

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2022-026]

RULING OF THE BOARD

Files: Online Music Services (SOCAN: 2007-2018); Re:Sound Tariff 8 (2013-2018)

May 4, 2022

[1] On March 23, 2022, Apple gave notice that it is withdrawing as a full participant in these two matters, and asked the Board to change its status to that of a limited intervener. By email dated April 5, 2022, Apple specified that it was not asking for intervenor status in the Re:Sound Tariff 8 (2013-2018) proceeding.

[2] Notwithstanding its withdrawal, Apple – as a significant operator of an online music service in Canada – believes that the Board’s consideration of SOCAN’s tariff would benefit from Apple’s participation by way of written and oral submissions. Apple submits that it has a direct interest in the proceedings, and has a distinct perspective to offer the Board regarding the issues before it. Apple also submits that its limited participation would not prejudice any party. Apple provided detailed explanations to support these statements.

[3] Apple proposes that it would not participate in the evidentiary phase of the proceeding, but be able to make submissions based on the record. Specifically, Apple requests that it:

1. Would receive copies of communications between the Board and parties;
2. Would receive a copy of the record as it remains to be filed by the parties;
3. May attend any remaining pre-hearing conferences, as well as the hearing;
4. May file a written submission and make oral submissions; and
5. Without leave to do so, would not be permitted to file a case or evidence, or question a witness, or make submissions on interlocutory aspects of the proceeding.

[4] In response to Notice CB-CDA 2022-020, SOCAN submitted that Apple’s request to file written submissions ought to be dismissed. In essence, SOCAN argues that because the Board was

considering Apple's request to intervene at the time specified by the Schedule of Proceedings for established interveners' submissions, Apple's request is moot.

[5] In the event that Apple brings a motion for leave to file written submissions outside of the existing Schedule of Proceedings and the Board grants that motion, SOCAN requests the right to file written submissions in response to Apple.

I. RULING

[6] Apple's request is granted.

[7] When it made its request, Apple withdrew as a full participant in the proceeding and therefore was no longer subject to the Schedule of Proceedings.

[8] As per s. 3 of the Directive on Procedure CB-CDA 2017-161, the Board may allow anyone to intervene in these proceedings, insofar as the Board finds it useful, given the interest of the person requesting to intervene and the nature of the participation contemplated by that person.

[9] The Board is satisfied with Apple's detailed explanations, and, therefore, finds Apple's intervention useful given its interest and the proposed nature of its participation.

[10] As such, Apple:

- a. Shall receive copies of communications between the Board and parties;
- b. Shall receive a copy of the record as it remains to be filed by the parties;
- c. May attend any remaining pre-hearing conferences, as well as the hearing;
- d. May make oral submissions;
- e. If it elects to file a written submission, it shall do so in accordance with an updated Schedule of Proceedings, which will be provided very shortly; and
- f. May be permitted, upon leave if the Board deems it warranted, to file a case or evidence in accordance with the Schedule of Proceedings and under certain conditions, including responses and replies, question a witness, or make submissions on interlocutory aspects of the proceeding.

Lara Taylor
Secretary General