

## NOTICE OF GROUNDS FOR OBJECTION

Filed by **Stingray Group Inc.**

In relation to proposed tariff *ARTISTI Online Music Services Tariff (2026-2028)*

Filed with the Copyright Board on 2024-12-16 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 Stingray Group Inc. (Stingray) in respect of Proposed Tariff *ARTISTI Online Music Services Tariff (2026-2028)* which was filed with the Copyright Board by Artisti on 2024-10-01 pursuant to Rule 15 of *Copyright Board Rules of Practice and Procedure*. 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**

This proposed tariff applies to communications to the public by telecommunication and the reproduction of performances fixed in a sound recording in Artisti’s repertoire by an online music services. This tariff has been proposed since 2021 but has not yet been certified. Artisti contends that it is entitled to collect a royalty flowing from these activities on behalf of its performer members. This is possible, but cannot be assumed without proper examination of the underlying grant of rights from Artisti’s members. This issue was examined thoroughly in the context of the first commercial radio tariff for Artisti (see: *SOCAN, Re:Sound, CMRRA-SODRAC Inc., AVLA-SOPROQ, Artisti - Tariff for Commercial Radio, 2008-2012* at paras 73 et seq.)

In that case, the Copyright Board noted that “It is only by looking at individual recording contracts that we could determine with any certainty whether or not performers control the reproductions made by radio stations. However, no individual contracts were filed and we are limited to relying on the boiler-plate recording contracts filed as evidence. Insofar as the rights of Artisti performers are concerned, we must also examine the collective agreements between the *Union des Artistes* (UDA) and the *Association québécoise de l’industrie du disque, du spectacle et de la vidéo* (ADISQ) and between the *Guilde des Musiciens du Québec* (Guilde) and ADISQ.”<sup>1</sup> The same would be true in determining the extent to which Artisti performers control the communications to the public and reproductions made by online music services.

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

Artisti is seeking disproportionately high rates for online music services that appear to be based on combining the existing rates for SOCAN 22.A and CSI Online Music Services and then multiplying that combined rate by a factor of 1.75 that is derived from the Board’s decision in blank audio recording media. The result is a top marginal rate of over 24% for limited download services. On its face, this is an absurd rate and cannot be justified. The rates for other variations of online music services are also disproportionately high and should be rejected.

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<sup>1</sup>*SOCAN, Re:Sound, CMRRA-SODRAC Inc., AVLA-SOPROQ, Artisti - Tariff for Commercial Radio, 2008-2012, Reasons*, <<https://decisions.cb-cda.gc.ca/cb-cda/decisions/en/item/366711/index.do?q=commercial+radio>>, at para 87.

In addition to high percentage rates, Artisti is seeking to increase the minimum fees in this tariff on the basis of generalized inflation. While this is a popular justification for widescale price increases in the current economic climate, Artisti offers no explanation as to why the factors driving inflationary increases across other sectors of the economy are specifically applicable to works in Artisti's repertoire such that Artisti should be entitled to almost double its minimum fees. Stingray acknowledges that the Copyright Board has accepted inflation as a justification for price increases in other tariffs and has published general guidelines for inflation, but notes that the increases proposed by Artisti are so significant that this justification should not be accepted without substantial economic evidence to support it.

In the context of a weakening economy and reduced discretionary consumer spending, there is no evidence that the value of music has increased on par with inflationary calculations that are based on a measure of a basket of goods that have no correlation with music valuation. In Canada, the "basket" of goods and services used to calculate CPI includes a wide range of items. "Other cultural and recreational services" comprises less than 2% of the value of the basket.<sup>2</sup> "Purchase of digital media" comprises less than 0.2% of the value of the basket. In any event, the overall index, which is overwhelmingly impacted by food, shelter, household operations, furnishings and equipment as well as transportation, is a poor proxy from which to calculate the change in the value of music over time. Absent valid justification, the rate increases should be rejected entirely.

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

The terms and conditions should be fair and reasonable and not place undue burden on the payors of the tariff. To the fullest extent possible Stingray requests harmonization on the terms and conditions between the proposed tariff and any other certified tariffs applicable to the same users for the same use. Ensuring consistency in the reporting obligations and administrative provisions across collectives will maximize efficiency and reduce the possibility for error.

Submitted on behalf of Stingray by

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<sup>2</sup> <https://www150.statcan.gc.ca/n1/pub/62f0014m/62f0014m2023003-eng.htm>