

## NOTICE OF GROUNDS FOR OBJECTION

Filed by **Canadian Association of Broadcasters**

In relation to proposed tariff *SOCAN Tariff 2.A.R – Commercial Television Reproduction Tariff (2025-2027)*

Filed with the Copyright Board on 2023-12-15 pursuant to Rule 18 of *Copyright Board Rules of Practice and Procedure*

The following Notice of Grounds for Objection (the “Notice”) is filed on behalf of the Canadian Association of Broadcasters (CAB) in respect of Proposed Tariff *SOCAN Tariff 2.A.R – Commercial Television Reproduction Tariff (2025-2027)* which was filed with the Copyright Board by SOCAN on 2023-10-23 pursuant to Rule 15 of *Copyright Board Rules of Practice and Procedure*. This Notice is filed in accordance with PN 2022-007 rev.1.

The CAB contends that the proposed tariff is not fair or equitable because the proposal does not clearly factor in pre-existing licences that may be applicable to some or all of the types of reproductions made by television broadcasters and because the proposal does not clearly factor in the reproduction right exceptions in the *Copyright Act*. The result is an unjustified and unsubstantiated proposal for a first-time tariff.

### **1. Any grounds for why the Board should not approve the proposed tariff despite any alteration of royalties or levies or fixation of terms and conditions**

This proposed tariff applies to the reproduction of musical works in SOCAN’s repertoire by a broadcast television station. This proposed tariff replaces Proposed SODRAC Tariff 8, last filed for the year 2019, which was the last year SODRAC filed tariffs on its own before becoming part of SOCAN. The CAB has objected to proposed SODRAC 8 for the years 2017 through 2019 and has objected to proposed SOCAN Tariff 2.A.R for all the years since 2019. Together, these proposed tariffs represent the first time that a tariff applicable to reproduction rights is sought in the television broadcasting context, so there are fundamental issues to be considered.

First, it is unclear to the CAB what types of copies are included in the proposed tariffs. The history of the CBC and SODRAC litigation involved extensive evidence and analysis relating to synchronization and post-synchronization copies, including various types of incidental copies, broadcasting copies and production related copies. There was extensive evidence about through-to-the-viewer licences and their impact on any residual rights remaining with SODRAC (now SOCAN). The litigation on this issue has shown that, at least in the context of the CBC and SODRAC, broadcast-incidental copies (BICs) could have value.<sup>1</sup> The evidence gathered in this proceeding will demonstrate the extent to which that bears true in the commercial television context.

The CAB objects to the application of the proposed tariff to the entire universe of copies made by online audiovisual services and notes that evidence will be required to clarify the scope of reproductions that

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<sup>1</sup> *Canadian Broadcasting Corp. v. SODRAC 2003 Inc.*, 2015 SCC 57, [2015] 3 S.C.R. 615 at para 55 <<https://www.canlii.org/en/ca/scc/doc/2015/2015scc57/2015scc57.html>>.

could be eligible under the proposed tariff, with due consideration given to the reproduction right exceptions in the Copyright Act.

## **2. Any grounds for objecting to any royalty or levy rates in the proposed tariff**

SOCAN is seeking to increase the rates by more than double in this tariff from the previously proposed tariff, yet it has not offered any justification for the proposed rate increases other than to suggest that “changes in the market” warrant the rate increase. SOCAN states the proposed increase is based on “the fact that the value of music has increased” but it offers no explanation or supporting evidence for this alleged fact. SOCAN says it will not and cannot know more until it sees interrogatory responses. The CAB is not aware of any factor that could justify an increase to the value of music used by licensees of this tariff. Absent valid justification, the rate increases should be rejected entirely.

SOCAN also notes that the proposed rate is “adjusted in accordance with the use of SOCAN’s reproduction rights repertoire and any applicable discount for documented pre-cleared programming” but has provided no explanation of what information SOCAN considered or how it did so in arriving at the proposed rate. The underlying information relating to SOCAN’s repertoire, the types of copies that will engage this tariff, and the application of reproduction right exceptions in the Copyright Act must be considered in setting any reasonable rate in this context.

SOCAN reserved the right to adopt and advance additional or alternative valuation methodologies and inflationary rates in the course of the proceedings relating to the proposed tariff. Accordingly, the CAB reserves the right to object to or otherwise challenge any such additional or alternative valuation methodologies and inflationary rates as they arise.

## **3. Any grounds for objecting to any terms or conditions in the proposed tariff**

SOCAN is seeking to introduce a reporting requirement at section 7(2) that stations paying under this tariff provide the Uniform Resource Locator (URL) of each website and the name of each application or platform at or through which any simulcast is or will be offered, as applicable. This tariff is not applicable to simulcasts, so this reporting requirement is unrelated to the proposed application of the tariff and therefore irrelevant. In addition, it asks for stations to provide the URL for any simulcasts that “will be offered”. It is highly unusual for stations to be asked to provide prospective information in reporting for past periods under a tariff. This reporting requirement should be struck from the proposed tariff.

SOCAN is also proposing a series of amendments that it says are intended to harmonize provisions across SOCAN tariffs. The CAB is generally supportive of harmonizing administrative terms across similar tariffs, but reserves the right to object to the inclusion of administrative provisions from one tariff into another where those are not reasonable or necessary.

Submitted on behalf of the CAB by

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