

Copyright Board  
Canada



Commission du droit d'auteur  
Canada

**[CB-CDA 2023-058]**

## **ORDER OF THE BOARD**

### **Proceeding: Online Audiovisual Services - Music (2014-2026)**

November 24, 2023

[1] I will hold a case conference in the *Online Audiovisual Services-Music (2014-2026)* proceeding.

[2] The Parties that have confirmed their participation in this proceeding are listed in Annex A. Given the Parties' responses, this proceeding will be in English.

#### **Issues to Discuss at Case Conference**

[3] The purpose of the case conference is to establish the initial steps in this proceeding. The issues that parties should be ready to address include the following:

1. *Will SOCAN and SODRAC act as one party or two?*
2. *The role of objectors and interveners, particularly in view of Order 2017-153.*

[4] First, I am of the preliminary view that I should maintain the portion of Order 2017-153 that restricts objectors from acting in relation to a family of proposed tariffs to which they had not objected.

[5] Furthermore, while Order 2017-153 invited parties to seek intervenor status with full participatory rights, I note that I will consider the factors in Rule 52(5) in determining whether any such request is sufficiently justified.

3. *The Schedule of Proceedings*

[6] A preliminary calendar is included in Annex B for Parties' comment during the case conference.

[7] Because

- there are variations in scope, rates, and terms and conditions among the proposed tariffs within each of the four tariff families under consideration in this proceeding (SOCAN 22.D.1; SOCAN 22.D.2; SODRAC 6 – SOCAN 22.A.R; and SODRAC 7 – SOCAN 22.D.1.R), and
- various portions of the proposed tariffs have been carved out of this proceeding (e.g., online allied services, online music video services),

I believe that the Board and the Parties would benefit from consolidated tariff texts for each tariff family. In the past, such consolidated texts have sometimes been referred to as a Request for Certification (RFC) or Request for Approval (RFA). As such, I am of the preliminary view that collectives should file a Request for Approval for each of the proposed tariff families.

[8] I am also of the preliminary view that parties should file both Notices of Grounds for Proposed Tariffs, as well Notices of Grounds for Objections. The Notices of the Grounds for Proposed Tariffs would accompany, and be in relation to, the Requests for Approval (i.e., per proposed tariff family). These would assist the Parties in developing a Joint Statement of Issues and assist me in developing an appropriate schedule for the remainder of the proceeding.

[9] Last, I have previously mentioned that in my view, this proceeding would benefit from being handled in two phases. The first phase would consider only those issues that require little or no interrogatories, and are expected to have a significant bearing on the remainder of the proceeding, such as by limiting the scope of further interrogatories.

[10] Therefore, the Parties' Joint Statement of Issues would not only need to identify issues for the Board to consider, but also indicate which of these issues they believe should be determined in a first phase and why.

[11] As a reminder, I have previously indicated in Order 2023-001 that the following issues may be appropriate to consider in a first phase:

- the applicability of *CBC v. SODRAC* to this proceeding;
- the effect of s. 29.21 of the *Copyright Act* on intermediaries; and
- the model to determine the effect of reproduction exceptions on royalty rates.

4. *Any other procedural issues the Parties wish to bring to my attention.*

[12] Finally, if a Party intends to raise any procedural issues other than the ones mentioned in this order at the case management conference, it shall provide the Board and other Parties a brief description of those issues by no later than **Monday, December 11, 2023**.

### **Case Conference Scheduling**

[13] I will be available for the case conference on **Monday, December 18, 2023** and **Tuesday, December 19, 2023** between 9:00 a.m. and 3:00 p.m.

[14] The case conference is expected to last 2 hours (with a 10-minute break) and will be held virtually.

[15] Taking this into consideration, Parties shall discuss amongst themselves and propose a date and time that are convenient for all.

[16] Parties shall inform me of the date and time selected by no later than **Friday, December 1<sup>st</sup>, 2023.**

Nathalie Théberge  
Case Manager

## ANNEX A: List of Parties and Roles

<b>Party</b>	<b>Role</b>
SOCAN	Collective
SODRAC	Collective
Apple Inc. and Apple Canada Inc.	Objectors
Bell Canada	Objector
Canadian Association of Broadcasters	Objector
Canadian Communication Systems Alliance	Objector
Cogeco Communications Inc.	Objector
DAZN	Objector
Goodlife Fitness Centres Inc.	Objector
Google Inc.	Objector
Meta Platforms Inc.	Objector
Motion Picture Association – Canada	Objector
Netflix Inc.	Objector
Quebecor Media Inc.	Objector
Rogers Communications Canada Inc.	Objector
Stingray Digital Group Inc.	Objector
Telus Communications Inc.	Objector
TikTok Technology Canada Inc.	Objector
Warner Bros.	Objector

## ANNEX B: Preliminary Calendar

<b>Who</b>	<b>What</b>	<b>Date</b>
Collective(s)	File Requests for Approval and corresponding Notices of Grounds	March 29, 2024
Objectors	File Notices of Grounds for Objection	April 30, 2024
Collective(s)	File Responses to Objectors	May 31, 2024
Board	Issues directions on Joint Statement of Issues	July 15, 2024
Collective(s) and Objectors	File Joint Statement of Issues	August 30, 2024
Intervener	Files Additional Issues	September 16, 2024
Collective(s) and Objectors	Respond to Intervener	September 30, 2024
Board	Finalizes List of Issues and Rules on Phases	November 15, 2024
All	Case Conference on scheduling remaining steps	November 30, 2024