

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2024-048]

ORDER OF THE BOARD

Matter: 71-2023-01 Totem Médias Inc. v CONNECT Music Licensing Service Inc.

June 26, 2024

[1] I have reviewed the Case Records and Responses filed by the Parties. Based on the submissions and evidence contained therein, I now put the following questions to Totem Médias Inc. (“Totem”) and CONNECT Music Licensing Service Inc. (“CONNECT”).

[2] Each party shall respond to the questions put before them by **Monday, July 22, 2024**. The other party may file a reply to such responses by **Monday, August 12, 2024**.

A. QUESTIONS TO TOTEM

1. In their submissions, both parties allude to the financial viability of Totem and/or Création Newmood (“Newmood”).

Totem shall supply, for the period of January 1, 2018, to December 31, 2023, their T-2 corporate tax returns (without accompanying schedules).

If available, Totem shall also provide these same documents for Newmood.

2. CONNECT raises the issue of the kinds of uses Totem makes of sound recordings. The Board would like to understand how the two entities, Totem and Newmood, use sound recordings (whether by making reproductions, authorizing reproductions, performing or communicating by telecommunication to the public, authorizing performances, or communications by telecommunication to the public).

Totem shall describe its use of sound recordings from when Newmood acquires a new client, to when background music is heard in the client’s establishment. It will also describe the process of updating or otherwise modifying the contents of the hard drives it provides.

3. Totem has identified 3 other main tariffs that may serve as appropriate proxies for the royalty rates for the reproduction of sound recordings in CONNECT's repertoire.

Totem shall provide submissions on which of these is the best proxy for this activity. It shall address what adjustments, if any, are needed for that proxy.

4. CONNECT contends that Totem and Newmood should effectively be treated as a single enterprise.

Totem shall supply the names of the officers and directors of Totem. If available, Totem shall also provide the same for Newmood.

Totem may provide submissions on whether or not this information, along with the financial records provided in response to Question 1, support CONNECT's contention.

5. If the Board were to determine that the appropriate rate base is the price paid by end-users, but that revenues derived from ancillary services (such as renting, maintaining and replacing hardware and software) should not be part of the rate base, how should the Board determine the appropriate portion of the end-user price to attribute to those ancillary services?

B. QUESTIONS TO CONNECT

1. In order for the Board to have a better understanding of the industry in which Totem operates, including when users pay the minimum fee, CONNECT shall supply, for each of the 21 clients other than Totem, the monthly invoices for the months of March 2023 to February 2024. If the invoice does not provide the number of establishments, the gross revenues for the month, or the royalties payable, these figures should be appended to the respective invoice.

Out of concern for privacy, CONNECT may redact the name of those 21 clients, but must give each client a unique numeric name for ease of identification (e.g., Client #1, Client #2, etc.)

2. CONNECT shall provide submissions on why a background music supplier that includes in-store advertising in its programs should pay a different rate than one that does not, both with respect to the percentage rate and with respect to the minimum fee.

Luc Martineau
Chair, Copyright Board