Copyright Board Canada

Commission du droit d'auteur Canada

Date	2025-11-14
Ruling of the Board	CB-CDA 2025-103
Proceeding Number	PT25-12
Proceeding	SOCAN Tariff 22.G – Internet – Game Services (2020-2026)
Case Manager	The Honourable Luc Martineau

I. Background

[1] On October 16, 2025, pursuant to Rule 52 of the *Copyright Board Rules of Practice Procedure* (the Rules) and PN 2023-10 – *Practice Notice on Changing the Status of a Party* (the "Practice Notice"), Apple requested to change its status from that of an objector to that of a limited intervener in respect of the Board's consideration of the Proposed Tariffs for the full tariff period under consideration, i.e., 2020-2026. (Currently, Apple is an objector to the Proposed Tariffs for the tariff periods 2020 and 2021-2023 and has no status in respect of 2024-2026.)

[2] Apple proposed that it would not participate in the evidentiary phase of the proceeding as an objector and instead would participate as a limited intervener, in respect of the Proposed Tariffs, which would allow Apple to make submissions based on the record. Specifically, Apple requests that it:

1. Would receive copies of communications between the Board and parties;

2. Would receive a copy of the record as it remains to be filed by the parties;

3. May attend any remaining pre-hearing conferences, as well as the hearing;

4. May file a written submission and make oral submissions; and

5. May be permitted, on leave, to file a further case or evidence, question a witness, or make submissions on interlocutory aspects of the proceeding in respect of the Tariff.

[3] Without leave to do so from the Board, Apple would not be permitted to file a further case or evidence, question a witness, or make submissions on interlocutory aspects of the proceeding in respect of the Proposed Tariffs.

[4] Apple takes the position that it does not require a licence from SOCAN in Canada as it relates to Apple's game services. In light of this, it has determined it is no longer efficient for it to participate in the evidentiary portion of this proceeding as an objector.

[5] As per Order CB-CDA 2025-094, SOCAN provided on October 31, 2025, submissions opposing Apple's request. Essentially, SOCAN argues that allowing Apple to change its status from full participant to intervener would result in procedural unfairness. This is because it would allow Apple to make legal arguments and advance its position while simultaneously insulating itself from disclosure obligations, thereby limiting access by SOCAN and the Board to important market data that may help the Board make a final determination on fair and equitable rates. SOCAN points out that Apple was denied status change in another file, as per Ruling CB-CDA 2025-041 – *Online Audiovisual Services – Music (2014-2026)*, CB-CDA 2025-041.

[6] Apple replied on November 10, 2025. It argues that the limited intervener status it requested, which in essence is a request to receive adequate notice of communications and the record of the proceeding, and to be permitted to make final submissions, is consistent with prior Board decisions granting equivalent procedural rights to numerous participants over the years. Apple submits that SOCAN has failed to provide any compelling reason for the Board to depart from its past decisions.

II. Ruling

[7] The request from Apple to change its status is granted for the reasons below with certain conditions.

[8] The Practice Notice provides that an objector that seeks to cease participation as an objector, and participate instead as an intervener must make a request under Rule 52 of the Rules.

[9] Rule 52 provides that:

> (5) In determining whether to grant leave to intervene, the Board must consider
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> (a) whether the requester has an interest in the proceeding that is sufficient to warrant the intervention;
>
> (b) whether the requester will present information or submissions that are useful and different;

> (c) whether the intervention will prejudice any party to the proceeding;
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> (d) whether the intervention will interfere with the fair and expeditious conduct of the proceeding; and
>
> (e) any other factor that the Board considers appropriate.

[10] Subrule 6 provides that the Board may grant or deny the request for leave to intervene and impose any condition or restriction that it considers appropriate, including a restriction on the scope of the intervention.

[11] I agree with Apple that it has a sufficient interest in the proceeding (factor (a)): The price set by the Board in relation to the public performance of music associated with online game services will be of interest to Apple's business model.

[12] I agree that Apple will present information or submissions that are useful and different (factor (b)): Apple operates the App Store, Apple Arcade and the Apple Games App. Operation of these services provides Apple with a perspective that is distinct from the other participant in this proceeding—Entertainment Software Association (ESA)—which also represents game developers and makers. Apple is not a member of ESA.

[13] I do not agree with SOCAN that the intervention will cause it prejudice (factor (c)), cause delays, or breach procedural fairness (factor (d)): Apple's intervention will be limited, as detailed further below in this ruling. SOCAN's procedural rights will be preserved: It will be able to respond to authorized submissions or address evidence filed on leave, if any.

[14] Furthermore, if SOCAN has reasons to believe that Apple uses content in SOCAN's repertoire that requires permission, it can always make the case with the Board that Apple should provide specific information. The Board will examine SOCAN's request, hear Apple and decide whether to order Apple to provide relevant information.

[15] At this point, I accept Apple's good faith declaration it is not, as a matter of fact, a tariff user. I would find it difficult to compel a non-user to participate fully in a proceeding. Conversely, I find support in the words of MacKay J. in the case of *Society of Composers, Authors and Music Publishers of Canada v. Canada (Copyright Board)*, 1993 CanLII 17534 (FC),[1] for hearing from interested parties:

> In my opinion, the Board is not precluded from hearing from others than users who have filed timely objections. I find this to be implicit in the powers of the Board as necessarily incidental to its role under the Act. It seems to me entirely consistent with the Board's role to act in the public interest that it receive and

[1] https://www.canlii.org/en/ca/fct/doc/1993/1993canlii17534/1993canlii17534.html.

> consider submissions from any interested party. A public agency charged to act in the public interest can hardly do otherwise than be open to receive and consider submissions from the public at large which are relevant to matters under consideration by the agency. This Board's role is more administrative than judicial, in the sense that its decisions so far as they affect private rights are to be made in the public interest.

[16] In terms of precedents, I note that Apple's request is consistent with past Board rulings,[2] and while its request was denied as per Ruling CB-CDA 2025-041 – *Online Audiovisual Services – Music (2014-2026)*, CB-CDA 2025-041, the latter did not permanently foreclose Apple from changing status.

[17] Accordingly, Apple:

a. Shall receive copies of communications between the Board and parties;

b. Shall receive a copy of the record as it remains to be filed by the parties;

c. May attend any remaining pre-hearing conferences, as well as the hearing;

d. May make oral submissions, if an oral hearing is ordered;

e. If it elects to file a written submission, it shall do so in accordance with any schedule of proceeding; and

f. May be permitted, on leave, to file a case or evidence in accordance with the schedule of proceeding and under certain conditions, including responses and replies, to question a witness, or to make submissions on interlocutory aspects of the proceeding.

[18] Furthermore, Apple shall not respond to Order CB-CDA 2025-082.

[2] For ex., CB-CDA 2022-026.