

NOTICE OF GROUNDS FOR OBJECTION

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

In relation to Proposed Tariff **SOCAN Tariff 22.D.1.R – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by Online Audiovisual Services and User-Generated Content Services (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 Online Audiovisual Services - Reproduction for 2027-2029, (the “Statement of Proposed Royalties” or “proposed SOCAN Tariff 22.D.1.R”). CAB respectfully reserves the right to rely on objections raised by other parties to the proceedings, *mutatis mutandis*. CAB also reserves its 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

This proposed tariff replaces Proposed SODRAC Tariff 7, last filed for the year 2019, which was the last year SODRAC filed tariffs on its own before becoming part of SOCAN. CAB has objected to proposed SODRAC 7 and has objected to proposed SOCAN Tariff 22.D.1.R in each iteration for every year since. Together, these proposed tariffs represent the first time that a tariff applicable to reproduction rights is sought in the audiovisual context, so there are fundamental issues to be considered.

First, it is unclear to CAB what types of copies are included in the proposed tariffs. The history of the CBC and SODRAC litigation involved extensive evidence and analysis relating to synchronization and post-synchronization copies, including various types of incidental copies, broadcasting copies and production related copies. There was extensive evidence about through-to-the-viewer licences and their impact on any residual rights remaining with SODRAC (now SOCAN). The litigation on this issue has shown that, at least in the context of the CBC and SODRAC, broadcast-incidental copies (BICs) could have value.¹ Evidence is required to demonstrate the extent to which that bears true in the online audiovisual context.

Second, while SOCAN has not proposed increases to its rates for SOCAN Tariff 22.D.1.R relative to previous proposals for this tariff, it has removed the per-work per-share calculation mechanism included in previous versions of proposed SOCAN Tariff 22.D.1.R and has not included any mechanism to deduct non-SOCAN works from the calculation. SOCAN has expressly removed the adjustment provision for instances

¹ Canadian Broadcasting Corp. v. SODRAC 2003 Inc., 2015 SCC 57, [2015] 3 S.C.R. 615 at para 55
<https://www.canlii.org/en/ca/scc/doc/2015/2015scc57/2015scc57.html>.

where SOCAN does not hold all the rights in a musical work. CAB objects to the application of the proposed tariff to the entire universe of copies made by online audiovisual services and notes that evidence will be required to clarify the scope of reproductions that could be eligible under the proposed tariff.

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

CAB objects to the proposed rates for the following reasons:

- The rates do not reflect the fair, reasonable, and appropriate value of the reproduction of musical works in SOCAN's repertoire.
- The rates do not adequately reflect the varying amounts and types of reproductions made in Canada by different services/users.
- The rates do not account for reproduction right exceptions in the *Copyright Act*, which have been applied by the Copyright Board in the context of commercial radio,² and in the context of the *CBC v SODRAC* licence arbitration,³ and which will operate to reduce the amount of royalties payable to SOCAN in this case.
- The proposed "minimum fee" is unnecessary or in the alternative, much too high
- The tariff includes revenues that are unconnected to the use of musical works (e.g. product placement and sponsorship and where audiovisual content is offered in bundles with other products and services). Further, certain types of expenses should be excluded from revenue (e.g. app store fees, intermediate billing providers, marketing / partner commissions, and applicable taxes).
- The proposed rates do not reflect the fact that in many cases users already have the necessary rights, including by licensing or acquiring them directly from the copyright owners or otherwise.

Assuming the proposed tariff is only applicable to broadcast- incidental copies not already covered by existing licence agreements, CAB notes that the extent to which incidental copies have an independent economic value is very unclear, and that a nominal rate for any unaccounted-for incidental copies is the most appropriate approach. Even if incidental copies have an independent economic value, that value cannot be established without taking into account the other royalties paid under the reproduction right, and because incidental copies are "incidental" by nature, their value to the user must be lower than that of non- incidental copies.⁴

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

² *Statement of Royalties to be collected by SOCAN, Re:Sound, CSI, connect/SOPROQ and Artisti in respect of commercial radio stations*, 2016-04-21, <<https://decisions.cb-cda.gc.ca/cb-cda/decisions/en/item/366778/index.do?q=%22commercial+radio%22>>.

³ *SODRAC 2003 Inc. v CBC*, 2021 CB 1.

⁴ *Ibid* at para 155

applicable to the same users for the same use. Ensuring consistency in the reporting obligations and administrative provisions across collectives will maximize efficiency and reduce the possibility for error.

CAB objects to the onerousness of the reporting and payment obligations under sections 5 and 6, including the frequency (which should generally be quarterly rather than monthly) and delay (which should generally be 60 days rather than 20 days after the quarter). In addition the tariff should note that information and documentation shall be provided to the extent it is available to the service paying the tariff. Not all the specific types and formats of requested information are always provided to CAB and therefore cannot be provided by CAB to the collectives. Where requested information is available it should be provided, but the tariff should include this “where available” language.

Any Grounds not identified above

CAB expects SOCAN to prove its eligible reproduction right repertoire through a comprehensive repertoire use study including a robust audit right for the objectors. As a reproduction right tariff has not yet been applied to online audiovisual services, it is essential for CAB to understand the extent to which the SOCAN reproduction right repertoire is engaged and to ensure there is no overlap with the CMRRA repertoire.

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.