

This is SOCAN's response to Board Order CB-CDA 2024-083 (the "Order").

Both issues identified in the Order relate to SOCAN's proposal that the approved royalty rates be adjusted for inflation according to the Board's default methodology.

SOCAN has proposed an inflationary increase in order to preserve the purchasing power of rightsholders. SOCAN collects royalties on behalf of rightsholders and those rightsholders rely on royalties for their livelihood. The purchasing power of those royalties is eroded unless the amounts are periodically adjusted to account for inflation. This principle is recognized in the weight of the Board's jurisprudence. SOCAN does not need to advance economic evidence to support this basic principle that the Board routinely implements in its decisions. Indeed, the Board has established a default methodology for applying inflationary adjustments to dollar-denominated royalty fees (described in the document titled, "Inflation Adjustment to Royalty Rates – Default Methodology"). This default methodology is not binding on the Board; however, parties who propose other methodologies must provide an explanation. Similarly, if the Board is to depart from the default approach, it must explain the reasons for doing so.

In this case, SOCAN has proposed that the Board follow the default methodology. The objector Associations have opposed that proposition. Accordingly, the Associations bear the onus of explaining why the default methodology should not be applied in this case. Similarly, if the Board is of the view that another methodology is appropriate here, it must provide the parties with an opportunity to make meaningful submissions on the methodology to be used and it must explain its reasons for departing from the default methodology.

Therefore, SOCAN submits that the issues to be decided in this proceeding are as follows:

1. Should the royalty rate be adjusted to account for inflation?

SOCAN submits that the royalty rate should be adjusted to account for inflation in accordance with the Board's default methodology. The Associations submit that it should not. The Associations bear the onus of establishing why a departure from the default methodology is warranted in this case. If the Board is considering departing from the default methodology in this case, it must provide the parties the opportunity to make meaningful submissions on the issue.

2. What methodology should be used to adjust for inflation?

SOCAN submits that the Board should use the default methodology to adjust the royalty rate for inflation. The Associations oppose the use of the default methodology to determine the inflation adjustment. The Associations bear the onus of establishing why a departure from the default methodology is warranted in this case. If the Board is considering departing from the default methodology in this case, it must provide the parties the opportunity to make meaningful submissions on the issue.

