

RESPONSE TO NOTICE OF GROUNDS FOR OBJECTION

Filed by SOCAN

In relation to proposed tariffs

SOCAN Tariff 22.D.1.R – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by Online Audiovisual Services and User-Generated Content Services (2015-2026)

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 Bell Canada, Rogers Communications Canada Inc., Cogeco Communications Inc., Québecor Média Inc., TELUS Communications Company, the Canadian Communication Systems Alliance, Meta Platforms, Inc. (formerly known as Facebook Inc.), Netflix Inc., Buena Vista International Inc. (Disney), Warner Bros. Entertainment, 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.R – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by Online Audiovisual Services and User-Generated Content Services (2015-2026)* (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 reproduction of musical works by online audiovisual services and 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.
- SOCAN does not agree that, in many cases, users have obtained the rights granted by the Proposed Tariff in relation to any musical work embedded in an audiovisual program—let alone *all* musical works embedded in an audiovisual program, or in multiple audiovisual programs—from someone other than SOCAN. In any event, the proposed royalty rates are fair and equitable.
- The formula for calculating royalties under the Proposed Tariff is not unduly complex or unrealistic in practice.

Finally, with respect to the proposed royalty rate for on-demand streams, SOCAN has explained how that rate was initially determined, in accordance with the Copyright Board’s Practice Notice on Filing of Grounds for Proposed Tariff (PN 2022-006 rev. 1).

To be clear, SOCAN’s Notice of Grounds for Proposed Tariff filed on February 22, 2024 addresses the general basis for the royalty rates and royalty structure in the Proposed Tariff. SOCAN reserves the right to advance additional or alternative valuation methodologies and adjustments for inflation and other externalities in the course of the proceeding. Without limitation, SOCAN reserves the right to seek information and documents from other parties to the proceeding to put forward expert evidence to support a detailed valuation analysis, to permit the Copyright Board to set equitable royalty rates for the activities covered by the Proposed Tariff

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.