

# RESPONSE TO NOTICE OF GROUNDS FOR OBJECTION

Filed by SOCAN

In relation to proposed tariffs

SOCAN Tariff 22.D.2 – User-Generated Content 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 the Response of SOCAN to the Notice of Grounds for Objection of Google, Meta Platforms Inc. (formerly known as Facebook Inc.), TikTok Inc., the Canadian Association of Broadcasters (CAB), Stingray Group Inc. (Stingray), and Goodlife Fitness Centres (collectively, the “**Objectors**”) filed on March 28, 2024 in relation to the consolidated request for approval of *SOCAN Tariff 22.D.2, User-Generated Content 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, and properly reflects the value of the use of musical works by user-generated content 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 services, or a service’s specific business models, offerings, or revenue models. The proposed royalty rates adequately reflect the principle of technological neutrality.
- A percentage-of-revenue royalty is appropriate for all potential users of the Proposed Tariff. All potential users operate the same type of service, namely a user-generated

content service. The Objectors do not explain which users they believe should be subject to a different rate structure or why differential treatment would be appropriate. In SOCAN's submission, there is simply no reason to treat some users differently from others.

- 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.
- User-generated content services do not satisfy the criteria for the exception for non-commercial user-generated content in section 29.21 of the *Copyright Act*.

### **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 user-generated content services.