

Online Music Video Services (2014-2018)

Joint Statement of Issues

By including these issues, the parties do not agree on the merits of each issue, nor does SOCAN agree that the issues are applicable to the objector's business operations or service model.

NATURE OF SERVICES

1. How have OMV services evolved in Canada, during the tariff period, including as to service offerings, revenue-generation and revenue-sharing schemes, amount of revenue generated, and functionalities?
2. How do OMV services use music in Canada?
3. What technology do OMV services and their authorized distributors use to offer and deliver music to end users in Canada? How do they use that technology?

LEGAL ISSUES

4. How do the *CBC v SODRAC* factors apply to this proceeding, if at all, including how the principles regarding technological neutrality and the relative contributions by copyright owners and users should apply in this case?
5. Which, if any, reproduction exceptions in the *Copyright Act* does the objector intend to rely on in this proceeding?
6. How should the Board interpret the meaning, scope, and potential applications of the exceptions in ss 29.24 (backups), 30.7 (Incidental Inclusion), 30.71 (Temporary Reproductions for Technological Processes), and other reproduction exceptions in the *Copyright Act*, including what types of conditions are required for relevant services to meet the exceptions?

ECONOMIC AND VALUATION ISSUES

A. Statutory Criteria

7. How should the Board apply the criteria set out in s. 66.501 of the *Act*?

B. Rate Base

8. What is the appropriate rate base for the tariffs?
 - a. Should the revenue base reflect the amounts received by the service, rather than paid by subscribers?
9. Is the proposed definition of "Service" appropriate for the scope of this tariff?
 - a. Should the definition be modified to account for corporations that offer more than one service (sometimes at different times) that could each attract different royalty calculations?
10. Should the tariffs provide for an optional "modified blanket licence" whereby certain identifiable revenue is excluded from the revenue base where that

revenue is earned exclusively by programming which only contain musical works that do not require a licence from SOCAN?

C. Percentage Rate

11. What is the appropriate basis to determine a fair and equitable percentage rate for each use covered by the tariffs (e.g., a proxy market, benchmark, or economic model)?
 - a. Should the relationship between the rates for audiovisual files and audio files be considered in this proceeding?
 - b. Is so, which reference rates or prices should the Board use to determine the relationship?
12. Should the Board determine a ratio of the value of the reproduction right to the value of the communication to the public right when both rights are engaged by the same use? Is the historical 1:3.2 ratio relevant to this proceeding?
13. Should the rates be adjusted to reflect circumstances where the rights to use some of the musical works have been cleared through other means or where the rights being granted under the tariffs are not necessary for the service, for example where
 - a. the service has precleared the necessary reproduction rights;
 - b. some or all works in a stream or file are not held in SOCAN's repertoire,or could the tariff address these circumstances in other ways?

D. Hybrid Services

14. In the case of a hybrid service, should the Board determine an apportionment of the royalties for the service's communication and reproduction of musical works, and if so how?

E. Potential adjustments for reproduction exceptions and repertoire

15. Do any reproduction exceptions apply to the uses at issue in the Proposed Tariffs?
16. In relation to each reproduction exception claimed by the objector,
 - a. What are the types of copies that the objector claims to be covered by the exception?
 - b. Do those copies satisfy the criteria for the exception in each case?
17. What is the appropriate model to determine the effect, if any, of any applicable reproduction exceptions on royalty rates?
18. Should the tariff provide for an adjustment that would account for the extent of a service's use of SOCAN's repertoire for reproduction rights, and if so, how?

- a. How should repertoire be established?
- b. Does the repertoire vary over the years in the tariff?
- c. Is a blanket repertoire adjustment appropriate for a tariff for which royalties are to be paid on a “per-work, per-share” basis (as contemplated by paragraph 5(3) of SODRAC Tariff 6 (2014) and paragraph 6 of SODRAC Tariff 6 (2015-2018))?
- d. Is a blanket repertoire adjustment for all users appropriate?

F. Pre-Existing Licences

19. If applicable, how should the tariff account for the existence of pre-existing licences that authorize a service to make certain types of reproductions of musical works?
 - a. How, if at all, should any such pre-existing licences held by a user factor into the application of a tariff of general application?

G. Minimum Fees

20. Are minimum fees appropriate, and if so, what should the Board consider when determining the appropriate structure and amount of minimum fees, including whether a “greater of” structure is appropriate?
21. If minimum fees are appropriate, are the minimum fees proposed by SOCAN fair and equitable?

H. Terms and Conditions

22. What terms and conditions, including reporting requirements, should the Board set in association with its rate decisions?
23. Should the qualifying language “if available” be added for any of the music use-related information to be reported?
24. What is the appropriate frequency (e.g. monthly, quarterly) for royalty payments and reporting requirements?
25. Are the administrative obligations in the proposed tariffs appropriate?