



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](mailto:registry-greffe@cb-cda.gc.ca)

Re: Proposed Tariff Title: Artisti Pay Audio Services Tariff (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 *Artisti Pay Audio Services Tariff (2024-2026)* which was filed with the Copyright Board by SOCAN on 2022-11-11 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 tariff applies to reproductions made in the course of providing the pay audio service to the BDUs and to related simulcast and semi-interactive webcasts of the pay audio signal. Artisti contends that it is entitled to collect a royalty flowing from these reproductions on behalf of its performer members. This is possible, but cannot be assumed without proper examination of the underlying grant of rights from Artisti’s members. This issue was examined thoroughly in the context of the first commercial radio tariff for Artisti (see: *SOCAN, Re:Sound, CMRRA-SODRAC Inc., AVLA-SOPROQ, Artisti - Tariff for Commercial Radio, 2008-2012* at paras 73 et seq.)

In that case, the Copyright Board noted that “It is only by looking at individual recording contracts that we could determine with any certainty whether or not performers control the reproductions made by radio stations. However, no individual contracts were filed and we are limited to relying on the boilerplate recording contracts filed as evidence. Insofar as the rights of Artisti performers are concerned, we must also examine the collective agreements between the *Union des Artistes* (UDA) and the *Association québécoise de l’industrie du disque, du spectacle et de la vidéo* (ADISQ) and between the *Guilde des Musiciens du Québec* (Guilde) and ADISQ.”<sup>1</sup> The same would be true in determining the extent to which performers control the reproductions made by pay audio services.

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

Artisti proposes a rate that is a combination of a rate for the pay audio service delivered through the BDU platform plus a rate for the simulcast and webcast of the pay audio service. Artisti appears to use the certified *Re:Sound and SOCAN — Stingray Pay Audio and Ancillary Services Tariff (2007–2016)* (2021 CB 5-T) as the basis for its calculations relating to the former, and appears to rely on the decision in *CBC*

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<sup>1</sup>*SOCAN, Re:Sound, CMRRA-SODRAC Inc., AVLA-SOPROQ, Artisti - Tariff for Commercial Radio, 2008-2012*, Reasons, <<https://decisions.cb-cda.gc.ca/cb-cda/decisions/en/item/366711/index.do?q=commercial+radio>>, at para 87.

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*v SODRAC* (Request fixing royalties for the reproduction of musical works in the repertoire of the Society for the Reproduction Rights of Authors, Composers and Publishers in Canada Inc. and SODRAC 2003 inc. by the Canadian Broadcasting Corporation [Review (2012-2018)]) as the basis for calculating the latter.

The Board's certified tariff for pay audio services delivered by Stingray (2021 CB 5-T) includes the primary service, simulcasting and webcasting and is likely a more appropriate proxy for any entitlements Artisti may have. The starting point for calculating Artisti's entitlement would therefore be SOCAN's top rate of 9.96% for 2016 for the pay audio service and simulcasts (not 10.4% noted by Artisti), and 5.3% for related pay audio webcasting. These rates would be subject to adjustments for the relative value of communication and reproduction rights, plus additional adjustments for repertoire and the reproduction right exceptions in the *Copyright Act*. Stingray would engage an economic expert to perform the appropriate calculations to arrive at the proper rate.

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

The terms and conditions should be fair and reasonable and not place undue burden on the payors of the tariff. To the fullest extent possible Stingray requests harmonization on the terms and conditions between the proposed tariff and any other certified tariffs applicable to the same users for the same use (i.e. 2021 CB 5-T). Ensuring consistency in the reporting obligations and administrative provisions across collectives will maximize efficiency and reduce the possibility for error.

With respect to music use reporting requirements, the tariff should note that information and documentation shall be provided to the extent it is available to the entity paying the tariff. Occasionally, not all the specific types and formats of requested information are provided to user and therefore cannot be provided by that user to the collectives. Where requested information is available it should be provided, but the tariff should include this "where available" language in sections 6 and 7.

In addition, proposed section 8(5) 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. It expressly provides for correcting underpayments but does not provide redress for overpayments. 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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