



[CB-CDA 2024-022]

REASONS FOR RULING OF THE BOARD

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

March 26, 2024

I. OVERVIEW

[1] Three parties filed requests to modify their status in this proceeding:

- Google requested to recommence its participation as objector in this proceeding;
- Warner Bros. Entertainment, Inc. (“Warner”) requested leave to intervene in relation to the SOCAN 22.D.1.R family of proposed tariffs; and
- Buena Vista International Inc. (“Disney”) requested leave to intervene in relation to both the SOCAN 22.D.1 and SOCAN 22.D.1.R families of proposed tariffs.

[2] On March 12, 2024 in Ruling 2024-020, I granted all of the above requests, indicating that reasons would follow. These are the reasons for that Ruling.

II. GOOGLE’S REQUEST TO RE-START PARTICIPATION

[3] Following Order 2024-004, Google requested (February 7, 2024) that it be reinstated as a party in this proceeding. I had previously indicated that barring objections, I was ready to reinstate it.

[4] Because no party, including SOCAN, objected to Google’s request, I reinstate it as an objector.

III. WARNER’S AND DISNEY’S REQUESTS FOR LEAVE TO INTERVENE

[5] I conclude it is appropriate to grant Warner’s and Disney’s request for leave to intervene.

A. PROCEDURAL BACKGROUND

[6] Warner requested leave to intervene, in the SOCAN 22.D.1.R family of proposed tariffs with “participatory rights and obligations akin to those of an objector,” since Warner is already an objector to the SOCAN 22.D.1 family of proposed tariffs.

[7] Disney requested leave to intervene in relation to the SOCAN 22.D.1 and 22.D.1.R families of proposed tariffs with participation akin to that of an objector.

[8] Both Warner and Disney are Members of the Motion Pictures Association-Canada (the MPA-C). The MPA-C is presently an objector to the SOCAN 22.D.1.R family of proposed tariffs. However, Warner and Disney both note developments in the market and the nature of Warner’s and Disney’s respective services, and the MPA-C is likely to withdraw from participation. They submit that they each need to be able to address their own particular situation.

[9] The MPA-C agrees with Warner’s and Disney’s characterization of the situation, supports their requests and confirms that it will withdraw from participation if Warner’s and Disney’s original requests are granted.

[10] SOCAN is the sole collective society in this proceeding, and will likely be the party most affected by the Board granting Disney’s requests and Warner’s modified request. SOCAN consented to the requests; no other party responded to either Warner’s or Disney’s request.

[11] SOCAN explained that it would prefer that Disney and Warner be granted “objector-like” participatory rights, rather than more limited ones: granting Disney and Warner intervenor-like status would ensure they are subject to the same requirements to disclose information (such as through interrogatories, or cross-examination) as any other objector would.

B. THE APPLICABLE RULES

[12] Subrule 52(5) of the *Copyright Board Rules of Practice and Procedure* sets out the factors that the Board must consider when deciding whether to grant leave to intervene. Additional guidance is set out in [PN 2023-010] *Practice Notice on Changing the Status of a Party*.

C. ANALYSIS

[13] In my view, the agreement among SOCAN, Warner, and Disney—and lack of objections from others—weighs strongly in favour of granting the requests. The requests should be granted absent an overriding policy-like consideration weighing against it.

[14] In respect of Warner, I conclude that there are no significant considerations weighing against granting the request in this proceeding. Warner is already an objector to the proceeding, and their expanded role will have a limited effect. I therefore grant Warner’s request.

[15] Unlike Warner, Disney is not an objector in this proceeding. As such, granting it “objector-like” intervener status will tend to increase its complexity. This is counterbalanced by

- the timeliness of Disney’s request;
- the withdrawal of the MPA-C, along with the importance of members of trade associations being able to represent their interests in such situations; and
- the likelihood that Disney will present information or make submissions that are useful and different from those of other parties.

[16] I conclude that there is no strong overriding consideration weighing against Disney’s request; in fact, the overall considerations weigh in favour of granting it. I therefore grant Disney’s request.

D. NEXT STEPS

[17] If the MPA-C decides to withdraw its participation, it may do so by providing notification to the Board and other parties. In accordance with PN 2023-10, it will cease to be a participant 15 days after that date.

Nathalie Théberge
Case Manager