

NOTICE OF GROUNDS FOR OBJECTION

Filed by Bell Canada, Rogers Communications Canada Inc., Cogeco Communications Inc., Québecor Média Inc., Bragg Communications Inc., Totem Médias Inc., and TELUS Communications Company (the “Fasken Objectors”)

In relation to proposed tariff *SOCAN Tariff 16 – Background Music Suppliers (2025-2027)*

Filed with the Copyright Board (the “Board”) on 2023-12-15 pursuant to Rule 18 of *Copyright Board Rules of Practice and Procedure*.

General Statement of Objection

This is the Notice of Grounds for Objection of Bell Canada, Rogers Communications Canada Inc., Cogeco Communications Inc., Québecor Média Inc., Bragg Communications Inc., Totem Médias Inc., and TELUS Communications Company to the *Statement of Proposed Royalties to be collected by the Society of Composers, Authors and Music Publishers of Canada (“SOCAN”) for the public performance and communication to the public by telecommunication of musical or dramatico-musical works in 2025-2027* (the “Statement of Proposed Royalties”) filed by SOCAN and published on the Copyright Board website on November 15, 2023 pursuant to the provisions of section 68.2 of the *Copyright Act*.

The Fasken Objectors respectfully reserve the right to rely upon objections raised by other parties to the proceedings, *mutatis mutandis*. The Fasken Objectors also reserve their right to raise additional substantive points of objection throughout the proceedings related to the Statement of Proposed Royalties.

These objections are filed in accordance with the *Copyright Act* and the Practice Notice on the Filing of Grounds for Objection.

Grounds for Objecting to Royalty Rates in the Proposed Tariff

The Fasken Objectors object to the rates set out in section 3 of the Statement of Proposed Royalties for the following reasons:

- Said proposed fees do not reflect the fair, reasonable, and appropriate value of the public performance and communication to the public of works in SOCAN’s repertoire.
- Said proposed fees do not reasonably reflect either the amount or the type or the impact of such public performance and communication by a licensee.
- Said proposed fees include revenues that are unconnected to the use of musical works.
- Said proposed fees do not reflect the fact that in many cases users have already acquired the reproduction rights directly from the copyright owners.
- Said proposed fees do not adequately reflect the principle of technological neutrality in that it seeks to collect higher royalty rates from prospective users of the *SOCAN Tariff 16*

licence than from other users who make substantially similar uses of music, as discussed in *Canadian Broadcasting Corp v SODRAC 2003 Inc*, 2015 SCC 57.

- Said proposed fees are based on the maximum inflationary increase entitled under the Board's established CPI-adjustment formula with no evidence in support of or explanation as to why the rate should be increased to this maximum.

Grounds for Objecting to Terms and Conditions in the Proposed Tariff

The Fasken Objectors object to the reporting and auditing provisions contained in the Statement of Proposed Royalties in sections 4 and 5. Said provisions are intrusive, require the disclosure of potentially sensitive confidential information, and place a disproportionate burden on licensees.

The Fasken Objectors object to the confidentiality provision at section 8. In particular, they object to section 8(2)(f) where SOCAN is given the right to share information with anyone who is *presumed* to know confidential information received pursuant to the tariff. This provision could allow for the release of sensitive confidential information to uninvolved third parties.

Additional Grounds for Objecting to the Proposed Tariff

The Fasken Objectors object to the fact that the Statement of Proposed Royalties does not adequately reflect the risk and investment by users in new technology, as discussed in *Canadian Broadcasting Corp v SODRAC 2003 Inc*, 2015 SCC 57.