

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2021-058]

DIRECTIVE ON NOTICE OF GROUNDS FOR OBJECTION

December 20, 2021

Any user or their representative that files an objection to any of the proposed tariffs for the years 2023 to 2025 identified below, is required to file a Notice of Grounds for Objection:

- SOCAN Tariff 2.B – Television - Ontario Educational Communications Authority
- SOCAN Tariff 2.C – Television - Société de télédiffusion du Québec
- SOCAN Tariff 3.C – Adult Entertainment Clubs
- SOCAN Tariff 7 – Skating Rinks
- SOCAN Tariff 10.A – Parks, Parades, Streets and Other Public Areas - Strolling Musicians and Buskers; Recorded Music
- SOCAN Tariff 10.B – Parks, Parades, Streets and Other Public Areas - Marching Bands; Floats with Music
- SOCAN Tariff 11.A – Circuses, Ice Shows, Fireworks Displays, Sound and Light Shows, Dance Shows and Similar Events
- SOCAN Tariff 11.B – Comedy Shows and Magic Shows
- SOCAN Tariff 12.A – Theme Parks, Ontario Place Corporation and Similar Operations
- SOCAN Tariff 12.B – Canada's Wonderland and Similar Operations
- SOCAN Tariff 13.A – Public Conveyances - Aircraft
- SOCAN Tariff 13.B – Public Conveyances – Passenger Ships
- SOCAN Tariff 13.C – Public Conveyances - Railroad Trains, Buses and Other Public Conveyances, Excluding Aircraft and Passenger Ships
- SOCAN Tariff 21 – Recreational Facilities Operated by a Municipality, School, College, University, Agricultural Society or Similar Community Organizations

Notices of Grounds for Objection must be filed with the Board no later than 45 days after the publication of the proposed tariff, in either official language.

This requirement is in addition to the obligation under the *Copyright Act* to file an objection within 30 days after the publication of the proposed tariff.

Introduction

This year, in light of the new Government regulations, *Time Limits in Respect of Matters Before the Copyright Board* (SOR/2020-264), the Board has ordered Collective Societies to provide grounds for the proposed tariffs they file (“*Notice of Grounds for Proposed Tariff*”), for those proposed tariffs where the Board is considering an approval process with no hearing. The Board expects to publish these proposed tariffs in January 2022.

Similarly, users who object to any of these proposed tariffs will be required to also file a *Notice of Grounds for Objection*.

The Board expects to expand this requirement to all proposed tariffs and objections filed with the Board in the future.

Purpose of the Notices of Grounds

The intent of these Notices of Grounds is to provide the Board and parties with the information necessary to support a tariff-approval process that is as informal and expeditious as circumstances and considerations of fairness permit.

The Notices of Grounds will help the Board determine whether it should hold a hearing in respect of a proposed tariff (*Time Limits in Respect of Matters Before the Copyright Board Regulations*, SOR/2020-264, s. 5).

The *Notice of Grounds for Objection* will help the Board and other parties to identify potential issues to consider in its examination of a proposed tariff. These issues may be of a legal, economic, or practical nature.

In cases where the Board does not hold a hearing, it may rely solely on the *Notice of Grounds for Proposed Tariff*, any objection and *Notice of Grounds for Objection*, and any reply to an objection, to make its decision on the proposed tariff.

The Board is aware that the information provided in the Notices of Grounds will reflect the information available to a party at the time of filing of their Notice, and—in cases where there is a hearing—this will not prevent parties from introducing information obtained in the course of the hearing, or to take positions based on this new information.

Contents of the *Notice of Grounds for Objection*

In your *Notice of Grounds for Objection*, identify and explain your grounds for contending why the proposed tariff is not fair and equitable, and address all applicable issues identified below. Refer to specific provisions of the Proposed Tariff where applicable.

Identify and explain any changes you propose that you contend would improve the proposed tariff’s fairness, clarity, or ease of administration.

Issues that should be identified and addressed, if applicable to your objection:

1. Issues related to the scope and clarity of the proposed tariff.

These include issues of clarity of the scope (does the tariff apply to you, and to which activities?); overlap with other proposed or approved tariffs; and the collective society's authority to issue licenses for the activities in the scope of the proposed tariff.

2. Issues related to the royalty rate or royalty structure in the proposed tariff.

These include issues related to the amount of the royalties; the appropriateness of the royalty structure to your activities; and whether the royalty structure favours certain activities or business models.

3. Issues related to the terms and conditions in the proposed tariff

These include issues related to feasibility or practicability of terms and conditions; reporting obligations and information sharing; and payment and reporting periods and dates.

4. Any other relevant issues that would affect the Board's consideration of the Proposed Tariff

These include novel issues, such as related to the Board's jurisdiction, or the constitutionality of particular provisions.

In preparing your *Notice of Grounds for Objection*, use plain language and concrete examples that would be generally understood by other potential users of the proposed tariff and the collective society.

Next Steps

The Board expects to publish the identified proposed tariffs, along with the respective *Notice of Grounds of Proposed Tariff*, on its website in January 2022.

Users may file an objection to a proposed tariff within 30 days of its publication.

Users who do file an objection to a proposed tariff must also file *Notice of Grounds for Objection* within 45 days of the publication of the proposed tariff.

The Board will provide the collective society with any such *Notices of Grounds for Objection* when it provides copies of any objections.

Assistance

This is the first time a *Notice of Grounds for Objection* is required in a systematic way. The Board understands that this Directive may not address all situations that may arise. As such, if you require any directions or clarifications with any aspects of this Directive, please contact the Secretary General at registry-greffe@cb-cda.gc.ca.



Josée Péroquin for Lara Taylor, Secretary General