

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2024-069]

RULING OF THE BOARD

Proceeding: Online Music Video Services (2014–2018)

August 23, 2024

I. OVERVIEW

[1] SOCAN's motion to use the responses to 10 interrogatory questions previously provided by Apple is granted.

Procedural background

[2] SOCAN's amended motion is being made pursuant to Ruling 2024-062. In that Ruling, I granted SOCAN's motion to use the interrogatory responses of Stingray (paras. 9–14), but denied its motion to use those of Apple (paras. 16–21).

[3] However, given the potential value of Apple's responses to this proceeding, I granted SOCAN the right to file an amended motion, with certain parameters (paras. 22–24).

[4] SOCAN filed its amended motion on August 8, 2024; Apple filed its response, objecting to the motion, on August 15, 2024.

II. RULING

[5] I consider two issues:

- whether to grant SOCAN's request to be able to use some of Apple's previous responses to interrogatories; and
- SOCAN's use of a response to an interrogatory that is the subject of a objection.

1. Use of Apple's responses to interrogatories

[6] Apple opposes the motion on two grounds:

- Apple's interrogatory responses should not be filed in this proceeding if interrogatories could not be put to it; and
- the filing of Apple's interrogatory responses will likely "necessitate some evidentiary response from Apple, which makes illusory the lesser burden associated with Apple having chosen to seek only intervener status, rather than that of a full objector."

[7] When Apple filed its motion to change its status from objector to limited intervener, on June 2, 2022, it stated that

Notwithstanding its withdrawal, Apple – as a significant operator of an online audiovisual service in Canada (as well as a company that offers music videos as part of its online music service) – believes that the Board's consideration of the remaining tariffs before it, and in particular SOCAN's tariffs, would benefit from Apple's participation by way of written and oral submissions. Apple has a direct interest in the proceedings, and has a distinct perspective to offer the Board regarding the issues before it.

[8] It was not until January 11, 2023, that the Case Manager cancelled the interrogatory process in the proceeding that would become *Online Music Video Services (2014-2018)*. In other words, at the moment that Apple requested a change in its status, it did not yet know that the Board would cancel the interrogatory process. It also did not yet know that its responses would not be usable in the present proceeding.

[9] I agree with Apple that permitting SOCAN to file Apple's responses to interrogatories is something that would usually happen in relation to an objector, not an intervener. However, the situation in this proceeding is rather unusual: a party provided responses to interrogatory questions while an objector, but—prior to any of those responses having been used as evidence—it has become an intervener.

[10] Furthermore, the schedule of proceedings already contemplates the possibility of limited interrogatories related to the interveners' memoranda; all the parties agreed with this approach. The implied assertion that interveners never have an obligation to respond to interrogatories is not wholly true.

[11] I agree with Apple that permitting SOCAN to file Apple's responses may increase the burden on Apple. As acknowledged by Apple, however, it has the right but not the obligation to file additional contextual information after SOCAN has used its responses to interrogatories. Furthermore, I observe that any potential increase in burden is limited by the fact that only responses to 10 questions could be used by SOCAN.

[12] In addition, as implied by Rule 52(5)(b), a person is permitted to intervene in Board proceedings not simply because they have an interest in a proceeding, but also because that

person may bring useful information to the proceeding. Indeed, this was Apple's claim in its motion of June 2, 2022. The useful information may come from responses to interrogatories.

[13] I therefore conclude that, in this proceeding, it is appropriate to permit SOCAN to use Apple's responses to the 10 interrogatories.

2. Interrogatory question with pending objection

[14] In its amended motion, SOCAN identified the 10 questions, the responses to which they contemplate using.

[15] The Board has directed that none of the questions in SOCAN's list shall be the subject of an objection or deficiency motion by Apple. However, there is an objection to the scope Question 33 (which required "any and all agreements"). SOCAN proposes to address this by accepting Apple's objection and rely on only the sample of agreements already provided by Apple.

[16] In my view, this is a satisfactory and an expeditious manner of addressing that objection.

3. Conclusion

[17] I grant SOCAN's amended motion.

Lara Taylor
Case Manager