

Online Music Video Services (2014-2018)

SiriusXM Canada Statement of Issues¹

How should the OMV tariff address minor promotional uses of “talk and music” videos by services predominantly engaged in other activities with respect to:

1. Whether the “fair and equitable” principle requires separate evaluation of different classes of users with different business models, revenue streams, primary uses, foreground and background splits, and levels of music use?
2. Defining the boundaries between “talk and music” works that qualify as “music videos” covered by the tariff and “non-music videos” that are not. For example, how would the Board categorize an interview interspersed with occasional short clips of a live or pre-recorded song? How should the Board:
 - a. differentiate the “foreground” from the “background” for “talk and music” clips?
 - b. apply the requirement that the “visual content [be] **produced to accompany** one or more sound recordings of one or more musical works”?²
 - c. account for non-substantial uses, including when a skip precedes the musical portion of a talk and music clip.
3. Addressing fair dealing for talk and music clips.
4. Identifying the author and owner of talk and music clips when “the making of the audiovisual work was authorized by the owner of copyright, or their agent, licensee, or other representative”³ or where the musical use is a fair dealing.
5. Addressing accountability for royalty payments and avoiding double-counting when a use takes place on a third-party platform.
6. Assessing whether SiriusXM’s online music and talk video offering is covered off by SOCAN Tariff 22.B and/or other tariffs or licences.
7. Addressing foreign server copies.
8. Considering whether terms and conditions and reporting requirements should be varied for minor users.

¹ SiriusXM may wish to comment on other points raised in the Joint Statement of Issues.

² See the “foreground” requirement expressed in [Ruling CB-CDA 2023-047](#) as meaning a term that “conveys the primary role of music” and excluding “background” uses from the tariff. The ruling also requires that music videos be “produced to accompany” a sound recording and that music videos have “an ‘official aspect’ to them”.

³ See [CB-CDA 2023-047](#).