



[CB-CDA 2024-062]

RULING OF THE BOARD

Proceeding: Online Music Video Services (2014-2018)

July 24, 2024

I. OVERVIEW

[1] This Ruling addresses two proposals to vary Order CB-CDA 2023-001, so that parties could use responses provided during a previous interrogatory process.

[2] For the reasons below, I grant Motion 1 and deny Motion 2 with leave to file an amended motion, as per my directions below.

Procedural Background

[3] 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.

[4] In Notice 2024-046, I invited the Parties to file proposals on whether and how I should permit the use of the responses to interrogatory questions.

[5] On July 10, 2024, SOCAN filed two motions to vary Order 2 of Board Order 2023-001:

- a motion to use the interrogatory responses of Stingray (Motion 1); and
- a motion to use the interrogatory responses of Apple (Motion 2).

[6] Motion 1 was filed on consent of Stingray.

[7] Motion 2 was opposed by Apple, and Apple filed its reasons for opposing the motion on July 16, 2024.

[8] I address each of the Motions in turn.

II. THE MOTIONS

Motion 1: SOCAN and Stingray

[9] This motion proposes that SOCAN and Stingray each may use the other party's responses to any of the interrogatories posed in the previous iteration of this proceeding.

[10] This motion proposes that if either party wishes to seek a response to an interrogatory that was the subject of an outstanding objection or deficiency motion, to do so by way of a request for leave to pose that interrogatory to the respondent (or to seek a more complete response, as the case might be), in the interrogatory phase of this proceeding.

[11] Finally, this motion proposes that 3 weeks be added to the Schedule of Proceedings to allow SOCAN and Stingray to review the interrogatory responses, prior to the filing of the Case Records.

[12] I grant this motion.

[13] SOCAN and Stingray have agreed, and as I indicated in Notice 2024-046, I am generally amenable to this approach, especially if it is agreed to by both the interrogator and respondent.

[14] Furthermore, the manner proposed for treating interrogatory questions that were the subject of objections or deficiency motions is expeditious and appropriate.

[15] Finally, given the fact that there are 83 pages of interrogatory questions from SOCAN to Stingray and 15 pages of interrogatory questions from Stingray to SOCAN, an extra 3 weeks seems entirely reasonable. The Schedule I fix in this Ruling (Annex A) takes this extra time into account.

Motion 2: SOCAN and Apple

[16] SOCAN's motion to use interrogatory responses by Apple sets very similar modalities as the motion to use the interrogatory responses by Stingray.

[17] SOCAN notes that Apple's responses are likely relevant and useful. According to SOCAN,

Apple operated a significant online music video service during the tariff period. Its service offerings during that time included both streaming and downloading of music videos.

[18] Apple advances several grounds for denying the motion.

[19] First, had it been an intervener at the time of the 2017 interrogatories, it would not have been required to answer them. Second, there is a burden on Apple associated with the use of

these answers. Apple would need to put the responses in context by filings evidence in response, which is typically more of an activity of an objector. Finally, SOCAN did not list specific questions the responses to which it plans to use, as required by Notice 2024-046, at paragraph [17].

[20] I find Apple's second and third grounds for denying the motion more compelling than SOCAN's grounds for granting it. In particular, addressing the second ground would require additional procedural steps and time to allow Apple to respond. This would be exacerbated by the fact that SOCAN did not limit its request to a subset of the interrogatory responses: the time and resources required to respond could therefore be significant.

[21] As such, I conclude that the costs of this approach outweigh its benefits.

[22] Nevertheless, given the potential value of Apple's responses, I grant SOCAN the right to file an amended motion, under the following conditions:

- SOCAN shall list no more than 10 specific question numbers associated with the interrogatories it plans to use in this proceeding. It shall also provide the text of the questions.
- None of the questions in SOCAN's list shall be the subject of an objection or deficiency motion by Apple.
- The motion shall be filed no later than **Thursday, August 8, 2024**.
- Apple may reply to any such motion no later than **5 business days** after SOCAN files its motion.

[23] If granted on re-filing, Apple will be permitted to file a Response Case Record at the time when SOCAN and Stingray file their respective Responses Case Records. This Response Case Record would be limited to addressing claims of fact by SOCAN arising from the use of Apple's interrogatory responses.

[24] Furthermore, I will not further adjust the Schedule on account of granting the re-filed motion.

III. SCHEDULE OF PROCEEDING

[25] I fix the Schedule in Annex A as the current Schedule of Proceeding.

[26] I look forward to meeting with the Parties at the Case Management Conference to discuss potential interrogatories.

Lara Taylor
Case Manager

Annex A

Schedule of Proceedings

Step	Deadlines
SOCAN files Case Records	October 9, 2024
Stingray files Case Record	November 6, 2024
Apple and Sirius XM file Memoranda	November 27, 2024
SOCAN and Stingray file Response Case Records (reply to both Case Records and Memoranda)	December 18, 2024
SOCAN and Stingray may file Applications for leave to ask Interrogatories	January 24, 2025 (To be filed no earlier than the Reply Case Records)
All Parties file Response to Applications (if any)	February 7, 2025
Case Management Conference re. interrogatories (if any)	TBD week of February 17 or 24, 2025
Interrogatory Process (if any)	Completed by: TBD
Case Management Conference re. cross examination (to determine whether appropriate & scope)	TBD
Cross Examination and Redirect Examination (if any)	TBD
Questions from the Board, if any	TBD
All parties file Final Submissions (with any new evidence)	TBD
SOCAN and Stingray file Final Reply Submissions (with any new reply evidence)	TBD