

NOTICE OF GROUNDS FOR OBJECTION

Filed by **Canadian Association of Broadcasters**

In relation to proposed tariff *CMRRA Audiovisual Services Tariff (2025-2027)*

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

NOTICE OF GROUNDS FOR OBJECTION

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 *CMRRA Audiovisual Services Tariff (2025-2027)* which was filed with the Copyright Board by SOCAN on 2023-10-23 pursuant to subsection 67(1) of the Copyright Act. This Notice is filed in accordance with PN 2022-007 rev.1.

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

The Tariff sets the royalties payable to CMRRA by audiovisual services for the reproduction of works in CMRRA’s repertoire that are embodied in audiovisual programs, for the purpose of transmitting those programs as streams, downloads, or both, by any means of telecommunication, including the Internet or another digital network. It also authorizes the service to make archival copies of its content, authorizes a person to reproduce a musical work embodied in an audiovisual program for the purpose of delivering a file to the service, and authorizes end users in Canada to further reproduce a musical work as embodied in an audiovisual program for their own private use. This proposed Tariff does not cover commercial television broadcasters, the CBC, or any online music service, except to the extent those users also operate online audiovisual services.

This Tariff appears to resurrect the previous Tariff 7 (2016-2018) which was suspended *sine die* by the Copyright Board on April 20, 2018 on the understanding that CMRRA and the music publishers that it represents in relation to the uses covered by Tariff 7 agreed not to enforce their rights against services that engage in Tariff 7 uses during the term of that proposed tariff. This Proposed Tariff covers the years 2025-2027, leaving open the possibility of unknown liability for the years 2019 to 2024.

In addition to the question of the missing years, this Proposed Tariff suffers from the same threshold issues faced by all reproduction right tariffs in the audiovisual space; that is, the Proposed Tariff does not appear to factor in pre-existing licences that are applicable to some or all of the types of reproductions made in the context of audiovisual services. In addition, the Proposed Tariff does not appear to factor in the reproduction right exceptions in the *Copyright Act*. The result is an unjustified and unsubstantiated proposal for a first-time tariff.

Despite the fact that this Proposed Tariff has existed in some form for many years, the threshold entitlement to collect has not yet been established and it is unclear whether there are legal grounds to fix this Tariff. And if the Board determines that there are any remaining rights to be licenced, the rates certified for CMRRA must be adjusted to reflect the degree of their entitlement.

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

CMRRA notes that it has elected not to propose rates on the basis of the amount of music contained in a file, but has not clarified the basis upon which it is proposing the new rates. Absent such an explanation, it is difficult for the CAB to provide specific objections to the rates other than to note that they appear high and out of proportion with SOCAN rates for similar uses.

Similarly, CMRRA notes that it has proposed “certain minima” and “certain rate changes” in consideration of proposed tariffs filed by SOCAN but does not provide any further explanation or justification of why these rates are fair and reasonable or why they are appropriate for this use in this case. For an audiovisual service that offers streams, CMRRA is seeking 3% of the gross revenue for the service, subject to a minimum that is the greater of 19.5¢ per sub and 1.3¢ per play. SOCAN’s proposed rates for the same use for 2024-2026 were 1.49% of the gross revenue of the service, adjusted by a factor to represent SOCAN’s repertoire percentage, subject to a minimum equal to the greater of 7.95¢ per subscriber, and 0.054¢ for each play of a file requiring a SOCAN licence. CMRRA offers no justification for why its proposed rates would be double SOCAN’s (3% vs 1.49%) or why its proposed minima would be more than double the SOCAN proposal. Nor does CMRRA acknowledge that its rates should be adjusted for repertoire. Despite the assertion that the proposal is based on SOCAN, it is not clear to the CAB whether this is true or whether the proposal is in any way justified.

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

The Proposed Tariff seeks reporting and payment on the first day of the month. This is inconsistent with other tariffs for similar uses and puts an undue burden on users of the tariff. CAB requests that, to the extent possible, reporting and payment deadlines for similar uses by similar users under other tariffs should be aligned.

With respect to music use reporting requirements set out in Section 9, the Proposed Tariff should note that information and documentation shall be provided to the extent it is available to the entity paying the tariff. Where requested information is available it should be provided, and the tariff should include this “where available” language.

Proposed Section 12 provides very strict breach and termination rules whereby a user of this Tariff would be precluded from continuing to offer their service if they are more than 5 days late in reporting or making payments. That could lead to infringement liability in situations where there are administrative errors. CMRRA has provided no evidence that they have been prejudiced by late payments or late reporting that would justify this proposal. This is unduly punitive and should be rejected outright.

Similarly, the late payment penalty of \$50 per day is unreasonable. CMRRA has provided no explanation of the extent to which late reporting has occurred in its other tariffs, or why they think it would occur in this one. Nor has CMRRA provided any evidence of any alleged increases to its costs for administering the tariff that would justify this penalty. This provision should not be included in the tariff.

Submitted on behalf of the CAB by

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