



January 17, 2023

Copyright Board of Canada
800-56 Sparks Street
Ottawa, ON K1A 0C9

Filed via: email to registry-greffe@cb-cda.gc.ca

Re: Proposed Tariff Title: SOCAN Tariff 22.D.3 – Allied Audiovisual Services (2024-2026)

NOTICE OF GROUNDS FOR OBJECTION

The following Notice of Grounds for Objection (the “Notice”) is filed on behalf of the Canadian Association of Broadcasters (CAB) in respect of Proposed Tariff *SOCAN Tariff 22.D.3 – Allied Audiovisual Services (2024-2026)* which was filed with the Copyright Board by SOCAN on 2022-11-14 pursuant to subsection 67(1) of the *Copyright Act*. This Notice is filed in accordance with PN 2022-007.

1. Any grounds for why the Board should not approve the proposed tariff despite any alteration of royalties or levies or fixation of terms and conditions

The CAB’s members have been party to an agreement with SOCAN relating to this proposed tariff since 2018 (hereinafter “the Pre-Existing Agreement”) which is currently subject to certification by the Copyright Board. Subject to the comments below relating to the proposed rate increase and music use reporting requirements, the CAB is of the view that the Copyright Board should approve the tariff in substantially the same form as the Pre-Existing Agreement.

2. Any grounds for objecting to any royalty or levy rates in the proposed tariff

SOCAN has proposed significant increases to the rates in section 3 of the Proposed Tariff, as follows:

- An increase in the regular music use rate from 1.9% to 3%;
- An increase in the low music rate from 0.8% to 1.5%;
- An increase in the minimum fee for a service with no revenue from \$15 to \$25;
- An increase in the per subscription rate from 7.5¢ per subscriber to 19.5¢ per subscriber.

SOCAN has not offered any justification for the proposed rate increases other than to suggest that it believes the interrogatories will disclose information that will justify the increases. SOCAN has had access to detailed music use and financial reporting from individual services under the Pre-Existing Agreement for several years and should have information in its possession relating to the type and amount of music being used and the revenues being made. It is open to SOCAN to formulate arguments based on that information to provide some justification to support the contention that the value of music used on these services has somehow increased sufficiently during the tariff term to justify an increase of this magnitude. SOCAN has not done so. The CAB is also not aware of any factor that could justify an increase to the value of music used by licensees of this tariff. Absent valid justification, the rate increases should be rejected entirely.

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3. Any grounds for objecting to any terms or conditions in the proposed tariff

SOCAN has proposed changes to several definitions where it has proposed the word “transmitted” instead of “received.” For example, the definitions of *stream* and *on-demand stream* reflect this proposed change. SOCAN has provided no explanation for these proposed changes other than to note that “Several of the definitions in the proposed tariff have been amended for clarity.” Further explanation is required to justify this change.

SOCAN has proposed modifications to the music use reporting requirements, including the addition of proposed section 6 relating to the making available right. SOCAN’s request for information to determine whether and to what extent there are songs that were made available but not played, presumably so that it may provide distributions to the rightsholders associated with those songs, is *prima facie* reasonable. To the extent the music use requirements are subject to the “where available” caveat, the CAB does not contest the modifications and will encourage its members to provide any and all available information to assist SOCAN in its distributions.

That said, it is possible that not all allied audiovisual services have readily available records that will enable them to differentiate between the content that was made available and the content that was actually streamed. SOCAN’s request for services to use commercially reasonable efforts to obtain cue sheets from third parties set out in section 6 combined with the definition of “cue sheet” in section 2 does not appear to incorporate the “where available” caveat. In the event a service requests a cue sheet from a third-party audiovisual producer and that cue sheet is not provided or does not include the components articulated in the definition, the service could be non-compliant with the tariff. The definition of “cue sheet” should be modified to reflect this possibility.

In addition, proposed section 10(4) is prejudicial to users of this proposed tariff, in that it specifically limits correcting errors discovered in audit only to errors made by the user of the tariff and expressly states that if SOCAN makes an error that is discovered in an audit, those errors need not be corrected. This is unfair. If there is an audit, all discovered errors should be subject to correction and compliance with the terms of the tariff.

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