

COPYRIGHT BOARD OF CANADA

IN THE MATTER OF

SOCAN Proposed Tariff 2.A.R, 2025-2027

NOTICE OF GROUNDS FOR OBJECTION

OF

ETHNIC CHANNELS GROUP LIMITED, KNOWLEDGE NETWORK CORPORATION, L'OFFICE DES  
TÉLÉCOMMUNICATIONS ÉDUCATIVES DE LANGUE FRANÇAISE DE L'ONTARIO, TLN MEDIA GROUP INC.,  
AND WORLD FISHING NETWORK ULC (THE "INDEPENDENT BROADCASTERS")

Joel R. Fortune  
Barrister & Solicitor  
Joel R. Fortune Professional Corporation  
122 Guigues Avenue  
Ottawa, Ontario K1N 5H7

[jfortune@fortunelaw.ca](mailto:jfortune@fortunelaw.ca)

Ariel Thomas  
Barrister & Solicitor  
Ariel Thomas Professional Corporation  
2500-120 Adelaide St. W  
Toronto, ON M5H 1T1

[law@arielthomas.ca](mailto:law@arielthomas.ca)

December 15, 2023

## Introduction

This Notice of Grounds for Objection is submitted on behalf of Ethnic Channels Group Limited, Knowledge Network Corporation, l'Office des télécommunications éducatives de langue française de l'Ontario, TLN Media Group Inc., and World Fishing Network ULC (the "Independent Broadcasters"), all of whom are Objectors to SOCAN's proposed Tariff 2.A.R for the years 2025-2027 (the "Proposed Tariff").

The Independent Broadcasters object to the Proposed Tariff in its entirety. Although the Independent Broadcasters specifically note the following grounds, they reserve the right to raise additional grounds as the Board's consideration of the Proposed Tariff progresses.

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

The Independent Broadcasters object to the proposed rate of 1.4% of the programming service's gross income (adjusted for repertoire and minus a discount for music that, in SOCAN's view, has been established to have been pre-cleared) in section 4 of the Proposed Tariff. This proposed rate does not reflect the value of the reproduction rights in music embedded in television programs. The Independent Broadcasters also object to the method of calculating royalties set out in section 4 of the Proposed Tariff.

Under the Proposed Tariff, programming services would be required to prove to SOCAN that they do not need a SOCAN licence in respect of pre-cleared musical works. Depending on an individual service's use of SOCAN's repertoire, the majority of works the service transmits could be pre-cleared works and non-repertoire works. This requirement contradicts the Supreme Court's reasoning in *York University v. Canadian Copyright Licensing Agency (Access Copyright)*, 2021 SCC 32, that tariffs certified pursuant to the *Copyright Act* are voluntary and do not create a 'negative option' duty to pay.

Contrary to SOCAN's claim in its Notice of Grounds for the Proposed Tariff, the value of music performance rights as established in SOCAN Tariffs 2.A and 17 is not relevant to the market value of SOCAN's reproduction rights.

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

The Independent Broadcasters object to the reporting requirements outlined in sections 11 to 15 of the Proposed Tariff.

The Independent Broadcasters object to the revised audit provisions outlined in section 12 of the Proposed Tariff.

In particular, and without limiting their general objection, they object to the proposed requirement in subsection 12(3) that a programming undertaking that is found in an audit to have understated the royalties payable in a quarter by more than 10 per cent to pay the cost of the audit. This provision is potentially onerous for small independent organizations. Further, the provision provides programming undertakings with no input into the choice of auditor or costs of the audit, which makes it unfair to require that programming undertaking to pay for the audit.

The Independent Broadcasters also object to the confidentiality provisions in section 13 of the Proposed Tariff, in particular, and without limiting their general objection, paragraphs 13(2)(b), (c) and (f).

Paragraphs 13(2)(b) and (c) appear to allow SOCAN to share confidential information received pursuant to the tariff with any other collective seeking to collect royalties or to enforce any tariff. These provisions

are overbroad. Confidential information provided pursuant to the Proposed Tariff, once certified, pertains only to SOCAN and should not be shared with other collectives, who are permitted to receive specific information pursuant to their own tariffs or licence agreements.

Paragraph 13(2)(f) of the Proposed Tariff is similarly overbroad and unnecessary. It would permit SOCAN to share programming undertakings' confidential information with "any person who knows or is presumed to know the information". Sharing the information with a person who already knows it is unnecessary. Sharing the information with a person who is presumed to know the information is either unnecessary (if the person does know the information) or overbroad. There is no limitation in the Proposed Tariff on SOCAN's ability to presume another person's knowledge. The Board should not approve this provision.

### **Additional Information**

The Independent Broadcasters submit that the final tariff should include provisions that would allow programming services who are licensees pursuant to the tariff to audit SOCAN's assessment of their use of SOCAN's repertoire.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 15<sup>th</sup> day of December, 2023.

Joel R. Fortune  
Barrister & Solicitor  
Joel R. Fortune Professional Corporation  
122 Guigues Avenue  
Ottawa, Ontario K1N 5H7

[jfortune@fortunelaw.ca](mailto:jfortune@fortunelaw.ca)

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