



**[CB-CDA 2023-018]**

## **NOTICE OF THE BOARD**

### **Proceeding: Online Audiovisual Services – Music (2014-2018)**

April 11, 2023

[1] In Ruling CB-CDA 2023-010, I expressed the preliminary view that the Proposed Tariffs should be considered in two separate proceedings: one considering the proposed tariffs for music videos, and one considering proposed tariffs for audiovisual and user-generated content (“UGC”) services. Parties were invited to submit comments on this preliminary view.

[2] While some parties expressed support for this approach, certain parties expressed uncertainty about which proposed tariff or tariffs apply to their activities, and about the definition of “music videos” more generally.

[3] I recognize that there may be several factors contributing to such uncertainties, including:

- the use of varying terminology and definitions among the proposed tariffs, such as “music video” (used in some of SOCAN’s proposed tariffs) versus “musical audiovisual work” (used in some of SODRAC’s proposed tariffs);
- the varying nature of the service to which a proposed tariff applies, such as service versus online music service versus music video service; and
- the relationships between the different families of proposed tariffs (for example, which SODRAC tariff would apply in the case of an AV service that transmits a music video).

[4] In short, is there a portion of the proposed tariffs that covers “music videos” and/or “music video services” that can be defined with reasonable clarity and certainty?

[5] I further recognize that this question should be resolved before finalizing the list of proposed tariffs to be considered, and selecting the best and most efficient way forward.

## **I. TECHNICAL MEETING**

[6] To this end, I have instructed Board staff to organise a technical meeting with parties to clarify which user and/or users would be covered. A potential list of questions for discussion are included in the Annex. SOCAN and SODRAC should be ready to speak to these questions.

[7] For greater certainty, this technical meeting is only intended to facilitate a consideration of the issues and discussion among the parties, and is without prejudice to any position parties may take in their subsequent submissions.

[8] This meeting will occur on **Monday, April 24, 2023** from 2 to 3 p.m. Parties are to confirm their intent to participate by **Friday, April 14, 2023**. Each attending party may have only one representative present.

## **II. SUBMISSIONS**

[9] Subsequent to the technical meeting, I will issue a notice fixing a date for submissions on how to define the portions of proposed tariffs to include in the “music video” proceeding.

[10] Unless significant new issues are raised at the technical meeting, Parties can expect to have approximately two weeks to file submissions, and one week thereafter to reply to the submissions of other Parties.

[11] SOCAN and SODRAC will be required to file such submissions; any other party will be permitted to do so.

Nathalie Théberge  
Case Manager

Annex: Potential Discussion Questions

1. Which works should be included in the “music videos” proceeding?
  - “music videos” (e.g., *SOCAN Tariff 22.A (2021-2023)*);
  - “musical audiovisual works” (e.g., *SODRAC Tariff 6 (2018)*); or
  - other.
  
2. How should either “music video” or “musical audiovisual work” be defined?
  - What does “audiovisual representation of a musical work” (e.g., *SOCAN Tariff 22.A (2021-2023)*) mean?
  - Could/should these terms be defined in reference to the person who made the audiovisual representation?
  - Could/should these terms be defined in reference to the sound recording in which the work is embedded? Is there (frequently) a **unique** “video” in respect to a given sound recording?
  - Could/should it be defined in reference to the purpose for which it was created (e.g., promotion of the musical work & sound recording).
  
3. Which users to include?
  - services (without restriction);
  - online music services;
  - music video services;
  - other users; or
  - users delineated by other characteristics.
  
4. What is the relationship among the proposed tariffs?

Assuming that no exceptions in respect of the act of communication or reproduction apply, and assuming that the copyright owner(s) has (have) not already authorized those acts, which proposed SOCAN tariff, and which proposed SODRAC tariff, should apply to:

- a UGC service, when it reproduces and streams an “official” music video;
- a UGC service, when it reproduces and streams a cover of a musical work embedded in an audiovisual recording of the performance of that work; or
- a service that primarily offers (non-music-video) audiovisual content, when it reproduces and streams a music concert.