

## NOTICE OF GROUNDS FOR OBJECTION

Filed by Bell Canada, Rogers Communications Canada Inc., Québecor Média Inc., TELUS Communications Company, Google Inc., Amazon.com.ca Inc., Meta Platforms Inc. (formerly known as Facebook, Inc.), SaskTel, and the Canadian Communication Systems Alliance (the “Fasken Objectors”)

In relation to proposed tariff *CMRRA Audiovisual Services Tariff (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*.

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### General Statement of Objection

This is the Notice of Grounds for Objection of Bell Canada, Rogers Communications Canada Inc., Québecor Média Inc., TELUS Communications Company, Google Inc., Amazon.com.ca Inc., SaskTel, Meta Platforms Inc. (formerly known as Facebook, Inc.), and the Canadian Cable Systems Alliance to the *Statement of Proposed Royalties to be collected by the Canadian Musical Reproduction Rights Agency (the “CMRRA”) for the Reproduction of Musical Works, in Canada, by Audiovisual Services in 2025-2027* (the “Statement of Proposed Royalties”) filed by CMRRA 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 5 of the Statement of Proposed Royalties for the following reasons:

- Said proposed fees do not reflect the fair, reasonable, and appropriate value of reproduction of musical works in CMRRA’s repertoire by audiovisual services.
- Said proposed fees do not reasonably reflect either the amount or the type or the impact of such reproduction 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 (as discussed in *Canadian Broadcasting Corp v SODRAC 2003 Inc*, 2015 SCC 57) in that it

seeks to collect higher royalty rates from prospective users of the *CMRRA Audiovisual Services Tariff* licence than from other users who make substantially similar uses of music.

- Said proposed fees are not tied to any evidence that would explain the rates suggested. CMRRA only cites various pending (and currently unapproved) tariffs as a source for the fees, which is not a reliable foundation upon which fees should be based.
- Said proposed fees are unreasonably based on a 1:1 ratio approach to performance and reproduction royalties, which is not only not reflective of the 1:3.2 ratio used in all prior proceedings, but is also an overall approach that has been rejected by both the Supreme Court and the Board (*CBC v SODRAC, 2015 SCC 57, SODRAC 2003 Inc v CBC, 2020 CB 1, and SODRAC 2003 Inc v CBC, 2021 CB 1*).
- Said proposed fees set a minimum that is wildly inflated relative to minimums used in other tariffs.
- Said proposed fees use the “greater of” royalty structure that has been discouraged multiple times by the Board.

### **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 9 and 11, as well as the cue sheets provisions in section 8. 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 11(1) is also unreasonable and places a disproportionate burden on licensees. Additionally, the fact that services are required to pay for audit costs as per section 11(4) is not standard.

The Fasken Objectors object to the breach and termination provision at section 12. In particular, they object to the language that terminates the rights of the licensee five business days after *any* information is due at section 12(1). This provision offers an unfairly short timeline for licensees to provide information that may be difficult to obtain, particularly if there is any dispute over whether *all* necessary information has been provided.

The Fasken Objectors object to the confidentiality provision at section 13. In particular, they object to section 13(2)(e) where CMRRA 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.

The Fasken Objectors object to the interest on late payments provision at section 14. In particular, they object to the late fee of \$50.00 a day if information is not provided by the due date at section 14(2). This provision enforces an onerous surcharge and offers very little time for dispute or the retrieval of additional information before the surcharge begins to accumulate if the licensee believes that they have appropriately provided the requested information but CMRRA disagrees. There is equally nothing in the tariff that forces CMRRA to immediately inform the licensee if they believe there to be missing information, which could allow the surcharge to accumulate before the licensee is even aware that there is a question of whether or not they have met their obligations.

### **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.