



**[CB-CDA 2019-048]**

## **RULING OF THE BOARD**

**Proceeding: SOCAN Tariff 24 - Ringtones and Ringbacks (2014-2018)**

### **I. APPLE'S REQUEST**

[1] On July 5, 2019, Apple requested that the Schedule of Proceedings set out in Notice 2018-154 be adjourned *sine die*.

[2] Apple is now the only remaining objector in this proceeding.

[3] Apple submits that

1. It is impractical to conduct all three proceedings [Online Music Services (2007-2018); Online Audiovisual Services – Music (2007-2018); and the present proceeding] simultaneously;
2. Many of the issues in this proceeding are due to be addressed in the anticipated decisions of the Federal Court of Appeal's judicial review of the Board's August 25, 2017, decisions in Online Music Services [CSI (2011-2013); SOCAN (2011-2013); SODRAC (2010-2013)] and Scope of 2.4(1.1) of the Copyright Act – Making Available; and
3. Many of the issues in this proceeding are related to the issues in the Online Music Services (2007-2018) proceeding.

### **II. BACKGROUND**

[4] On April 19, 2018, in Notice 2018-081, the Board partially granted a request to delay consideration of SOCAN Tariff 24 for the years 2014-2018. It ruled that

[t]he Board will wait until the end of the hearing in the OMS proceeding before beginning the examination of the above-mentioned tariff. This may serve as a negotiation period for the Parties.

[5] However, the Board also ruled that “the hearing shall take place in the Fall of 2020.” In Notice 2018-154, the Board established a Schedule of Proceedings, based on an agreement between SOCAN and Apple, setting the start of the hearing for September 22, 2020.

[6] As Apple points out in its request, the *Online Music Services (2007-2018)* and the *Online Audiovisual Services – Music (2007-2018)* have yet to progress to a hearing, as the Board has not yet ruled on various interrogatory-related motions in those proceedings.

[7] Apple states that, after being served with interrogatories by SOCAN on May 29, 2019, it approached SOCAN to discuss the terms on which this matter might be adjourned on consent, but was unable to reach an agreement. Apple has not taken any other steps with regard to this proceeding.

### III. RULING

[8] In Notice 2017-105, the Board, while giving notice that it intends to commence consideration of various tariffs related to Online Music Services, stated that:

The Board is aware that some of the Parties have sought judicial review of the Online Music Services Tariff (CSI: 2011-2013; SOCAN: 2011-2013; SODRAC: 2010-2013). However, given the duration of the proceedings in that matter, a significant amount of time has already elapsed since the publication of most of the Proposed Tariffs. As such, the Board believes it is appropriate to proceed promptly with the proceedings.

The duration of any judicial review, a possible appeal therefrom, and any reconsideration that may be ordered, is unknown, and may be significant. Awaiting the resolution of these would only prolong the period during which a continuation of rights [...] will apply [...]. Furthermore, if the Board awaits the results of the judicial review and any subsequent appeal before commencing the contemplated proceedings, the Board may be required to consolidate additional years into any eventual proceedings, making such a matter even more retrospective in effect and more complex than these proceedings.

[9] The Board is of the view that this reasoning is equally applicable to the present proceeding, and that it is not appropriate to await the conclusion of the judicial review. Similarly, it is not appropriate to await the resolution of the *Online Music Services* proceeding; the significant delays in those proceedings should not have as a consequence that all other proceedings dealing with similar issues be delayed as well.

[10] That being said, the Board seeks to make Schedules of Proceedings practical and feasible. As such, Apple and SOCAN are invited to propose, jointly or separately, revised dates for the following four steps of the Schedule of Proceedings. Step 2 should occur no earlier than 6 weeks after step 1.

Step No.	Step	Currently Scheduled Date
1	Filing of responses to objections to interrogatories	Monday, July 15, 2019

	[Board Ruling]	To be determined
2	Responses to interrogatories	Friday, August 16, 2019
3	Exchange of motions re: incomplete/unsatisfactory responses to interrogatories	Tuesday, September 10, 2019
4	Filing of responses to motions re: incomplete/unsatisfactory responses to interrogatories	Tuesday, October 1, 2019

[11] At this point, the Board does not intend to revise the other remaining scheduled steps of this proceeding.

[12] Any such proposal shall be filed by no later than **Tuesday, July 16, 2019**.

Véronique Desjardins  
for  
Gilles McDougall  
Secretary General