

NOTICE OF GROUNDS FOR OBJECTION

Filed by ADISQ, CIMA, AND MUSIC CANADA

In relation to the proposed *ARTISTI - PHONOGRAMS TARIFF (2026-2028)*

Filed with the Copyright Board on 2024-12-16 pursuant to Rule 18 of *Copyright Board Rules of Practice and Procedure*.

A. Introduction

1. This is the joint Statement of Objection (“**Objection**”) filed on behalf of l’Association québécoise de l’industrie du disque, du spectacle et de la vidéo Inc. (“**ADISQ**”), the Canadian Independent Music Association (“**CIMA**”), and Music Canada (together, the “**Associations**”) and their respective members, in accordance with section 68.3 of the *Copyright Act*, RSC 1985, c. C-42, to the *Statement of Royalties to Be Collected from Producers and Record Companies by ARTISTI (2026-2028)* (the “**Proposed Tariff**”), published by the Copyright Board of Canada on November 15, 2024.
2. The Associations are non-profit trade associations that promote the interests of their respective recording industry members and those members’ partners, the recording artists.
3. The Associations intend to participate in the process leading to the certification of the Proposed Tariff. They request that the Copyright Board hold a public hearing so that they may fully present their Objections to the Proposed Tariff.

B. Objections

The Proposed Rates Are Neither Fair Nor Equitable

4. To the extent, if any, that the Proposed Tariff (i) is found to be within the jurisdiction of the Copyright Board, (ii) pertains to a use of copyright for which a licence is required under the *Copyright Act*, and (iii) is found (or conceded) to apply, in whole or in part, to any of the Associations’ members, it is the Associations’ position that the royalties sought in the Proposed Tariff are excessive, unwarranted, and unreasonable. They bear no relation to the value of any copyright that may, in fact, be proven to be in issue in connection with the fixation of performances in sound recordings, and the reproduction and distribution of such recorded performances in the form of phonograms, including the use of sound recordings in any manner purportedly covered by the Proposed Tariff.
5. The Associations contend further that the proposed minimum fees are neither fair nor equitable.

ARTISTI Does Not Have the Rights That It Purports to Have

6. The Copyright Board has stated that performers outside Québec almost invariably grant to makers of sound recordings the exclusive right to use the fixation of their performances for “all purposes.” In some cases, performers assign those rights to sound recording makers outright. Consequently, each individual entity represented by Music Canada or CIMA enjoys the exclusive right under the *Copyright Act* to monetize the economic value in the performers’ performances embodied in the sound recordings and phonograms that they make, distribute, and sell, without having to request a licence from, or pay royalties to, ARTISTI.
7. In Québec, two collective agreements made under the *Act Respecting the Professional Status of Artists in the Visual Arts, Film, the Recording Arts, Literature, Arts and Crafts and the Performing Arts*, RSQ., chapter S-32.1, are currently applicable to performers of sound recordings whose services are retained by makers of sound recordings who are members of ADISQ. These collective agreements have been entered into between UDA and ADISQ and between the Québec Musicians’ Guild and ADISQ (together, the “**Collective Agreements**”).
8. Under the Collective Agreements, performers assign or grant by licence to makers of sound recordings the exclusive rights to fix and reproduce their performances in sound recordings and to exploit the resulting sound recordings in all forms.
9. Consequently, pursuant to the Collective Agreements, each individual entity represented by ADISQ who acts as a maker of sound recordings enjoys the exclusive rights under the *Copyright Act* to monetize the economic value in the performers’ performances embodied in the sound recordings and phonograms that they make, distribute, and sell, without having to request a licence from, or pay royalties to, ARTISTI.
10. Performers in Québec whose services are retained by makers of sound recordings who are not bound by the Collective Agreements also assign or grant by licence to those makers the exclusive rights of fixation and reproduction of their performance and of exploitation of the sound recordings in all forms.
11. In Québec, ADISQ also represents record labels in circumstances where they do not act as makers of sound recordings. In this context, record labels obtain licences for the exclusive rights held by the makers and undertake to reproduce and commercialize the sound recordings made by the them.

12. Consequently, record labels who do not act as makers of sound recordings and who are represented by ADISQ enjoy the exclusive rights under *Copyright Act* to monetize the economic value in the performers' performances embodied in the sound recordings and phonograms that they make, distribute, and sell, without having to request a licence from, or pay royalties to, ARTISTI.
13. Therefore, it is the Associations' position that ARTISTI does not have the repertoire it purports to have and, with respect to the Associations' members, has no right (exclusive or otherwise) to seek to authorize (i) the fixation of performers' performances in sound recordings, (ii) the reproduction of those sound recordings in the form of phonograms, or (iii) the distribution of the resulting phonograms.

The Structure of the Proposed Tariff is Impractical and Unduly Onerous

14. The structure of the Proposed Tariff is inconsistent in significant ways with longstanding practices in the Canadian recording industry. The Proposed Tariff, if approved, would constitute a fundamental change to customary practices in the Canadian recording industry. There is no need or justification to fundamentally alter existing practices in order to accommodate ARTISTI's administrative preferences, particularly since ARTISTI does not represent a significant repertoire of performers' performances embodied in sound recordings made and/or distributed in Canada.

The Proposed Administrative Provisions are Impractical and Unduly Onerous

15. Like the structure of the Proposed Tariff, the administrative provisions set out in the Proposed Tariff are impractical, unduly onerous, and would fundamentally change customary practices in the Canadian recording industry. Consequently, the Associations object to the certification of these provisions.

C. Reservation of Rights

16. The Associations, and each individual sound recording maker, performer, and other entity represented by each of them for purposes of this Objection, reserve the right to vary and/or supplement the positions set out above at any stage of the proceedings related to the Proposed Tariff.

All of which is respectfully submitted December 16, 2024



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