



CB-CDA 2025-004

Ruling of the Board

Proceeding: Online Audiovisual Services – Music (2014-2026)

January 16, 2025

I. OVERVIEW

A. Summary

[1] On December 2, 2024, SOCAN filed a Motion (the “Motion”), arguing that certain statements made by the Objectors in their respective Statements of Case are improper, in that they go to issues not in Phase I of the proceeding (referred to by SOCAN as the “Statements at Issue”), as established in Order CB-CDA 2024-067.

[2] SOCAN argues that the Statements at Issue risk having the Board be improperly influenced in respect of Phase I or Phase II, or lead the Board to make a decision in Phase I beyond the bounds established in Order CB-CDA 2024-067.

[3] In its Motion, SOCAN provides a non-exhaustive list of examples of such Statements at Issue.

[4] As a remedy, SOCAN seeks that the Statements at Issue be struck. In the alternative, the Board should confirm that it will disregard the Statements at Issue and not predetermine any issue reserved for Phase II.

[5] For the reasons that follow, we grant the Motion in part. Namely, we confirm that the Board

- will not consider the Statements at Issue for the purposes of Phase II;
- is aware of the limits of the issues in Phase I, as established in Order CB-CDA 2024-067;
- will not make conclusions on issues outside the scope of Phase I; and

- will not make findings of fact in Phase I beyond what was contemplated in Order CB-CDA 2024-067.

[6] We then set new dates for the next steps in the proceeding.

B. Procedural Background

[7] The *Online Audiovisual Services – Music (2014–2026)* proceeding has been separated into two phases: Phase I, to determine certain preliminary issues by way of a written hearing; and Phase II, to determine all the remaining issues.

[8] The issues to be considered in Phase I were established by the Case Manager in Order CB-CDA 2024-067. In the same order, the Case Manager established a Schedule for Phase I.

[9] In accordance with this Schedule, all Parties filed their Case Records for Phase I by October 30, 2024, and were to file Reply Case Records by January 15, 2025.

[10] On December 2, 2024, SOCAN filed their Motion.

[11] In Ruling CB-CDA 2024-10, the Case Manager referred the Motion to the Members of the Panel; permitted Objectors to reply to the Motion, and SOCAN to respond to any reply; and suspended the current Schedule.

[12] Objectors filed their Responses to the Motion on December 13, 2024. SOCAN filed its Reply on December 20, 2024.

II. ANALYSIS

A. Arguments related to Phase II

[13] Among the statements identified by SOCAN as examples of Statement at Issue, the vast majority can be characterized as arguments related to issues for Phase II. But the mere fact that they are related to issues for Phase II does not mean they are improper here.

[14] For example, in relation to Issue 1 (*CBC v SODRAC*), some Objectors provided examples of methods that can be used in Phase II, of ways *CBC v. SODRAC* could be applied in a tariff proceeding with multiple parties (McMillan Objectors, Phase I Statement of Case, paras. 24–25; Van Loon Simmons Objectors, Phase I Statement of Case, paras. 15–21). This was to support the proposition that there is a practical way to do so.

[15] Furthermore, the Case Manager has delineated the parameters of the decisions to be made in Phase I. Inclusion of the Statements at Issue will not lead the Board to

predetermine issues in Phase II, nor induce the Board to decide matters in Phase I that were not identified in Order CB-CDA 2024-067.

B. Statements of Fact

[16] The remainder of the Statements at Issue can be characterized as statements of fact.

[17] While SOCAN mentions, on many occasions, that the impugned statements of fact are untested, this is not its main complaint in relation to such statements.

[18] In its Motion, SOCAN does not seek to cross-examine witnesses that may have knowledge related to the statements made by the Objectors. Rather, SOCAN submits that even had witness statements been provided, “it would remain the case that those statements of fact concern issues reserved for Phase II and should not be considered in Phase I at all.” (SOCAN Motion, para. 65d)

[19] Having reviewed the Statements at Issue, it appears to us that determining whether some statements are within scope is similar to assessing relevance: whether the statements go beyond Order CB-CDA 2024-067 will become apparent only by substantive consideration of all the submissions.

[20] Moreover, most statements of fact were made in relation to Issue 2 (which exceptions may apply). For Issue 1 (*CBC v SODRAC*) and Issue 4 (which rights apply when offline copies are made and/or used), only a few statements of fact are identified by SOCAN in its non-exhaustive list of examples. For Issue 3 (interpretation of s. 66.501(a) of the *Act*), no statement of fact is identified.

[21] In the context of Issue 2, the Objectors cited their own business practices as evidence that users with such characteristics exist. This follows the parameters set out by the Case Manager in Notice CB-CDA 2024-103 at para. 5:

the consideration of issue 2 requires, at the very least, a general appreciation of the characteristics of the services that are to be covered by the proposed tariffs, and some interpretation of the relevant statutory provisions[.]

[22] Therefore, we do not agree that the Objectors are attempting to cause the Board to make factual determinations beyond those contemplated for Phase I, or that the Board will do so because of their inclusion.

III. **RULING**

A. **Remedy**

[23] At their core, the concerns raised by SOCAN are based on the possibility that the Board act in a manner beyond what was established in Order CB-CDA 2024-067.

[24] Our overall assessment is that the Statements at Issue were included to provide context for submissions. They do not appear to have been included for an improper purpose, nor will their inclusion lead to the Board acting beyond what was established in Order CB-CDA 2024-067.

[25] At this phase of the proceeding, a statement-by-statement assessment is neither necessary nor warranted. However, in order to address the concerns raised by SOCAN, we confirm that the Board

- will not consider the Statements at Issue for the purposes of Phase II;
- is aware of the limits of the issues in Phase I, as established in Order CB-CDA 2024-067;
- will not make conclusions on issues not in Phase I; and
- will not make findings of fact in Phase I beyond what was contemplated in Order CB-CDA 2024-067.

B. **Next Steps**

[26] The Schedule is reinstated with the following new dates:

Table 1 - Schedule of Proceedings

Event	Date
All parties to file their Responses to Case Records	Monday, February 17, 2025
Cross-Examinations	Monday, March 10, 2025
All parties to file their Replies to the Responses to the Case Records	Monday, March 31, 2025

Hon. Luc Martineau, Chair
 Katherine Braun, Member
 René Côté, Member