

## NOTICE OF GROUNDS FOR OBJECTION

Filed by SIRIUS XM CANADA INC.

In relation to proposed tariff SOCAN TARIFF 25 – SATELLITE RADIO SERVICES (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 the Society of Composers, Authors and Music Publishers of Canada (SOCAN). The tariff in question is entitled “SOCAN Tariff 25, 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. Some or all of the communications claimed by SOCAN do not trigger liability to SOCAN under the Act, *inter alia* because they:
  - (a) have already been authorized;
  - (b) are not the subject of a valid assignment to SOCAN;
  - (c) are not “substantial” in the meaning of the Act;
  - (d) are in the public domain;
  - (e) are not made by the Objector but by other persons without the authorization of the Objector; and/or
  - (f) do not have a real and substantial connection to Canada.
5. Some or all of the communications claimed by SOCAN are non-compensable pursuant to the user rights contained in the Act and available to the Objector, its subscribers and/or other persons associated with multi-channel subscription satellite radio services and/or streaming

services using satellite radio content, including those contained in ss. 2.4, 29, 29.1, 29.2, 30.7, 31.1 and 41.27 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. The Objector denies that it engages in any acts of making available of copyright works in the meaning of s. 2.4(1.1) of the Act.
8. Furthermore, the communications 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.

#### **SOCAN Lacks the Necessary Rights to Collect Royalties under the Tariff**

9. The Objector denies that SOCAN has legal entitlement to collect royalties for the uses covered by the Tariff, and puts SOCAN to the strict proof thereof.
10. In the alternative, any purported agreements relied on by SOCAN are void, unenforceable, and/or do not transfer sufficient rights to SOCAN.
11. In the further alternative, SOCAN does not have as large of a repertoire as it has claimed in past proceedings in respect of the activities covered by the Tariff.
12. The Objector denies that SOCAN filed its Tariff proposal by the date required under s. 68 of the Act with regard to Rule 12. If filed out of time, a Tariff proposal is void.

#### **The Tariff Is Potentially Duplicative**

13. The Objector objects to the Tariff to the extent that it is duplicative of other tariffs that are applicable to the Objector, including but not restricted to Tariff 22.A. 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” that violates 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**”).

14. In particular, certain definitions and deeming clauses in this Tariff and Tariff 22.A raise questions as to the proper classification of streaming services offered by the Objector.

### **The Royalties Sought Are Neither Fair Nor Equitable**

15. SOCAN's proposed royalties and minima set out in section 3 are neither fair nor equitable when applied to the Objector's enterprise. In particular, the proposed rates, rate base, and minima do not reflect a fair, reasonable and appropriate value of SOCAN's enforceable repertoire, and do not reflect the doctrine of technological neutrality, the nature of the Objector's service, the regulatory environment in which it operates, the degree to which it enables access to content for remote communities in Canada, or the risks taken or investments made by the Objector. Other tariffs take these kinds of factors into account, but the Tariff does not.
16. The proposed rates are also excessive compared to rates charged for similar uses and do not reasonably reflect the amount, type or impact of music use by the Objector.
17. The rate base for the Tariff contained within its revenue definitions captures revenues that are irrelevant to the rights administered by SOCAN.
18. The hybrid between revenue-based royalties and per play royalties proposed in the Tariff provides no certainty for calculating royalties due as part of the necessary budgetary planning for a satellite radio service.
19. The minima, including the free stream rate, are commercially unreasonable and inequitable. The "greater of" minimum rate model is commercially unreasonable, inherently inequitable and provides no certainty for calculating royalties. In the context of a single user tariff where the user earns significant revenues year after year, there is no need for a minimum rate mechanism at all.

### **The Administrative Provisions Are Unfair and Onerous**

20. The administrative provisions set out in sections 4 to 9 of the Tariff are impractical and unduly onerous, do not track information in the forms held by the Objector, require the disclosure of sensitive confidential information, and place a disproportionate burden on the Objector, including because:
  - (a) they do not impose an "if available" carve-out for provision of information to SOCAN, but instead demand disclosure so long as "commercially reasonable" reporting options exist, including options that would impose material expenses on the Objector;

- (b) they require counting of plays in a revenue-based royalty model, with the only purpose of the counting being to support an inequitable “greater of” minimum fee rate structure;
  - (c) reporting requirements are unduly detailed and unduly frequent;
  - (d) section 5(5) of the Tariff requires twice-yearly provision of an excessive information gathering exercise connected to the making available right, even though the Objector does not make available works in the meaning of the *Copyright Act*; and
  - (e) they require breakdown of revenues in a manner that is not tracked by the Objector.
21. The confidentiality clause at section 7 provides SOCAN the right to use and share confidential information in an unduly broadly manner, including with Re:Sound and with anyone who is *presumed* to know confidential information received pursuant to the tariff. There is a carveout that removes confidentiality provisions to information that must be provided pursuant to the *Copyright Act*, which could be read to include confidential information supplied pursuant to interrogatories. Section 7 could allow for the release of sensitive confidential information to uninvolved third parties, or to others who should not possess that sensitive confidential information.
  22. The section 8 adjustments clause does not permit set off of royalties or fees owed to SOCAN despite the availability of such set off at law and in equity.
  23. The section 9 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. SOCAN also creates punitive enforcement mechanisms in 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 17<sup>th</sup> day of December, 2025.

Daniel Glover  
Audrey-Anne Delage  
per: McCarthy Tétrault LLP  
66 Wellington Street West,  
Box 48, Suite 5300, TD Bank Tower  
Toronto, Ontario, M5K 1E6  
Telephone: (416) 601-8069  
Facsimile: (416) 868-0673  
E-mail: [dglover@mccarthy.ca](mailto:dglover@mccarthy.ca); [adelage@mccarthy.ca](mailto:adelage@mccarthy.ca)

Of Counsel to the Objector

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