

NOTICE OF GROUNDS FOR OBJECTION

Filed by **Stingray Group Inc.**

In relation to proposed tariffs

SOCAN Tariff 22.A – Online Music Services (2014-2018) [music videos only]

SOCAN Tariff 22.D – Audiovisual Content (2014, 2015) [online music video services only]

SOCAN Tariff 22.D.1 – Internet – Other Uses of Music - Audiovisual Content (2016, 2017, 2018) [online music video services only]

SODRAC Tariff 6 – Online Music Services - Music Videos (2014)

SODRAC Tariff 6 – Reproduction of Musical Works Embedded in Musical Audiovisual Works for Transmission by a Service (2015, 2016, 2017, 2018) [online music services & online music video services only]

Filed with the Copyright Board on 2024-02-08 pursuant to Rule 15 of *Copyright Board Rules of Practice and Procedure* and Copyright Board Order CB-CDA 2024-001. This Notice is filed in accordance with PN 2022-007 rev.1.

Identifying why the Board should not approve the proposed tariff despite any alteration, under paragraph 19(a) of the Rules

The Proposed Tariffs apply to online music services that offer music videos, and to online music video services that are not Allied Services (as that term is defined in SOCAN Tariff 22.D.3) or user-generated content services. Stingray offers certain online music video services that may be properly captured under this proposed scope, and accordingly, Stingray's comments are limited to the application of the Proposed Tariffs to online music video services.

Stingray does not contest the approval of fair and reasonable communication tariffs (SOCAN 22.A, 22.D and 22.D.1). However, the proposed reproduction tariff (SODRAC 6) suffers from the same threshold issues faced by all reproduction right tariffs in the audiovisual space; that is, it is not clear the extent to which the Proposed Tariff SODRAC 6 factors in pre-existing licences that are applicable to some or all of the types of reproductions made in the context of online music video services. In addition, it is not clear the extent to which the Proposed Tariff SODRAC 6 factors in the applicable reproduction right exceptions in the *Copyright Act*. Accordingly, the threshold entitlement to collect has not been established and it is unclear whether there are legal grounds to fix this Tariff. If, after review of the evidence, the Board determines that there are any remaining reproduction rights to be licenced, the rates certified for SODRAC must be adjusted to reflect the degree of their entitlement.

Objecting to any royalty or levy rates in the proposed tariff, under paragraph 19(b) of the Rules

SOCAN has reserved the right to advance additional or alternative valuation methodologies and adjustments for inflation and other externalities through the course of the proceeding. Accordingly, Stingray also reserves the right to object to, comment on, and/or otherwise address any additional or alternative valuation methodologies or adjustments that may be proposed.

With respect to the rates proposed for the communication right, Stingray appreciates the clarification as to which are the proposed rates for which years. However, Stingray does not accept the explanation offered by SOCAN for the increased rates. SOCAN notes that the rates proposed are “generally derived from the rates proposed by SOCAN in Tariff 22.A (2014-2018) for the offering of audio content by online music services.” However, the rate *proposed* by SOCAN in Tariff 22.A is not the appropriate baseline, given that the Copyright Board has *certified* rates for those services. The Board-*certified* rates for streaming music videos are 2.99% with a minimum annual fee of \$100. The SOCAN *proposed* rates are 5.9% with a minimum fee of \$0.608 per subscriber per month or \$0.013 per stream. The proposed percentage rates are double the certified rates, and the proposed minimum fees could lead to payments that exceed the annual revenue of some Stingray music video services. This is an absurd outcome and is in no way justified by SOCAN. The certified rates and minima were set with due consideration to the marketplace in which these services are offered. SOCAN has provided no indication that the marketplace or the services have changed such that an increase in the rates of this magnitude would be reasonable. The mere passage of time alone does not render the certified rates unreasonable. Indeed, having due regard for market trends in Canada for the Stingray services, the passage of time would support a roll-back of the certified rates.

With respect to the rates proposed for the reproduction right, SOCAN has explained how it arrived at the proposed rates but has not offered any explanation as to why this chosen approach is appropriate or reasonable. For example, SOCAN says that the minimum fees for limited downloads are calculated as two-thirds of the proposed minimum fees for permanent downloads, but it offers no explanation as to *why* limited downloads should be valued at two-thirds the value of permanent downloads. Why not one third? Or one quarter? Similarly, SOCAN says that “SODRAC’s proposed per-play minimum fee [for limited downloads] is calculated by multiplying 0.17¢ by a factor of 0.57, which reflects the ratio between the SODRAC rate for permanent downloads of music videos (5.64%) and the CSI rate for permanent downloads of audio tracks (9.9%)”, but does not explain why it starts with 0.17¢, or why the ratio between the SODRAC rate for permanent downloads of music videos and the CSI rate for permanent downloads of audio tracks is relevant or applicable to minimum fees for limited downloads. This 0.57 factor is applied again in the context of deriving the percentage rate for on-demand streams without any explanation as to why it is applicable or appropriate in that case either. A different factor of 0.54 is applied to determine the proposed per-subscriber minima for on-demand streams, which is the ratio between the proposed percentage rate for on-demand streams and the proposed percentage rate for limited downloads, but no explanation is offered as to why this is relevant for minima for on-demand streams.

SOCAN has proposed a complex and varied set of percentage rates and minimum fees that appear to be derived from comparing these proposals against each other. Stingray appreciates that these are inaugural rates to be applied in the first instance to reproductions made in the context of online music video services, so SOCAN/SODRAC has some latitude to propose something new; however, these proposals are not obviously connected to the value of the music delivered by online music video services. Pre-existing ratios between communication and reproduction rights for the same services have been used and relied upon by the Board in the past when setting a reproduction right value for a service after a communication right has already been valued. It is open to SOCAN/SODRAC to explain whether and why (or why not) to use those pre-existing ratios to determine the appropriate starting point for valuing the reproduction right in this context. Finally, as noted above, any rates for reproduction rights

must necessarily include discounts for pre-existing licences and pre-cleared uses as well as reproduction right exceptions in the *Copyright Act*, which has not been expressly done in this case.

Objecting to any terms or conditions in the proposed tariff, under paragraph 19(b) of the Rules

With respect to the music use reporting requirements set out in section 6, the Proposed Tariff should note that the required information and documentation shall be provided to the extent it is available to the entity paying the tariff. Where requested information is available it should be provided, and the tariff should include this “where available” language. We have long held the position that removing those words does not change the fact that some types of information are simply not available to the entities paying the tariff. For example, for the karaoke services, for most of the masters are produced by Stingray and therefore do not have an assigned ISWC.

SOCAN has failed to provide any evidence that online music video services are deliberately withholding information in their reporting and has failed to demonstrate any existing prejudice from the inclusion of the “where available” caveat. It is essential that it be maintained to ensure that when an online music video service provides all the information it has available to report, it will not be found offside the tariff. To the extent the music use requirements are subject to the “where available” caveat, Stingray does not contest the modifications and will provide any and all available information to assist SOCAN in its distributions.