

NOTICE OF GROUNDS FOR OBJECTION

Filed by Google, Meta Platforms Inc. (formerly known as Facebook Inc.), TikTok Inc., the Canadian Association of Broadcasters (CAB), Stingray Group Inc. (Stingray), and Goodlife Fitness Centres (the “Objectors”)

In relation to proposed tariff *SOCAN Tariff 22.D.2, User-Generated Content Services (2014-2026)*

Filed with the Copyright Board (the “Board”) on 2024-03-28 pursuant to Rule 18 of *Copyright Board Rules of Practice and Procedure*.

General Statement of Objection

This is the Notice of Grounds for Objection of Google, Meta Platforms Inc. (formerly known as Facebook Inc.), TikTok Inc., the Canadian Association of Broadcasters (CAB), Stingray Group Inc. (Stingray), and Goodlife Fitness Centres to *SOCAN Tariff 22.D.2, User-Generated Content Services (2014-2026)* (the “Request for Approval”) filed by SOCAN on February 22, 2024.

The Objectors respectfully reserve the right to rely upon objections raised by other parties to the proceedings, *mutatis mutandis*. The Objectors also reserve their right to raise additional substantive points of objection throughout the proceedings related to the Statement of Proposed Royalties.

These objections are filed in accordance with the *Copyright Act* and the Practice Notice on the Filing of Grounds for Objection.

Inter alia and without limiting their general objection, and without admitting that they are liable for the payment of royalties pursuant to the proposed tariff, the Objectors object to the following:

Grounds for Objecting to Royalty Rates in the Proposed Tariff

The Objectors object to the rates set out in section 3 of the Statement of Proposed Royalties for the following reasons:

- Said proposed fees do not reflect the fair, reasonable, and appropriate value of the communication to the public by telecommunication of musical or dramatico-musical works in SOCAN’s repertoire.
- Said proposed fees do not reasonably reflect either the amount or the type or the impact of such communication by a licensee.
- Said proposed fees do not reflect the fact that a percentage of revenue based royalty is not an appropriate structure for all users of this tariff.
- Said proposed fees have a “minimum fee” that is unnecessary or in the alternative, much too high.
- Said proposed fees include revenues that are unconnected to the use of musical works. Further, the revenue base as proposed does not reflect the business models and business

realities of many services, including a company operating multiple services, that royalties should be based on amounts received by services (not paid by users) and that certain types of expenses should be excluded from revenue (e.g. app store fees, intermediate billing providers, and marketing/partner commissions).

- Said proposed fees do not reflect the fact that in many cases users have already acquired the necessary rights, including by acquiring them directly from the copyright owners, or through section 29.21 of the *Copyright Act*.
- Said proposed fees do not adequately reflect the principle of technological neutrality in that it seeks to collect higher royalty rates from prospective users of the *SOCAN Tariff 22.D.1* licence than from other users who make substantially similar uses of music, as discussed in *Canadian Broadcasting Corp v SODRAC 2003 Inc*, 2015 SCC 57.

Grounds for Objecting to Terms and Conditions in the Proposed Tariff

The Objectors object to the reporting and auditing provisions contained in the Statement of Proposed Royalties at sections 4, 5, and 9. Said provisions are intrusive and require the disclosure of potentially sensitive confidential information. The fact that the Statement of Proposed Royalties requires licensees to retain records for a period of six years at section 9(1) is also unreasonable and places a disproportionate burden on licensees. Finally, the fact that services are required to pay for audit costs as per section 9(3) is also not standard.

The Objectors object to the onerousness of the reporting and payment obligations under sections 4, 5, and 6, including the frequency (which should generally be quarterly rather than monthly) and that Objectors should only be required to provide information if that information is available.

The Objectors object to the confidentiality provision at section 10. In particular, they object to section 10(2)(d) where SOCAN is given the right to share information with anyone who is *presumed* to know confidential information received pursuant to the tariff. This provision could allow for the release of sensitive confidential information to uninvolved third parties.

Additional Grounds for Objecting to the Proposed Tariff

The Objectors object to the fact that the Statement of Proposed Royalties does not adequately reflect the risk and investment by users in new technology, as discussed in *Canadian Broadcasting Corp v SODRAC 2003 Inc*, 2015 SCC 57.

The Objectors object to section 1(4) of the Statement of Proposed Royalties (relating to the training of any artificial intelligence system) to the extent it purports to limit the use of works in a manner consistent with the principles of fair dealing and other exceptions under the Copyright Act.