

## NOTICE OF GROUNDS FOR OBJECTION

Filed by Bell Canada, Rogers Communications Canada Inc., Cogeco Communications Inc., Québecor Média Inc., TELUS Communications Company, the Canadian Communication Systems Alliance, Meta Platforms, Inc. (formerly known as Facebook Inc.), Netflix Inc., Buena Vista International Inc. (“Disney”), Warner Bros. Entertainment, 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.R, Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by Online Audiovisual Services and User-Generated Content Services (2015-2026)*.

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 Bell Canada, Rogers Communications Canada Inc., Cogeco Communications Inc., Québecor Média Inc., TELUS Communications Company, the Canadian Communication Systems Alliance, Meta Platforms, Inc. (formerly known as Facebook Inc.), Netflix Inc., Buena Vista International Inc. (“Disney”), Warner Bros. Entertainment, 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.R, Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by Online Audiovisual Services and User-Generated Content Services (2015-2026)* (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 4 of the Statement of Proposed Royalties for the following reasons:

- Said proposed fees do not reflect the fair, reasonable, and appropriate value of the reproduction of musical works in SOCAN's repertoire.
- Said proposed fees incorporate a formula and proposal that is unduly complex and may not be realistically achievable in practice.
- Said proposed fees do not reasonably reflect either the amount or the type or the impact of such reproduction by a licensee.
- Said proposed fees do not adequately reflect the varying types of reproductions made in Canada by different services.
- 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 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 as proposed does 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 already have the necessary rights, including by licensing 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 SOCAN has in no way explained how the formula proposed for on-demand streams relates to the value of the reproduction right for audiovisual services. The proposed rate for on-demand streams is instead the result of a formula that is based on rates approved by the Board for streams of audio tracks, rates proposed by CMRRA-SODRAC Inc. for streams of audio tracks, and the proposed rate for *SOCAN Tariff 22.D.1*.

### **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 5, 6, 7, and 10. Said provisions are impractical, intrusive, 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 10(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 10(3) is also not standard.

The Objectors object to the onerousness of the reporting and payment obligations under sections 5, 6, 7, and 8, 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 the Objectors should only be required to provide information if that information is available.

The Objectors object to the repertoire disputes provision at section 9. In particular, they object to section 9(2), where it provides licensees only 20 days after receiving a report to dispute that a file contains a musical work requiring a SOCAN licence before they are no longer entitled to interest on the amounts owed to them. This provision offers an unfairly short timeline for licensees to identify and report an issue for dispute before imposing a consequence on the licensee for a mistake made by SOCAN itself.

The Objectors object to the confidentiality provision at section 11. In particular, they object to section 11(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 3(5) 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*.