



Copyright Board
Canada

Commission du droit
d'auteur du Canada

Filed by / Déposé par: Stingray Group Inc

Date: 2023-01-16

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

Re: Proposed Tariff Title: SOCAN Tariff 22.A– Online Music Services (2024-2026)

NOTICE OF GROUNDS FOR OBJECTION

The following Notice of Grounds for Objection (the “Notice”) is filed on behalf of Stingray Group Inc. (Stingray) in respect of Proposed Tariff *SOCAN Tariff 22.A– Online Music Services (2024-2026)* which was filed with the Copyright Board by SOCAN 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 service ordinarily accessed to listen to audio-only content other than a service covered other SOCAN Internet audio tariffs. As SOCAN notes, it is the nature of the *use* and not the *user* that determines whether the tariff applies. Stingray is of the view that this tariff should not be applicable to its online audio services and that, instead, the agreement with SOCAN Tariff following the release of *Re:Sound and SOCAN — Stingray Pay Audio and Ancillary Services Tariff (2007–2016)* (2021 CB 5-T) should apply to all such services. However, given the qualifier that it is the use and not the user, Stingray maintains its objection to this tariff to preserve standing in the event SOCAN seeks to apply this tariff to online audio services offered by Stingray.

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, yet it 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. Stingray is also not aware of any factor that could justify an increase to the value of music used by licensees of this tariff. Absent 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, Stingray does not contest the modifications.

In addition, proposed section 9(4) is prejudicial to users of this proposed tariff, in that it specifically limits correcting 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 should be subject to correction and compliance with the terms of the tariff.

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