

## REPLY TO NOTICE OF GROUNDS FOR OBJECTION

Filed by SOCAN

In relation to proposed tariffs

SOCAN Tariff 22.A – Online Music Services (2014-2018) [music videos only]

SOCAN Tariff 22.D – Audiovisual Content (2014, 2015) [online music video services only]

SOCAN Tariff 22.D.1 – Internet – Other Uses of Music - Audiovisual Content (2016, 2017, 2018) [online music video services only]

SODRAC Tariff 6 – Online Music Services - Music Videos (2014)

SODRAC Tariff 6 – Reproduction of Musical Works Embedded in Musical Audiovisual Works for Transmission by a Service (2015, 2016, 2017, 2018) [online music services & online music video services only]

Filed with the Copyright Board on 2024-02-22 pursuant to Rule 15 of *Copyright Board Rules of Practice and Procedure* and Copyright Board Order CB-CDA 2024-001.

### **1. SOCAN’s Notice of Grounds complies with Practice Notice PN 2022-006 rev. 1**

The Board’s Practice Notice on Filing of Grounds for Proposed Tariff (PN 2022-006 rev. 1) indicates that a notice of grounds is to help users “determine whether the proposed tariff applies to them and their activities,” and to “help the Board identify potential issues to consider in its examination of the proposed tariff.”

Collectives are required to identify the covered uses, indicate how the proposed rates were determined, describe the users to whom the tariff applies, explain how information collected under the tariff would be used, and identify and explain any changes from past tariffs.

Collectives are not required to provide evidence to support the Notice of Grounds; they are required only to describe the scope, application, and operation of the tariff and explain how the proposed rates were determined.

In SOCAN's respectful submission, it has met those requirements. It has provided the Board and the objectors with the appropriate information necessary for this stage of the proceeding.

Stingray's Notice of Grounds for Objection raises arguments that may be appropriate to consider in the eventual hearing before the Board, not at this stage of the proceeding. In particular, Stingray appears to criticize the lack of "evidence" provided in support of SOCAN's Notice of Grounds. That complaint, however, is unfounded at this stage of the proceeding, since no evidence is required to support a collective's Notice of Grounds and neither SOCAN nor any of the other parties, including Stingray, has had occasion to lead evidence in support of its position. If, at a later stage, Stingray wishes to argue that SOCAN's evidence is lacking, it will have every opportunity to do so.

## **2. The relevance of licence buyouts and reproduction exceptions will be determined on the evidence**

Stingray asserts that the proposed reproduction tariff does not factor in pre-existing licence buyouts or reproduction exceptions. That is true. SOCAN has no reason to believe that online music video services benefit from licence buyouts or that the reproductions they make meet the statutory criteria for any exception. If Stingray intends to assert otherwise, it will have the opportunity later in the proceeding to lead evidence and make submissions in support of that position.

As the Board indicated in *SOCAN, Re: Sound, CSI, Connect/SOPROQ, Artisti - Tariff for Commercial Radio, 2011-2017*, "to the extent they wish to benefit from exceptions, it is the broadcasters' obligation to adduce evidence that they meet any requirements of those exceptions."<sup>1</sup> Similarly, in *SODRAC Tariff 5 (Reproduction of Musical Works in Cinematographic Works), 2009-2012*, the Board stated, "the burden of providing information should lie with the person most likely to have that information. Thus... the distributor who claims that a work was licensed through other channels should be asked to supply that licence".<sup>2</sup>

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<sup>1</sup> [SOCAN, Re: Sound, CSI, Connect/SOPROQ, Artisti - Tariff for Commercial Radio, 2011-2017](#), Determination of the Copyright Board, 2016-04-21, at para. 132

<sup>2</sup> [SODRAC Tariff 5 \(Reproduction of Musical Works in Cinematographic Works\), 2009-2012](#), Determination of the Copyright Board, 2012-11-02, at para. 195.

Notably, it is the *licence* that is required, and a “producer’s or distributor’s guarantees in that respect ... are not sufficient.”<sup>3</sup>

Indeed, it would be absurd to require a collective to predetermine whether a specific user’s activities are subject to an existing licence or are eligible for exceptions, or to assume that such exceptions apply, when developing a tariff of general application.

Further, even if some online music video services do benefit from buyout licences or reproduction exceptions, which is denied, it would not eliminate the need for a tariff of general application, nor would it necessarily affect the determination of fair and equitable royalties.

### **3. SOCAN has identified the basis for its proposed rates**

Rule 16(b) of the *Copyright Board Rules of Practice and Procedure*, SOR/2023-24 only stipulates that a collective’s Notice of Grounds must “set out the basis for the proposed royalty or levy rates.” It states further that this explanation should identify “any source” for the rate and rate structure or, if there is no source, to indicate that one does not exist. In other words, the Board only requires a collective to identify the source of the proposed rates, not explain why that source was chosen.

Stingray complains that SOCAN’s proposed rates are based on the rates it proposed in Tariff 22.A (2014-2018), not on other rates that have been approved by the Board. However, a collective is not required to rely on previously certified rates when developing a tariff proposal. It may determine the proposed rates on any basis it considers appropriate—including, in this case, the rates it proposed for a different tariff or in a different rate-setting proceeding—and lead evidence to establish that those rates are fair and equitable. It is for the Board, not Stingray, to determine, on the evidence, whether or not the basis for SOCAN’s proposed rates is appropriate.

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<sup>3</sup> *Ibid*, para. 235.