

RESPONSE TO NOTICE OF GROUNDS FOR OBJECTION

Filed by SOCAN

In relation to proposed tariffs

SOCAN Tariff 22.D.1 – Online Audiovisual Services (2014-2026)

Filed with the Copyright Board on 2024-04-18 pursuant to Rule 21 of *Copyright Board Rules of Practice and Procedure* and Copyright Board Order CB-CDA 2024-007.

1. General Statement of Response

This is SOCAN's Response to the Notice of Grounds for Objection of Google, Meta Platforms Inc. (formerly known as Facebook Inc.), Netflix Inc., Buena Vista International Inc. (Disney), Warner Bros. Entertainment, DAZN, the Canadian Association of Broadcasters (CAB), Stingray Group Inc. (Stingray), Goodlife Fitness Centres, Apple Canada Inc., and Apple Inc. (collectively, the "**Objectors**") filed on March 28, 2024 in relation to the consolidated request for approval of *SOCAN Tariff 22.D.1, Online Audiovisual Services (2014-2026)* (the "**Proposed Tariff**").

SOCAN relies on and adopts the contents of its Notice of Grounds for Proposed Tariff filed on February 22, 2024. SOCAN also respectfully reserves the right to raise additional points in response to any grounds of objection raised by any Objector during the proceeding.

2. Response Regarding the Royalty Rates in the Proposed Tariff

SOCAN disputes the grounds for objection to the proposed royalty rates stated by the Objectors, including for the following reasons:

- Each proposed royalty rate, including the applicable rate base and any minimum fee, is fair and equitable,¹ and properly reflects the value of the use of musical works by online audiovisual services. The proposed royalty rates account for, or are otherwise not impacted by, the factors cited by the Objectors, including the amount of music used by

¹ As noted in SOCAN's Notice of Grounds for Proposed Tariff, the proposed royalty rate of 2.1% for 2014 through 2016 does not fully reflect the value of the use of SOCAN's repertoire by online audiovisual services in 2014 to 2016. That value is more properly reflected in the 3.0% rate proposed for 2017 to 2016.

services, or a service's specific business models, offerings, or revenue models. The proposed royalty rates adequately reflect the principle of technological neutrality.

- There is no overlap or duplication in the formula proposed for an advertising-funded or advertising-supported service. Subsection 3(2) of SOCAN's consolidated request for approval for the Proposed Tariff provides that the fees charged to end users under paragraphs 3(1)(A) and 3(1)(b) are excluded from the calculation of Internet-related revenues in paragraph 3(1)(c).
- Users cannot and do not acquire the right to communicate musical works in SOCAN's repertoire other than from SOCAN. SOCAN is the owner or exclusive licensor of the communication right in and to all musical works in its repertoire. Accordingly, a user cannot obtain a licence for that right from any other person.
- Finally, the removal of the page impression ratio from the royalty calculation for advertising-funded and advertising-supported services for 2024 to 2026 is appropriate. The initial rationale for the use of a page impression ratio is no longer applicable in those years because online audiovisual services have increasingly offered programs via a single webpage or software application for mobile devices. The removal of the page impression ratio will also simplify the administration of the tariff for both SOCAN and users.

3. Response Regarding the Terms and Conditions in the Proposed Tariff

SOCAN disputes the grounds for objection to the terms and conditions in the Proposed Tariff stated by the Objectors. The terms and conditions are fair and equitable. They are necessary to the efficient and proper administration of the tariff, including SOCAN's ability to identify users, calculate royalties, and distribute those royalties to rights holders.

4. Response the Objectors' Additional Grounds of Objection

SOCAN disputes the Objectors' additional grounds of objection to the Proposed Tariff. In particular:

- The Proposed Tariff adequately reflects the principles of technological neutrality and balance in accordance with *Canadian Broadcasting Corp. v. SODRAC 2003 Inc.* 2015 SCC 57.
- The Proposed Tariff states that it does not authorize the use of any works in SOCAN's repertoire in connection with the training of artificial intelligence (AI) systems. It does not purport to *restrict* any such use, whether in accordance with applicable exceptions in the *Copyright Act* (if any) or otherwise; rather, it merely clarifies that the licence available under the tariff does not extend to those activities. This clarification is made necessary by recent technological developments, including the reported development of consumer-facing AI systems by certain UGC services.