NOTICE OF GROUNDS FOR OBJECTION

Filed by SIRIUS XM CANADA INC.

In relation to proposed tariff ARTISTI SATELLITE RADIO TARIFF (2027-2029)

Filed with the Copyright Board on 2025-12-17 pursuant to Rule 18 of *Copyright Board Rules of Practice and Procedure*

1. This Notice of Grounds for Objection is filed on behalf of Sirius XM Canada Inc. (the "**Objector**") in response to the Statement of Proposed Royalties to Be Collected by Artisti. The tariff in question is entitled "Artisti Tariff for Multi-Channel Subscription Satellite Radio Services (2027-2029)" and will be referred to in this Notice of Grounds for Objection as the "Tariff".

2. Without admitting that it is liable for the payment of royalties pursuant to the Tariff, the Objector objects to the Tariff in its entirety.

3. The Objector offers satellite radio services. As the Tariff purports to target such services, the Objector has the necessary standing to object to the Tariff pursuant to the *Copyright Act* (the "**Act**").

The Activities Do Not Trigger Copyright Liability

4. The reproductions claimed by Artisti do not trigger liability under the Act, *inter alia* because they:

   (a) have already been authorized;

   (b) are not the subject of a valid assignment to Artisti;

   (c) are not "substantial" in the meaning of the Act;

   (d) are not "in a material form" in the meaning of the Act;

   (e) are not made by the Objector but by other persons without the authorization of the Objector; and/or

   (f) are made outside of Canada.

5. In the event that some or all of the reproductions fall within the exclusive rights protected by the Act, can be administered by Artisti, and are attributable to the Objector, all of which is specifically denied, such copies are non-compensable pursuant to the user rights contained in the Act and available to the Objector and/or other persons associated with multi-channel subscription satellite radio services, including those contained in

ss. 29, 29.1, 29.2, 29.22, 29.23, 29.24, 30.71, 30.8, 30.9, and 31.1 of the Act.

6. Any fair and equitable Tariff should also contain a “free trial” provision on economic and fair dealing grounds. The Tariff does not account for free trial periods, which have been recognized by the Copyright Board as mutually beneficial for creators and users in a number of contexts. The Objector submits that a three-month royalty-free trial period should be allocated over the course of a calendar year, be made applicable both to new subscribers and “win-back” subscribers”, and not be made subject to minimum fee mechanisms.

7. Furthermore, the reproductions made by other persons described in paragraphs 4 to 5 are capable of being made lawfully. The Objector does not countenance or sanction infringing acts, and is not liable for their authorization pursuant to the Act.

Artisti Lacks the Necessary Rights to Collect Royalties under the Tariff

8. The Objector denies that Artisti has legal entitlement to collect royalties for the uses covered by the Tariff, and puts Artisti to the strict proof thereof.

9. For example, the Objector is aware that Artisti’s entitlement was previously challenged by ADISQ, Music Canada and CIMA. On June 28, 2019, Artisti and those other organizations notified the Board of an agreement that resulted in Artisti making an application to the Board requesting the withdrawal of multiple tariffs through the year 2021.

10. The contents and background of this agreement to withdraw are not known to the Objector, but are fully known to Artisti. The Objector relies on the basis for the withdrawal in denying Artisti’s right to claim royalties under the Tariff.

11. Additionally, throughout Canada, performers invariably assign to makers of sound recordings the exclusive right to use the fixation of their performances for “all purposes”. The Objector pleads that all underlying assignments from performers to makers are valid both at law and in equity. Accordingly, the performers no longer have any rights that they are capable of granting to Artisti.

12. Further, the tariff amounts sought by Artisti are to be added to the amounts already paid by producers to artists to produce and exploit an album, which include the exclusive right to use the fixation of their performances for “all purposes”. Artisti is in effect seeking a second payment for an activity that has already been cleared, or which belongs to persons other than the performers represented by Artisti.

13. In the alternative, any purported agreements between Artisti and individual artists are void, unenforceable, and/or do not transfer sufficient rights to Artisti.

14. The Objector denies that Artisti qualifies as a "collective society" in the meaning of the Act that has standing to file a tariff or is capable of collecting royalties pursuant to a licensing scheme.

The Tariff Is Potentially Duplicative and/or Underinclusive

15. The Objector objects to the Tariff to the extent that it is duplicative of Artisti's *Online Music Services Tariff* (2026-2028) (**"Artisti OMS"**) or fails to authorize the activities described in the s. 3(2) carve-out to Artisti OMS.

16. By way of example only, a production copy authorized by the Tariff is not expressly authorized for streaming uses despite the carve-out in s. 3(2) of Artisti OMS implying that Artisti's satellite radio tariff covers reproductions made by "satellite radio services within the framework of their Internet activities".

17. Activities (if any) that are found by the Copyright Board to be covered by another tariff for a given year cannot be re-claimed under the guise of a different tariff, as they would constitute "double-dipping" in violation of the principles set out by the Supreme Court in *ESA v. SOCAN,* 2012 SCC 34 and *SOCAN v. ESA,* 2022 SCC 30 (*"**ESA I** and **ESA II**")*.

The Royalties Sought Are Neither Fair Nor Equitable

18. Artisti has based its proposed royalties for reproductions of performers' performances on royalties obtained by CSI for copyright works in the inaugural satellite radio tariff, which was certified in 2009 based on evidence from a long-past period, prior to the passage of the *Copyright Modernization Act* with its numerous user rights and prior to the Supreme Court's landmark decisions in *ESA I* and *ESA II.* All these factors were ignored in Artisti's methodology.

19. Artisti's methodology is erroneous in numerous respects, including because it ignores the criteria set out in the Act and the jurisprudence, grossly overvalues the reproduction rights in its repertoire and fails to explain any basis for its repertoire adjustment as applied to the Objector's service.

20. The proposed royalties, rate base, and minima are neither fair nor equitable when applied to the Objector's enterprise, if indeed some or all of the reproductions fall within the exclusive rights protected by the Act, can be administered by Artisti, and are attributable to the Objector, all of which is specifically denied.

21. In particular, the proposed rates, rate base, and minima do not reflect a fair, reasonable and appropriate value of Artisti's enforceable repertoire, and do not reflect the risks taken or investments made by the Objector. The proposed rates and minima are also excessive compared to those charged in other jurisdictions for similar uses and do not reasonably reflect the amount, type or impact of music use by the Objector.

The Administrative Provisions Are Unfair and Onerous

22. The Objector contends that the administrative provisions set out in ss. 5-10 of the Proposed Tariff are impractical and unduly onerous, do not track information in the forms held by the Objector, require the overbroad disclosure of sensitive confidential information, create unreasonable audit rights, and place a disproportionate burden on the Objector, including because they do not impose an "if available" carve-out as set out in s. 6(2) of the original satellite radio services tariff. Artisti relies on the terms of the original satellite radio tariff to establish a rate base, but it goes well beyond them in respect of the performers' performance use information sought. Similarly, Artisti demands above-prime interest for an adjustment in its favour but refuses any interest at all for an adjustment in Objector's favour.

23. The s. 7 audit provisions contained within the Tariff are inequitable, in part because they do not restrict the number of audits that may be carried out and do not provide for an independent auditor or a process to challenge any audit conclusions.

24. Artisti also creates punitive enforcement mechanisms in ss. 7, 9 and 10 of the Tariff despite the Board's guidance that it will not certify terms and conditions that "touch[] on the area of liability and the provisions of the Act applicable to remedies against users governed by a tariff" (SOCAN Tariff 18 – Recorded Music for Dancing (2018-2022) at ¶43). These provisions cross the line into liability and remedies. They should be struck from any certified tariff.

Reservation of Rights

25. The Objector reserves the right to vary or supplement the positions set out above at any stage of the within proceedings.

All of which is respectfully submitted this 17th day of December, 2025.

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