

NOTICE OF GROUNDS FOR OBJECTION

Filed by Bell Canada, Rogers Communications Canada Inc., Cogeco Communications Inc., Québecor Média Inc., TELUS Communications Company, Bragg Communications Inc., SaskTel, and the Canadian Communication Systems Alliance (the “Fasken Objectors”)

In relation to proposed tariff *SOCAN Tariff 17 – Transmission of Pay, Specialty and Other Television Services by Distribution Undertakings (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., TELUS Communications Company, Bragg Communications Inc., SaskTel, and the Canadian Communication Systems Alliance to the *Statement of Proposed Royalties to be collected by the Society of Composers, Authors and Music Publishers of Canada (“SOCAN”) for the 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 sections 8 and 9 of the Statement of Proposed Royalties for the following reasons:

- Said proposed fees do not reflect the fair, reasonable, and appropriate value of the 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 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 17*

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 do not have any true legal or economic basis. In SOCAN's Notice of Grounds, it is explicitly stated that SOCAN has no factual basis for its requested increase in royalties: "SOCAN cannot know the full extent of the changes to the market since 2004 that warrant the rate increase until the interrogatory phase of this proceeding."
- Said proposed fees do not account for the fact that television has been subject to declining revenues due to, among other factors, competitive pressures and declining profitability. SOCAN's own 2016-2020 Financial Highlight noted "TV has been trending slowly downward year over year." In its recent *Stingray Pay Audio and Ancillary Services Tariff (2007-2016)*, the Board applied a 20% "declining industry" discount that reflected increased competition and declining profitability in the relevant sector. A discount of this kind would be more appropriate than the increase suggested by SOCAN in the Statement of Proposed Royalties.

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 from sections 11 to 16. Said provisions are intrusive and require the disclosure of potentially sensitive confidential information. The fact that the Statement of Proposed Royalties requires licensees to retain records for a period of six years at section 16(1) is also unreasonable and places a disproportionate burden on licensees.

The Fasken Objectors object to the confidentiality provision at section 17. In particular, they object to section 17(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.