

NOTICE OF GROUNDS FOR OBJECTION

Filed by Amazon, Google, and Spotify (the “Fasken Objectors”)

In relation to proposed tariff *ARTISTI – Online Music Services Tariff (2026-2028)*

Filed with the Copyright Board (the “Board”) on 2024-12-16 pursuant to Rule 18 of *Copyright Board Rules of Practice and Procedure*.

General Statement of Objection

This is the Notice of Grounds for Objection of Amazon, Google, and Spotify (the “Fasken Objectors”) to *ARTISTI – Online Music Services Tariff (2026-2028)* (the “Proposed Tariff”) filed by ARTISTI on November 15, 2024.

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

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 Fasken Objectors object to the following:

Grounds for Objecting to Royalty Rates in the Proposed Tariff

The Fasken Objectors object to the rates set out in section 4 of the Proposed Tariff for the following reasons:

- Said proposed fees do not reflect the fair, reasonable, and appropriate value of the communication to the public by telecommunication and the reproduction, in Canada, of performances fixed in a sound recording in ARTISTI’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 communication to the public by telecommunication and the reproduction, in Canada, of performances fixed in a sound recording in ARTISTI’s repertoire.
- Said proposed fees do not reflect the fact that in many cases users have already acquired the necessary rights directly from the copyright owners. The fact that ARTISTI actually says “many of ARTISTI’s members have chosen to entrust it with all of their exclusive rights” suggests that there are members who have not done so. ARTISTI cannot claim royalties if the use of its repertoire has already been consented to.

- 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 *ARTISTI – Online Music Services Tariff (2026-2028)* 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.
- Said proposed fees use the “greater of”/“highest of” royalty structure that has been discouraged multiple times by the Board.

Grounds for Objecting to Terms and Conditions in the Proposed Tariff

The Fasken Objectors object to the reporting and auditing provisions contained in the Proposed Tariff at sections 5, 6, 7, and 12. Said provisions are intrusive and require the disclosure of potentially sensitive confidential information. The fact that the Proposed Tariff requires licensees to retain records for a period of six years at section 12(1) is also unreasonable and places a disproportionate burden on licensees.

Additional Grounds for Objecting to the Proposed Tariff

The Fasken Objectors object to the fact that the Proposed Tariff as a whole 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.