



January 17, 2023

Copyright Board of Canada  
800-56 Sparks Street  
Ottawa, ON K1A 0C9

Filed via: email to [registry-greffe@cb-cda.gc.ca](mailto:registry-greffe@cb-cda.gc.ca)

Re: Proposed Tariff Title: SOCAN Tariff 22.D.1 – Online Audiovisual Services (2024-2026)

### NOTICE OF GROUNDS FOR OBJECTION

The following Notice of Grounds for Objection (the “Notice”) is filed on behalf of the Canadian Association of Broadcasters (CAB) in respect of Proposed *Tariff 22.D.1 – Online Audiovisual Services (2024-2026)* which was published by the Copyright Board on 2022-11-14 pursuant to subsection 67(1) of the *Copyright Act*. This Notice is filed in accordance with PN 2022-007.

#### 1. Any grounds for why the Board should not approve the proposed tariff despite any alteration of royalties or levies or fixation of terms and conditions

This proposed tariff applies to the communication to the public by telecommunication of works in SOCAN’s repertoire in connection with the operation of an online audiovisual service. As SOCAN notes, it is the nature of the *use* and not the *user* that determines whether the tariff applies. The CAB is of the view that this tariff should not be applicable to the online audiovisual services of its members and that, instead, SOCAN Tariff 22.D.3 should apply to all such services. However, given the qualifier that it is the use and not the user, the CAB maintains its objection to this tariff in order to preserve standing in the event SOCAN seeks to apply this tariff to online audiovisual services represented by the CAB.

#### 2. Any grounds for objecting to any royalty or levy rates in the proposed tariff

SOCAN is seeking to increase the rates in this tariff from 1.9% to 3%, and to increase the per subscriber minimum fee from 7.5¢ to 19.5¢. SOCAN has not offered any justification for the proposed rate increases other than to suggest that it believes the interrogatories will disclose information that will justify the increases. SOCAN has had access to detailed music use and financial reporting from individual services under the certified tariff for several years and should have information in its possession relating to the type and amount of music being used and the revenues being made. It is open to SOCAN to formulate arguments based on that information to provide some justification to support the contention that the value of music used on these services has somehow increased sufficiently during the tariff term to justify an increase of this magnitude. SOCAN has not done so. The CAB is also not aware of any factor that could justify an increase to the value of music used by licensees of this tariff. Absent justification, let alone valid justification, the rate increases should be rejected entirely.

#### 3. Any grounds for objecting to any terms or conditions in the proposed tariff

SOCAN has proposed modifications to the music use reporting requirements, including the addition of proposed section 5 relating to the making available right. SOCAN’s request for information to determine This document has not been made nor issued by the Copyright Board. It has not been translated and is only available in the language in which it was filed with the Board.

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whether and to what extent there are songs that were made available but not played, presumably so that it may provide distributions to the rightsholders associated with those songs, is *prima facie* reasonable. To the extent the music use requirements are subject to the “where available” caveat, the CAB does not contest the modifications and will encourage its members to provide any and all available information to assist SOCAN in its distributions.

That said, it is possible CAB members may not have access to records that will enable them to differentiate between the content that was made available and the content that was actually streamed. SOCAN’s request for services to use commercially reasonable efforts to obtain cue sheets from third parties set out in section 5 combined with the definition of “cue sheet” in section 2 does not incorporate the “where available” caveat. In the event a service requests a cue sheet from a third-party audiovisual producer and that cue sheet is not provided or does not include the components articulated in the definition, the service could be non-compliant with the tariff. The definition of “cue sheet” should be modified to reflect this possibility.

In addition, proposed section 9(4) is prejudicial to users of this proposed tariff, in that it specifically limits correcting for errors discovered in audit only to errors made by the user of the tariff and expressly states that if SOCAN makes an error that is discovered in an audit, those errors need not be corrected. This is unfair. If there is an audit, all discovered errors be subject to correction and compliance with the terms of the tariff.

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