

NOTICE OF GROUNDS FOR OBJECTION

Filed by Bell Canada, Rogers Communications Canada Inc., Cogeco Communications Inc., Québecor Média Inc., TELUS Communications Company, and the Canadian Communication Systems Alliance (the “BDUs”)

In relation to proposed tariff *SOCAN Tariff 26 – Pay Audio and Ancillary Services (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 Bell Canada, Rogers Communications Canada Inc., Cogeco Communications Inc., Québecor Média Inc., TELUS Communications Company, and the Canadian Communication Systems Alliance (the “BDUs”) to *SOCAN Tariff 26 – Pay Audio and Ancillary Services (2026-2028)* (the “Proposed Tariff”) filed by SOCAN on November 15, 2024.

The BDUs respectfully reserve the right to rely upon objections raised by other parties to the proceedings, *mutatis mutandis*. The BDUs 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 BDUs object to the following:

Grounds for Objecting to Royalty Rates in the Proposed Tariff

The BDUs 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 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 do not reflect the fact that in many cases users have already acquired the necessary rights directly from the copyright owners.
- 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 26 – Pay Audio and Ancillary Services (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 do not take into consideration the fact that in its decision on *Stingray Pay Audio and Ancillary Services Tariff (2007–2016)*, the Board applied a 20% “declining industry” discount that reflected increased competition and declining profitability in the relevant sector. A discount of this kind would be more appropriate than the increase suggested by SOCAN in the Proposed Tariff.
- Said proposed fees fails to include the mechanism developed by the Board in its decision on *Stingray Pay Audio and Ancillary Services Tariff (2007–2016)* for allocating revenues to ensure that those revenues generated by activities not subject to the proposed tariff are not included in the royalty calculation. The number of Stingray Services have actually increased and this needs to be taken into consideration.
- Said proposed fees do not appear to be justified by SOCAN in any way. In the Explanation of How Royalties are Determined section of its Notice of Grounds for the Proposed Tariff, SOCAN does not even attempt to explain the source of its increased rates, but rather admits that it will only know the value of the use of SOCAN’s repertoire to the relevant services during the relevant period once Objectors have produced enough information, proving that the suggested rates are not grounded in any reasoning whatsoever. Further, SOCAN offers seemingly arbitrary multipliers (examples: 0.75, 0.25, and 0.10) to calculate the royalties for pay audio services provided in a bundle or package that contains other services at section 4(2) without providing any justification for the quantum of those multipliers.

Grounds for Objecting to Terms and Conditions in the Proposed Tariff

The BDUs object to the reporting and auditing provisions contained in the Proposed Tariff at sections 6, 7, and 8. Said provisions are intrusive and require the disclosure of potentially sensitive confidential information. Further, the addition of the requirement for semi-interactive and non-interactive webcast services to provide music use information at section 6 is unreasonably burdensome without justification. The fact that the Proposed Tariff requires licensees to retain records for a period of six years at section 8(2) is also unreasonable and places a disproportionate burden on licensees.

Additional Grounds for Objecting to the Proposed Tariff

The BDUs object to the addition of the wording “the right to make such works available” at section 3(1) because it inappropriately expands the scope of the tariff without justification. Similarly, the BDUs object to the addition of non-interactive webcast services at section 3(1)(c), which further inappropriately expands the scope of the tariff without justification.

The BDUs also object to the change to the definition of semi-interactive webcast services at section 2 whereby the phrase “whose content is similar to that of the pay audio service” was removed without explanation. Similarly, the BDUs object to the change to the definition of “Affiliation payments” at section 2, which inappropriately expands the scope of the term beyond what was previously captured without explanation.

Finally, the BDUs 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.