

## **NOTICE OF GROUNDS FOR OBJECTION**

Filed by **Canadian Association of Broadcasters (CAB)**

In relation to Proposed Tariff **SOCAN Tariff 22.B – Internet – Commercial Radio (2027-2029)**

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

This is the Notice of Grounds for Objection of the Canadian Association of Broadcasters (CAB) to the Statement of Proposed Royalties to be Collected by SOCAN for Internet – Commercial Radio for 2027-2029, (the “Statement of Proposed Royalties” or “proposed SOCAN Tariff 22.B”). CAB respectfully reserves the right to raise additional substantive points of objection throughout the proceedings related to the Statement of Proposed Royalties.

### **Grounds for why the Board should not approve the proposed tariff despite any alteration of royalties or levies or fixation of terms and conditions**

The Copyright Board commented on the most appropriate approach for simulcasting tariffs in its decision in Re:Sound Tariff 8 (2009-2012) when it stated at paragraph 72:

In our view, the Internet simulcast of a radio station’s over-the-air signal is a textbook example of an ancillary use that should be dealt with at the same time as the main use. The value per listener for simulcasting and for over-the-air broadcasting is the same. That value is best achieved by attaching the ancillary use to the main one. Accordingly, the royalties should be proportional to the relative audience.

The simulcasting rates for CMRRA and for Re:Sound are incorporated into the Commercial Radio Tariff, ensuring that CAB members pay the same rates for simulcast as they do for the primary broadcast. In proposed SOCAN Tariff 22.B, SOCAN is seeking a separate tariff for radio simulcast that is not related to the primary tariff and includes substantially different rates and terms. This is inconsistent with the Board’s guidance on ancillary use tariffs and should not be certified.

### **Grounds for objecting to any royalty or levy rates in the proposed tariff**

The CAB objects to the proposed rates as they are unjustified and too high. SOCAN has proposed a rate of 10.3% of the broadcaster’s Internet-related revenues, subject to a minimum fee, which shall be the greater of \$1.30 per subscriber per month and 0.13¢ per play requiring a SOCAN licence. This is completely out of line with the certified tariff for Commercial Radio which has a top effective rate of 4.2% and no minima. SOCAN’s proposal is also inconsistent with the Supreme Court of Canada’s guidance on technological neutrality as it seeks higher rates for simulcasting than for conventional broadcasting of the same content. Furthermore, SOCAN’s proposal, particularly the

minimum fees, does not properly reflect the business model of commercial radio broadcasters.

SOCAN states that the increase is intended to reflect changes in the market including increased efficiencies and expanded uses of music, which SOCAN assumes will be justified by evidence produced by the commercial radio stations during the proceeding. CAB is not aware of any factor that could justify an increase to the value of music used by licensees of this tariff. Absent justification, the rate increases should be rejected entirely.

### **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 CAB 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, particularly the Commercial Radio Tariff. Ensuring consistency in the reporting obligations and administrative provisions will maximize efficiency and reduce the possibility for error.

SOCAN has proposed changes to several definitions. SOCAN has provided no explanation for these proposed changes other than to note that “Several of the definitions in the proposed tariff have been amended for clarity.” Further explanation is required to justify this change.

SOCAN has proposed a new section 5 relating to the making available right. This provision does not and cannot apply in the context of simulcasting, where the entire radio broadcast is made available online. CAB radio members are unable to determine which songs were made available but not played. This provision should be removed from the tariff.

The CAB objects to the reporting requirements at sections 4 and 5 to the extent SOCAN has not include the “where available” qualifier. CAB has long held the position that failure to include those words does not change the fact that some types of information are simply not available to the CAB. SOCAN has failed to provide any evidence that CAB members are deliberately withholding information in their reporting or that SOCAN is experiencing any prejudice relating to reporting. It is essential that “where available” be included in sections 4 and 5 to ensure that when CAB members provide all the information they have available, they will not be found offside the tariff. To the extent the music use requirements are subject to the “where available” caveat, CAB does not contest the modifications and will encourage its members to provide any and all available information to assist SOCAN in its distributions.

### **Any Grounds not identified above**

SOCAN’s position regarding artificial intelligence is *prima facie* reasonable but is potentially overbroad. CAB reserves the right to make arguments as to the reasonable use of AI systems in its operations with appropriate limitations in place provided that the

use is not excluded under principles of fair dealing or other exceptions under the Copyright Act.