



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](mailto:registry-greffe@cb-cda.gc.ca)

Re: Proposed Tariff Title: SOCAN Tariff 22.B – Internet – Commercial Radio and Satellite Radio (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 22.B – Internet – Commercial Radio and Satellite Radio (2024-2026)* which was published by the Copyright Board 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

As SOCAN notes in its Notice of Grounds for the Proposed Tariff, this tariff is changing as it applies to commercial radio broadcasters. Whereas Tariff 22.B used to apply to commercial radio simulcasting, 22.B will now only apply to non-simulcast webcasting offered by commercial radio broadcasters and simulcasting will be covered in Tariff 1.A. The CAB agrees with SOCAN that simulcasting is properly in Tariff 1.A.

To the extent CAB radio broadcasters engage in non-simulcast webcasting, the CAB is of the view that the base rates should be consistent with all non-simulcast webcasting (i.e. the existing rates in Tariff 22.A). Assuming consistency in the webcasting rates, which SOCAN proposes in section 5(3) of its Notice of Grounds for the Proposed Tariff, the other reason to maintain Tariff 22.B for CAB members offering non-simulcast webcasting (as opposed to relying on Tariff 22.A for this type of service offering), is to recognize the unique role of the commercial radio broadcaster website that exists beyond the music. To date, this has been done through the inclusion of a page impression ratio in the royalty calculation. As is discussed in more detail below, SOCAN is proposing to eliminate the page impression ratio. The CAB is of the view that the page impression ratio should be maintained to reflect the unique nature of commercial radio broadcaster websites.

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

SOCAN is seeking rates of 10.3% for non-simulcast audio webcasting offered by commercial radio broadcasters, with minimum fees which shall be the lesser of 60.8¢ per subscriber per month and 0.13¢ per stream requiring a SOCAN licence.<sup>1</sup> To date, the rates applicable to this type of service were 5.3%

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<sup>1</sup> Proposed Tariff at section 3(1).

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with a \$100 minimum annual fee as set out in SOCAN Tariff 22.A (2011-2013).<sup>2</sup> To the extent CAB members offer this type of service and have been paying SOCAN for it under Tariff 22.A, the new rate proposal from SOCAN amounts to a doubling of the rate, and a reintroduction of the per subscriber/per stream fees that the Copyright Board eliminated in its decision on the 2011-2013 tariff. Assuming the per subscriber fee would not be applicable to a mixed content website with no subscribers, the per stream rate would likely apply to virtually all broadcasters offering webcast streams on their websites. The resulting increase in liability would be extremely prejudicial to users of the tariff.

SOCAN has not offered any justification for the proposed rate increase 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 users that have been paying under Tariff 22.A 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.

In addition to unjustified rate increases, SOCAN has proposed to entirely remove the page impression ratio from the proposed tariff. SOCAN notes that “The Board has recognized that page impressions have become less appropriate for measuring music use.” SOCAN provides no specific reference to the Board’s position on this issue or why that reasoning is appropriate in this case. At a high level, this approach could make sense for webcasting sites that exclusively function to convey music streams. This is not the case for the majority of websites of CAB members. The CAB does not accept that all Internet-related revenues from broadcaster websites are attributable to the music use, and therefore not all revenues are properly subject to the tariff. To the extent CAB members are monetizing their websites on the basis of content other than music in SOCAN’s repertoire, those revenues are properly excluded from the rate base for the SOCAN tariff. The best way to ensure that only the revenues attributable to the music use are captured in the rate base for the tariff is to apply a page impression ratio or an equivalent metric to the royalty calculation. The CAB is willing to discuss the modification or even removing the *default* page impression ratios on the basis that stations and services may now have the technology required to perform the calculations, but the tariff should continue to include a mechanism for stations to perform an informed calculation.

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

SOCAN has proposed modifications to the music use reporting requirements, including the addition of proposed section 5 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

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<sup>2</sup> Online Music Services (CSI: 2011-2013; SOCAN: 2011-2013; SODRAC: 2010-2013), <https://decisions.cb-cda.gc.ca/cb-cda/certified-homologues/en/item/366478/index.do?q=ONLINE+MUSIC+SERVICES+TARIFF+%28CSI%3A+2011-2013%3B+SOCAN%3A+2011-2013%3B+SODRAC+2010-2013%29+> at 4(1)(b) and 4(2)(b).

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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. This caveat should be expressly added to the definition of “additional information”, to section 4 and to section 5.

SOCAN has also proposed to reduce the time frame for providing service information set out in section 4(1) from 30 days after the end of the year to 20 days after the end of the first month. SOCAN has provided no indication that it has suffered prejudice from the pre-existing timeframe, or any rationale for the change. This change to the reporting time frame is unnecessary and unjustified and should not be included in the tariff.

In addition, proposed section 9(4) is prejudicial to users of this proposed tariff, in that it specifically limits correcting for 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 be subject to correction and compliance with the terms of the tariff.

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