



[CB-CDA 2024-046]

## NOTICE OF THE BOARD

### Proceeding: Online Music Video Services (2014-2018)

June 19, 2024

#### I. OVERVIEW

[1] This Ruling follows the Case Management Conference of June 18, 2024 (the “Conference”). At the Conference, SOCAN, Stingray, and the interveners Sirius XM and Apple were present. I thank all of the parties for their participation and useful representations.

[2] This Notice:

- allows parties to file specific wording of the issues to address concerns raised at the Conference;
- confirms the manner in which statements of facts by interveners will be treated; and
- seeks submissions from the parties on the manner any previous responses to interrogatories should be treated.

#### II. ISSUES TO BE CONSIDERED

*Parties may file specific wording suggestions*

[3] During our discussion of the issues for the Board to consider (Notice 2024-038, Annexes A, B, C), certain concerns were raised. I have made note of these.

[4] A common theme was that the organization or framing of some issues appeared to presuppose that they would be resolved by a particular mechanism in the tariff (*e.g.*, through an adjustment to the rate, or through the use of a modified blanket licence). SOCAN, in particular, stated that it could propose specific wording to assist the Board in addressing this concern.

[5] Therefore, any party that has specific wording to address any concerns that were raised at the Case Management Conference may do so by **Wednesday, June 26, 2024**.

[6] I will consider the proposed wording in the context of the representations made at the Case Management Conference.

*SOCAN and SiriusXM should continue discussions to address issues specific to Sirius*

[7] SOCAN and SiriusXM indicated that they have started discussions, as I had suggested in Notice 2024-038. They also indicated that they intend to continue to do so.

[8] I encourage these discussions to continue without delay. It still appears to me that, were these discussions fruitful, some of the issues raised by SiriusXM may not apply under the Proposed tariffs being considered. I further note that I may choose to review any still unresolved issues to determine whether they meet the criteria of proportionality and relevance in this case.

[9] My intention is to provide sufficient guidance for parties to begin to develop their Case Records without delay. Therefore, I intend to rule on a partial list of issues to be considered by the Board after parties have submitted any proposed wording changes. I may delay ruling on the issues between Sirius and SOCAN.

#### TREATMENT OF STATEMENT OF FACT BY INTERVENERS

[10] At the Conference, there was general agreement among the parties that the approach I described in Notice 2024-038 is appropriate. As such, this approach will be reflected when I fix the Schedule for the subsequent steps in this proceeding.

[11] In particular, this means that:

- the interveners SiriusXM and Apple will be permitted to make a statement of facts in their Memoranda (these need not be in a separate document or section);
- SOCAN and Stingray will have an opportunity to respond to any Memoranda filed by the interveners; and
- SOCAN and Stingray will have an opportunity to seek leave to put interrogatory questions to the interveners related to any statements of facts made in Memoranda.

[12] SOCAN asked that any Memorandum filed by the interveners that includes statements of fact be accompanied by a confirmation that the statements were reviewed by a person or persons who have knowledge of the claimed facts.

[13] I agree with this approach. This does not significantly increase the burden on the interveners, and gives some indication that the representations do not merely reflect the knowledge or belief of counsel.

### **III. INTERROGATORIES**

#### *Parties may request to use responses to previous interrogatory questions*

[14] There was a partially completed interrogatory process in an earlier iteration of this proceeding, *Online Audiovisual Services – Music (2014-2018)*, which the Board cancelled in Order 2 of Order 2023-001. Pursuant to that same Order, parties would not be able to rely on any information received through that interrogatory process—unless ordered otherwise.<sup>1</sup>

[15] At the Conference, parties invited me to consider permitting the use of the responses to interrogatory questions that were provided in this earlier proceeding in order to avoid repeating some interrogatory questions. I am generally amenable to this approach, especially if it is agreed to by both the interrogator and respondent.

[16] The Board, typically, does not receive responses to interrogatory questions, so the Board’s record in *Online Audiovisual Services – Music (2014-2018)* does not contain a complete set of responses to interrogatory questions. As such, any party contemplating such an approach (i.e., that the interrogator could use the information previously received) should examine their internal records related to the previous interrogatory process and propose an approach to the treatment of existing responses.

[17] Any proposal to use responses from a given respondent should include:

- i) a complete list of the questions posed to the respondent;
- ii) an enumeration of the questions, the responses to which would be used;
- iii) whether there are any concerns related to any outstanding objections or deficiency motions; and
- iv) whether any modifications to the proposed Schedule of Proceeding (2024-038, Part III.C) would be required as a result.

[18] Proposals may be filed jointly.

---

<sup>1</sup> This interrogatory process took place prior to Ruling 2023-047, which moved the Proposed Tariffs related to music videos into this separate proceeding. As such, Order 2023-001 applies to this proceeding, unless and until varied.

[19] All proposals for me to vary Order 2 of Order 2023-001 are to be filed by **Wednesday, July 10, 2024**.

*Scope of any permitted interrogatories*

[20] The Schedule of Proceedings contemplates that SOCAN and Stingray will be permitted to seek leave to put interrogatory questions to others.

[21] Given some of the concerns raised by Stingray regarding the possible scope of interrogatories, I note that:

- I intend to carefully monitor the scope of this proceeding to ensure it remains proportionate to the practical effect of the Approved tariff; and
- I intend to take into consideration the burden of participation of as a sole objector, especially if having provided responses in the previous interrogatory process could alleviate some of this burden.

**IV. SCHEDULE**

[22] SOCAN has indicated that the time it would require to prepare its case record may depend on the treatment of interrogatories. As such, I will wait until after receiving the proposals referenced in [19] to [22] above to fix the calendar.

Lara Taylor  
Case Manager