

REPLY TO NOTICES OF GROUNDS FOR OBJECTION

Filed with the Copyright Board by SOCAN on 2025-01-24 pursuant to Rule 21 of the *Copyright Board Rules of Practice and Procedure*

SOCAN Tariff 2.D – Television – Canadian Broadcasting Corporation (2026-2028)

1. This Reply is in response to the Notice of Grounds for Objection filed by the Canadian Broadcasting Corporation/Société Radio-Canada (“CBC”).
2. The CBC has filed numerous grounds for objection. SOCAN denies these grounds and any factual or evidentiary assertions made in the Notices of Grounds for Objection and puts the CBC to the strict proof thereof.
3. The CBC has challenged SOCAN’s proposed inflationary adjustment to the royalty rates in this tariff. The Board has repeatedly held that adjustments to royalty rates to account for inflation are appropriate to preserve the purchasing power of copyright owners. Failing to make such adjustments could, over time, erode the value of the royalties collected through tariffs. To this end, the Board has established a default methodology for inflationary adjustments. Contrary to the CBC’s objection, the proposed increase to the annual fee is consistent with the Board’s default methodology. SOCAN’s explanation of the proposed inflation adjustment is set out in its Notice of Grounds for the proposed tariff. In particular, the proposed inflation adjustment accounts for the fact that the annual fee in Tariff 2.D has not been adjusted since the last increase for the year 2006. That increase was a 2% increase from the annual fee for the year 2005. The Board’s default methodology provides that inflation is calculated starting from the month after “the last period for which the Board determines inflation was last taken into account in a tariff proceeding.” It is reasonable to assume that the 2% increase was the last time inflation was taken into account, and even if not, SOCAN submits that the inflation adjustment should begin in the last year the rate was increased. Any departure from the default methodology, such as that suggested by CBC, requires an explanation and supporting evidence.
4. The CBC has proposed a “public interest discount.” The Board has already recognized that the value of the CBC’s public interest mandate is accounted for by the appropriations it receives from Parliament, which compensate the CBC for “the increase in operating and programming costs linked to [its] mandate.”¹
5. The CBC has claimed adjustments for both “users rights”/statutory exemptions and a “declining industry discount.” Both of these claimed adjustments are highly fact-specific. Moreover, both of these claimed adjustments would be departures from the previously-approved tariff. When the Board approves a tariff, it is – by statutory definition – fair and equitable. If the CBC intends to challenge the structure from the last-approved tariff that the Board has determined to be fair and equitable, it needs to adduce evidence in support of its position.
6. Similarly, the CBC claims that a “modified blanket licence” ought to be applied to its uses of musical works in SOCAN’s repertoire. Applying a modified blanket licence would be a departure from the previously-approved tariff. Again, when the Board approves a tariff, it is – by statutory definition – fair and equitable. If the CBC intends to challenge the structure from the last-approved

¹ Copyright Board, “Statement of Royalties to be collected for the performance in Canada of dramatico-musical or musical works in 1991”, File: 1990-4, <<https://decisia.lexum.com/cb-cda/decisions/en/366509/1/document.do>> at p. 23

tariff that the Board has determined to be fair and equitable, it needs to adduce evidence in support of its position.

7. The CBC also claims an adjustment for “chain of title.” However, the CBC is conflating reproduction rights with performing rights. The CBC v. SODRAC proceeding was concerned with reproduction rights. This proceeding is concerned with performing rights. These different rights are typically administered in different ways. Moreover, even as it pertains to performing rights, the example that the CBC cites in support of its claim to a chain of title adjustment is incorrect. In the Pay Audio proceeding, the only reduction to SOCAN’s royalty was a result of repertoire use, not chain of title. The evidence in the pay audio proceeding was that some of the works used in a pay audio service were in the public domain. No audit of SOCAN’s chain of title was conducted.² These considerations are not relevant in the CBC broadcasting context. The CBC has not offered any evidence that its music use differs from that of a conventional broadcaster. Moreover, the CBC has not offered any evidence to suggest that SOCAN does not administer the performing rights covered by the proposed tariff.
8. The CBC argues that the proposed tariff involves a change in the “scope of the rights granted.” The CBC’s submissions on this point merely toy with semantics. The proposed tariff covers the music use required to operate a broadcast television station. The nature of these rights is well-understood. As SOCAN explained in its Notice of Grounds, the change in language from “to perform” to “communication to the public by telecommunication” corrects an error in the prior approved tariff. This is the same language that exists in SOCAN Tariff 2.A and Tariff 17, both of which were approved by the Board in November 2024. Indeed, the CBC was a party to the agreement that led to the approval of Tariff 17 at *status quo*.
9. Finally, the CBC repeats, as it has done previously in its Notice of Grounds for Objection for prior proposed Tariff 2.D, its untenable position on the effect of Notices of Grounds. The CBC argues that the Notice of Grounds for a proposed tariff must be binding on the party proposing the tariff and that party may not propose alternate justifications for the proposed tariff. The CBC’s position is overly restrictive. It runs contrary to Board practice and it conflicts with the Board’s *Rules of Practice and Procedure*. In particular:
 - a. Collectives and Objectors routinely reserve their right to make alternate arguments and raise alternative points at the hearing before the Board. The Notices 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 in response to SOCAN’s proposed Tariff 26 (2026-2028) is one example. Established Board procedure allows for parties to refine and adjust their positions as the evidence and analysis is filed throughout the proceeding.
 - b. The Board’s *Rules of Practice and Procedure* contemplate a step where the parties set out a statement of issues after the Notices of Grounds have been filed (Rules 24-26), and Rule 27 provides that the Board may consider any other relevant issue other than those identified in the statement of issues.
 - c. Rule 35 provides a further opportunity for a party to file a statement of case that sets out the party’s position and how they intend to support it.
 - d. The CBC overstates the effect of the Board’s November 2024 order in Tariff SOCAN 2.D – CBC Television Services (2015-2025). In particular, the order was clear that it was specifically restricted to the CBC TV(2015-2025) proceeding and was “not be understood as a direct interpretation of the Rules [of Practice and Procedure]” ([Order CB-CDA 2024-](#)

² [Re:Sound and SOCAN – Stingray Pay Audio and Ancillary Services Tariff \(2007–2016\)](#), 2021 CB 5 (CanLII), at para 266.

[098](#), para 20). For decades, the typical Board practice has been to allow parties (both collectives and objectors) to adjust their approach as new evidence comes to light and it has not resulted in unfairness. Other Board processes, such as statements of case and opening and closing statements, ensure that each party knows the case it has to meet and is able to address it.