

## NOTICE OF GROUNDS FOR OBJECTION

Filed by Google, Meta Platforms Inc. (formerly known as Facebook Inc.), Netflix Inc., Buena Vista International Inc. (“Disney”), Warner Bros. Entertainment, DAZN, the Canadian Association of Broadcasters (CAB), Stingray Group Inc. (Stingray), Goodlife Fitness Centres, Apple Canada Inc., and Apple Inc. (the “Objectors”).

In relation to proposed tariff *SOCAN Tariff 22.D.1 (Audiovisual Content), 2014-2026*.

Filed with the Copyright Board (the “Board”) on 2024-03-28 pursuant to Rule 18 of *Copyright Board Rules of Practice and Procedure*.

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### General Statement of Objection

This is the Notice of Grounds for Objection of Google, Meta Platforms Inc. (formerly known as Facebook Inc.), Netflix Inc., Buena Vista International Inc. (“Disney”), Warner Bros. Entertainment, DAZN, the Canadian Association of Broadcasters (CAB), Stingray Group Inc. (Stingray), Goodlife Fitness Centres, Apple Canada Inc., and Apple Inc. to *SOCAN Tariff 22.D.1, Online Audiovisual Services (2014-2026)* (the “Request for Approval”) filed by SOCAN on February 22, 2024.

The Objectors respectfully reserve the right to rely upon objections raised by other parties to the proceedings, *mutatis mutandis*. The Objectors also reserve their right to raise additional substantive points of objection throughout the proceedings related to the Statement of Proposed Royalties.

These objections are filed in accordance with the *Copyright Act* and the Practice Notice on the Filing of Grounds for Objection.

*Inter alia* and without limiting their general objection, and without admitting that they are liable for the payment of royalties pursuant to the proposed tariff, the Objectors object to the following:

### Grounds for Objecting to Royalty Rates in the Proposed Tariff

The Objectors object to the rates set out in section 3 of the Statement of Proposed Royalties for the following reasons:

- Said fees have been proposed without any justification. SOCAN says that the approved rates are “compromise rates,” but does not explain why the rates should be higher. They have not justified the increase to 2.1% and have not justified the further increase from 2.1% to 3.0%. SOCAN is proposing a 58% increase in rates with no justification.
- Said proposed fees have a “minimum fee” that is unnecessary or in the alternative, much too high and does not adequately reflect subscriptions.
- Said proposed fees do not take into account that some services might exclusively offer programming that uses SOCAN music for less than 20% of the run-time or uses SOCAN

music in a way that has lesser value. The Tariff should, *inter alia*, include a “low music use” rate to ensure that services with low usage are not being overcharged for what they are using.

- Said proposed fees include overlap and duplication within the formula proposed for a service that receives Internet-related revenues in connection with its communication of audiovisual programs. “C” in the formula applies to services that receive Internet related revenues, but the per-program fees in “A” and the subscription revenue in “B” are also included in the definition of “internet-related revenue.”
- Said proposed fees do not reflect the fair, reasonable, and appropriate value of the communication to the public by telecommunication of musical or dramatico-musical works in SOCAN’s repertoire.
- Said proposed fees do not reasonably reflect either the amount or the type or the impact of such communication by a licensee.
- Said proposed fees include 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, the revenue base and fees as proposed do not reflect the business models and business realities of many services, including a company operating multiple services, that royalties should be based on amounts received by services (not paid by users) and that certain types of expenses should be excluded from revenue (e.g. app store fees, intermediate billing providers, marketing / partner commissions, and applicable taxes).
- Said proposed fees also do not reflect the business models and business realities of many services, including promotional offers (including samples and demos), trials (both single and refresh), and student subscriptions.
- Said proposed fees do not reflect the fact that in many cases users have already acquired the necessary rights, including by licensing them or acquiring them directly from the copyright owners or otherwise.
- Said proposed fees do not adequately reflect the principle of technological neutrality in that it seeks to collect higher royalty rates from prospective users of the *SOCAN Tariff 22.D.1* licence than from other users who make substantially similar uses of music, as discussed in *Canadian Broadcasting Corp v SODRAC 2003 Inc*, 2015 SCC 57.

It is also worth noting that for 2024-2026, SOCAN is also suggesting a significant change to the rate calculations by proposing to eliminate the adjustment for the ratio of audiovisual page impressions to all page impressions. For services that offer a mixture of content types, this could result in a significant increase in royalties despite no change in the amount or value of music being used. The Objectors strongly object to this change, which SOCAN does not adequately explain or justify. The explanation that SOCAN does provide appears to conflate the adjustment for non-Canadian services with the adjustment to reflect page impressions that do not result in music being publicly performed. These two adjustments are intended to address very different factors and both are necessary to ensure royalty payment are fair and equitable.

### **Grounds for Objecting to Terms and Conditions in the Proposed Tariff**

The Objectors object to the reporting and auditing provisions contained in the Statement of Proposed Royalties at sections 4, 5, and 9. Said provisions are intrusive, impractical, and require the disclosure of potentially sensitive confidential information. The fact that the Statement of

Proposed Royalties requires licensees to retain records for a period of six years at section 9(1) is also unreasonable and places a disproportionate burden on licensees. Finally, the fact that services are required to pay for audit costs as per section 9(3) is also not standard.

The Objectors object to the onerousness of the reporting and payment obligations under sections 4, 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) and that Objectors should only be required to provide information if that information is available.

The Objectors object to the confidentiality provision at section 10. In particular, they object to section 10(2)(d) where SOCAN is given the right to share information with anyone who is *presumed* to know confidential information received pursuant to the tariff. This provision could allow for the release of sensitive confidential information to uninvolved third parties.

### **Additional Grounds for Objecting to the Proposed Tariff**

The Objectors object to the fact that the Statement of Proposed Royalties does not adequately reflect the risk and investment by users in new technology, as discussed in *Canadian Broadcasting Corp v SODRAC 2003 Inc*, 2015 SCC 57.

The Objectors object to section 1(4) of the Statement of Proposed Royalties (relating to the training of any artificial intelligence system) to the extent it purports to limit the use of works in a manner consistent with the principles of fair dealing and other exceptions under the *Copyright Act*.