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Copyright Board of Canada  
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To whom it may concern,

## **Re: Notice of Grounds for Objection- SOCAN Tariff 22.A (Online Music Services, 2024-2026)**

This is the Notice of Grounds for Objection of Google Inc., Spotify AB, and Amazon.com.ca Inc. (the “Services”) to the Statement of Proposed Royalties to be Collected by SOCAN for the operation of Online Music Services for 2024-2026 (the “Statement of Proposed Royalties”) filed by SOCAN and published on the Copyright Board website on November 18, 2022 pursuant to the provisions of section 68.2 of the *Copyright Act*.

The Services respectfully reserve the right to rely upon objections raised by other parties to the proceedings, *mutatis mutandis*. The Services also reserve their right to raise additional substantive points of objection throughout the proceedings related to the Statement of Proposed Royalties.

These objections are filed in accordance with the *Copyright Act* and the Practice Notice on the Filing of Grounds for Objection.

*Inter alia* and without limiting their general objection, and without admitting that they are liable for the payment of royalties pursuant to the proposed tariff, the Services object to the following:

### **Grounds for Objecting to Royalty Rates in the Proposed Tariff**

The Services object to the rates set out in section 3.

Said proposed fees do not reflect the fair, reasonable, and appropriate value of the public performance or the communication to the public by telecommunication of works in SOCAN’s repertoire. Said proposed fees do not reasonably reflect either the amount or the type of the impact

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of music use by a licensee. In particular, the Services object to the proposed minimum “per play” rates, each of which is unjustified and commercially unreasonable.

The Services object to the fact that the Statement of Proposed Royalties seeks to include in the rate base revenues which are in no way connected to the use or value of SOCAN’s repertoire and the fact that in the Statement of Proposed Royalties, SOCAN is proposing to collect royalties for permanent downloads and limited downloads, two activities that do not engage any of the rights controlled by SOCAN.

Further, the Services object to the fact that the Statement of Proposed Royalties does not adequately reflect the principle of technological neutrality in that it seeks to collect higher royalty rates from online music services than from other users who make substantially similar uses of music

### **Grounds for Objecting to Terms and Conditions in the Proposed Tariff**

The Services object to the reporting and auditing provisions contained in the Statement of Proposed Royalties at sections 4, 5, and 9. Said provisions are intrusive, require the disclosure of potentially sensitive confidential information, and place a disproportionate burden on licensees. The Services object to the requirement to provide certain information even in circumstances where that information is not available to the licensee. This requirement imposes an undue burden on licensees and could result in a licensee being prohibited from relying on the tariff.

The Services also object to the fact that the Statement of Proposed Royalties requires licensees to retain records for a period of six years at section 9(1). This requirement is unreasonable and places a disproportionate burden on licensees.

### **Additional Grounds for Objecting to the Proposed Tariff**

The Services object to the fact that the Statement of Proposed Royalties does not adequately reflect the risk and investment by users in new technology.

The Services also object to the fact that the Statement of Proposed Royalties does not include a mechanism requiring SOCAN to identify which of the musical works used by a licensee are within its repertoire and to adjust the royalties payable accordingly, despite the fact that royalties are only payable for streams requiring a SOCAN licence and despite the fact that licensees are required to identify the title, author, and publisher of each musical work.

Further, the Services object to the overlapping nature of SOCAN’s proposed Internet tariffs (SOCAN’s proposed Tariffs 22.A-G). SOCAN has not clearly differentiated its proposed Internet tariffs, which leaves prospective users unable to determine which tariffs may apply to them.

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**



Jay Kerr-Wilson