

NOTICE OF GROUNDS FOR OBJECTION

Filed by SIRIUS XM CANADA INC.

In relation to proposed tariff SOCAN TARIFF 22.D.1 (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 22.D.1 – Online Audiovisual 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 is not an online audiovisual service. However, since the Tariff appears to target any service that ever communicates even a single audiovisual clip, via any method, for any reason whatsoever and regardless of its length, 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 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 more meaningful “free trial” provision on economic and fair dealing grounds. 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*”).

The Royalties Sought Are Neither Fair Nor Equitable

14. 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.
15. 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 and similarly situated services.
16. The rate base for the Tariff contained within its revenue definitions captures revenues that are irrelevant to the rights administered by SOCAN.
17. The hybrid between revenue-based royalties and per program royalties proposed in the Tariff provides no certainty for calculating royalties due as part of the necessary budgetary planning for any service.
18. The minima are commercially unreasonable and inequitable. The non-commercial flat rate should be applicable to any service that does not obtain revenues for occasional communications of audiovisual content.

The Administrative Provisions Are Unfair and Onerous

19. 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 a generalized "if available" carve-out for provision of information to SOCAN;
 - (b) reporting requirements are unduly detailed and unduly frequent;
 - (c) they require an unreasonably long retention period of six years; and
 - (d) they require breakdown of revenues in a manner that is not tracked by the Objector.
20. The section 6 payment provisions have been unfairly accelerated.
21. The section 7 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. It also appears to favour adjustments based on SOCAN audits over adjustments based on other discoveries.

22. The section 8 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.
23. The proposed confidentiality clause at section 9 provides SOCAN the right to use and share confidential information in an unduly broadly manner, including with other collective societies 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 9 could allow for the release of sensitive confidential information to uninvolved third parties, or to others who should not possess that sensitive confidential information.
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 17th 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; adelage@mccarthy.ca

Of Counsel to the Objector