

NOTICE OF GROUNDS FOR OBJECTION

Filed by **Stingray Group Inc.**

In relation to proposed tariff *SOCAN Tariff 26 – Pay Audio and Ancillary Services (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 *SOCAN Tariff 26 – Pay Audio and Ancillary Services (2026-2028)* which was filed with the Copyright Board by SOCAN on 2024-10-15 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

Stingray has no objection to the tariff in principle, but merely to the rates and terms, as articulated below.

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

SOCAN is proposing a base royalty rate of 12.45%, which SOCAN says is based on the previously approved tariff. However, the Board-certified rate for 2016, the latest year for which the Board certified a rate, is 10.4%. It is not clear why or how SOCAN is starting with a rate higher than the rate certified by the Board. If we are relying on the Board’s decision as a proxy, which Stingray submits is appropriate, 10.4% is not the correct starting point for the tariff years 2026-2028.

It is clear that the Copyright Board accepted Stingray’s arguments that the increased competition in the marketplace created an absurdity whereby the rates for digital pay audio were more than double the applicable rates payable by its online music services competitors (i.e. 13% for pay audio vs 5.3% for pay audio’s “competitors” i.e. webcasting services). Accordingly, the Copyright Board implemented a step-down rate year over year up until the most recent year under consideration by the Board at the time. It then follows that the pay audio rate should come down to a rate in line with webcasting services and be in the range of 5.3%. The pay audio service is not seen as competitive with webcasting and it is clear to all industry observers that pay audio is not a technology of the future. If anything, the rate subject to pay audio should be less than the webcasting rate.

The rate formula proposed by SOCAN is the base rate of 12.45% multiplied by 0.75 of the affiliation payments for the period. SOCAN identifies this 0.75 multiplier as a “a factor to reflect a concept similar to the rationale for the “pay audio affiliation multiplier” set out in the approved tariff.” The Copyright Board carefully considered evidence in the proceeding before setting out the affiliation multiplier, and SOCAN offers no explanation for why that careful formula should be replaced by a 0.75 multiplier. SOCAN further states that, in a proceeding, it expects Stingray would produce information which it could use to “provide fulsome valuation analysis.” Stingray agrees that SOCAN has not provided such an analysis or justification at this stage and that the 0.75 multiplier is not sufficiently explained or justified and should be rejected in favour of a more detailed approach to the affiliation multiplier. If a default

multiplier were to be applied, it should be more reflective of the myriad of services that Stingray offers in its bundles to its BDU partners. A more appropriate starting point would be a multiplier in the range of 0.2 as opposed to 0.75.

To the extent SOCAN reserves the right to adopt and advance additional or alternative valuation methodologies and inflationary rates in the course of any proceeding relating to the proposed tariff, Stingray reserves the right to object to such additional or alternative methodologies or rates.

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

Despite acknowledging that Stingray is the only provider of digital pay audio services, SOCAN is proposing to broaden the application of this tariff to include all semi-interactive and non-interactive webcast programming available solely by subscription to a distribution undertaking not just semi-interactive and non-interactive webcast programming provided by pay audio programming undertakings. This appears to be an overbroad application of the digital pay audio services tariff.

While Stingray acknowledges and undertakes to provide SOCAN with all the reporting information available to it to comply with the tariff terms, it does not accept the removal of the “where available” qualifier. As has been repeatedly stated to this Board, the inability of a user to provide reporting information that is not available to it should not give rise to an infraction of the tariff. If, as SOCAN states, it is receiving the information it requires, there is no need to remove this important qualifier. This is particularly important given that SOCAN is also requesting reporting for webcasting services where it has not required such reporting in the past.

Stingray objects to the added requirement to report on each distribution undertaking to which it provided a service in the previous year, regardless of whether the programming undertaking paid royalties or not. SOCAN states that this requirement provides data that facilitates tariff administration, given the fact that the tariff applies to both distribution undertakings and programming undertakings. However, if royalties are not paid for a particular service, Stingray should be under no obligation to report for that service, and it unfairly extends the scope of the tariff into Stingray’s business.

Submitted on behalf of Stingray by

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