

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2023-001]

ORDER OF THE BOARD

File: Online Audiovisual Services – Music (2014-2018)

January 11, 2023

[1] After reviewing the procedural history and assessing the expected complexity of the issues that the Board will need to consider in this matter, I have concluded that the approach the Board had originally recommended for this proceeding is not optimal.

[2] Rather, I am of the preliminary view that the most effective and expeditious way for the Board of dealing with this matter it is to separate the current proceeding into two separate proceedings, as explained below.

[3] I will hold a Case Management Conference to discuss this approach and its modalities with Parties.

ORDER 1: CASE CONFERENCE

[4] A **Case Management Conference** for Collectives and Objectors will be held virtually on **January 25, 2023 at 9:30** by Zoom. This Case Management Conference will not include interveners. Any written materials that will be referred to at the Case Conference (*e.g.*, alternative schedules, alternative lists of issues) must be filed with the Board no later than **January 20, 2023**. Collectives and Objectors shall confirm their attendance by this same date. The Registrar will then provide parties with a link for the meeting.

[5] At the Case Management Conference, parties must be ready to comment on the approach described below, including:

- the separation of the current proceeding into two separate proceedings;
- the steps contemplated for each proceeding, including the form of hearing (written/oral) and any related modalities;
- the issues to be considered in Phase I of the second proceeding;

- a tentative schedule, in Annex A, for the two proceedings; and
- a tentative list of parties that would participate in each proceeding, in Annex B.

[6] Following the Case Management Conference, I will issue schedules for both proceedings, and determine in which proceeding or proceedings current interveners will be permitted to participate, and the manner of their participation.

[7] Collectives and Objectors are invited to an optional **informal meeting with Staff** on **January 18, 2023** at **9:30** to discuss this Order and the upcoming Case Conference. Any party that wishes to attend must confirm their attendance by **January 13, 2023**.

Proposed Approach

[8] Proceeding 1 would consist of a written hearing in respect of:

- SOCAN Tariff 22.A – Online Music Services (2014, 2015, 2016, 2017, 2018) [music video portion]
- SOCAN Tariff 22.D – Internet - Other Uses of Music - Audiovisual Content (2014, 2015) [excluding UGC portion; excluding allied services]
- SOCAN Tariff 22.D.1 – Internet - Other Uses of Music - Audiovisual Content (2016, 2017, 2018) [excluding allied services]

[9] Proceeding 2 would consist of a two-phase hearing in respect of:

- SOCAN Tariff 22.D – Internet - Other Uses of Music - Audiovisual Content (2014, 2015) [UGC portion only]
- SOCAN Tariff 22.D.2 – Internet – Other Uses of Music – User Generated Content (2016, 2017, 2018)
- SODRAC Tariff 6 – Online Music Services, Music Videos (2014)
- SODRAC Tariff 6 – Reproduction of musical works embedded in musical audiovisual works for transmission by a service (2015, 2016, 2017, 2018)
- SODRAC Tariff 7 – Reproduction of musical works embedded in audiovisual works for transmission by a service (2015, 2016, 2017, 2018)

[10] Tentative schedules for both of these proceedings are in Annex A. Please note that these schedules reflect Order 2 and Order 3, below.

Proceeding 1: Written Hearing

[11] The written hearing would consist of:

- An interrogatory process, with questions permitted by leave only;
- The filing of a Statement of Case from SOCAN and a Reply Statement of Case from Objectors;
- Questions from the Board, as needed; and
- The filing of Written Closing Arguments from all Parties.

Proceeding 2: Two-Phase Hearing

[12] Phase I would result in a decision by the Board on those issues

- that can be decided with little or no information obtained through an interrogatory process (e.g., questions of law, selection of economic models); and
- whose resolution are expected to limit the scope of the Phase II interrogatory process.

[13] Preliminarily, these issues would be:

- the applicability of *CBC v. SODRAC* to this tariff proceedings;
- the effect of s. 29.21 of the *Copyright Act* on intermediaries; and
- the model to determine the effect of reproduction exceptions on royalty rates.

[14] Phase I would have the following steps:

- a Phase I interrogatory process, with questions permitted by leave only;
- the filing of Statements of Case and Reply Statements of Case in respect of Phase I issues, both by Collectives and Objectors; and
- if appropriate, an oral hearing.

[15] Following the Board's decision on Phase I issues, Phase II would commence, in which all remaining issues would be determined, including the royalty rates.

[16] Phase II would include:

- an interrogatory process (in which the relevance of questions will be informed by the Board's decision on Phase I issues); and
- a written or oral hearing, as appropriate.

[17] The Board would determine the appropriate schedule for Phase II, and issue further directions after the conclusion of Phase I.

ORDER 2: CURRENT INTERROGATORY PROCESS CANCELLED

[18] Given that the two proceedings would have their own interrogatory processes, each with their own parameters, the current interrogatory process, as described in Notice 2017-153, is cancelled.

[19] Unless ordered otherwise, Parties will not be able to rely on any information they received through that process. However, Parties should not delete any information sent or received, until ordered by the Board.

ORDER 3: ORDER 2022-030 VARIED

[20] Order 2022-030 required Parties to file a Statement of Issues, and permitted Parties to attend an informal meeting with Board Staff beforehand.

[21] For greater certainty, this Order varies Order 2022-030: A Statement of Issues is no longer required. Rather, Parties may make submissions as to which issues the Board should consider in Phase I of its two-Phase proceeding, as per paragraph 4, above.

[22] The opportunity to meet with Staff for an informal meeting, if desired, is still available, as per paragraph 7 above.

Nathalie Théberge
Case Manager