

REPLY TO NOTICE OF GROUNDS FOR OBJECTION

Filed with the Copyright Board by SOCAN on 2024-01-26 pursuant to Rule 21 of the *Copyright Board Rules of Practice and Procedure*

SOCAN TARIFF 16 – BACKGROUND MUSIC SUPPLIERS (2025-2027)

1. This Reply is in response to the Notices of Grounds for Objection filed by SiriusXM Canada Inc. (“SiriusXM”), Stingray Group Inc. (“Stringray”), and the Fasken Objectors (collectively, the “Objectors”).
2. The Objectors have filed numerous grounds for objection. SOCAN denies these grounds and any factual or evidentiary assertions made in the Notices of Grounds for Objection and puts the Objectors to the strict proof thereof.
3. To the extent that the Objectors take issue with the proposed inflationary adjustment, SOCAN submits that CPI all-items is the most appropriate measure for inflationary adjustments to nominal values in the proposed tariff. Such an adjustment preserves the purchasing power of rights owners.⁷ The Board has, on numerous occasions, confirmed its preferred approach to inflationary adjustments.⁸ There is no reason to depart from this approach. Given the Board’s jurisprudence on inflation, SOCAN should not be required to provide economic evidence to support the requested inflationary adjustment.
4. SiriusXM argues that the free trial period should be extended to three months. SOCAN denies this and states that there is no basis in fact or law to extend the free trial period to three months.
5. SiriusXM argues that SOCAN has no reasonable claim to revenues generated from the sale of equipment to a subscriber. SOCAN denies this and puts SiriusXM to the strict proof thereof.
6. SiriusXM argues that the “minimum fees are excessive”. SOCAN denies this and puts SiriusXM to the strict proof thereof.
7. SiriusXM argues that the administrative provisions in the proposed tariff are “impractical and unduly onerous.” SOCAN denies this and puts SiriusXM to the strict proof thereof.
8. The Fasken Objectors oppose the amendment proposed at s. 8(2)(f) of the proposed tariff. SOCAN notes that this language is consistent with accepted uses of confidential information outside the context of approved tariffs. Further, this language is found in a number of approved tariffs, including:
 - a. *SOCAN Tariff 22.B – Commercial Radio and Satellite Radio (2007-2018)* - 2023 CB 6-T-1

⁷ *Re:Sound Tariff 8 – Non-Interactive and Semi-Interactive Streaming (2013-2018)*, 2023 CB 12 at para 98.

⁸ See, for example, *SOCAN, Re:Sound – Tariff for CBC Radio 2006-2011* (8 July 2011) at paras 82-91; *Access Copyright - Tariff for Provincial and Territorial Governments, 2005-2014* (22 May 2015) at paras 494-497; *SOCAN Tariff 3.C – Adult Entertainment Clubs (2023-2025)*, 2022 CB 13 at paras 16-22; *Re:Sound Tariff 8 – Non-Interactive and Semi-Interactive Streaming (2013-2018)*, 2023 CB 12 at paras 98-104.

- b. *SOCAN Tariff 22.C – Other Audio Websites (2007-2018) - 2023 CB 6-T-2*
- c. *CPCC – Private Copying Tariff (2022-2024) - 2021 CB 12-T*
- d. *SOCAN - Tariff 22.D.1 (Internet - Online Audiovisual Services), 2007-2013 [Redetermination]*

9. Although Rule 22 of the *Copyright Board Rules of Practice and Procedure* provides that the Board may decide the matter of a proposed tariff only on the information provided under Part 3 of the Rules, SOCAN submits that it would not be appropriate in this case for the Board to decide the matter without hearing additional evidence and submissions from both SOCAN and the Objectors absent a settlement or further developments between SOCAN and the Objectors. For greater certainty, in the event of a settlement between SOCAN and the Objectors, the Board should not rely on any of the information provided under Part 3 of the Rules.