



October 24, 2017

[*CB-CDA 2017-126*]

ORDER OF THE BOARD

Files: Online Music Services / Services de musique en ligne

[SOCAN: 2014-2018; Re:Sound: 2013-2018; CSI: 2014-2018; CMRRA: 2014-2018; SODRAC: 2014-2018; Artisti: 2016-2018]

Internet – Audiovisual Content and User Generated Content / Internet – Contenu audiovisuel et contenu généré par les utilisateurs [SOCAN: 2014-2018; CMRRA: 2016-2018; SODRAC: 2015-2018]

On October 6, 2017, the Board issued Notice 2017-105 and Notice 2017-106. The below procedural issues were raised by some parties:

Status of parties that did not formally object to a particular proposed tariff

In its response to Notice 2017-105, Re:Sound raises the issue that not all parties that are objectors in the proposed consolidated matter have objected to its proposed Tariff 8 for the years 2013-2018. They ask that the Board limit the participation of such parties. They identify the following:

- The *Association québécoise de l'industrie du disque, du spectacle et de la vidéo* (ADISQ)
- Cineplex Entertainment LP
- Music Canada
- Motion Picture Association – Canada
- Netflix Inc.
- Retail Council of Canada
- Spotify AB
- Videotron GP
- Yahoo! Canada Co.

The Board appreciates Re:Sound's concerns. As such, with respect to its proposed Tariff 8 for the years 2013-2018, these parties may not pose interrogatories to Re:Sound, cross-examine witnesses appearing solely on behalf of Re:Sound nor file evidence relevant only in relation to Tariff 8.

However, the purpose of consolidating tariff proceedings is to ensure that all relevant issues are considered together in order to allow the Board to arrive at coherent conclusions and in an efficient manner. Thus, parties to a merged proceeding should be allowed to fully participate in

respect of all tariffs being merged. Hence, any party listed above may file a request to be granted intervenor status with full participatory rights and obligations in relation to Re:Sound's proposed Tariff 8. Each request will be considered on its own merit. Parties that do not file such a request may, however, file comments at any point before the close of proceedings.

Status of parties whose standing is contested

Re:Sound and Artisti both raise the issue that several of the objectors do not appear to be prospective users of the tariffs in issue.

To address some of the concerns raised by Re:Sound and Artisti, the Board orders as follows:

The following parties shall confirm, by no later than **Friday, October 27, 2017**, that they are either a user or prospective user in relation to the proposed tariffs to which they have objected:

- Canadian Association of Broadcasters
- Bell Canada
- CBC
- CKUA Radio Network
- Federation of Calgary Communities
- Fitness Industry Council of Canada
- GoodLife Fitness Centres Inc.
- Google Inc.
- Music Canada
- Pelmorex
- *Québecor Media Inc.*
- Restaurants Canada
- Retail Council of Canada
- Rogers Communication Partnership
- Sasktel
- Shaw Communications Inc.
- Sirius XM Canada Inc.
- Yahoo! Canada

The inclusion of simulcasting activities

In Notice 2017-105, the Board wrote that it is of the preliminary view that any components of the proposed tariffs identified in that Notice that relate to the simulcasting of a primary activity should be considered with the tariff targeting the said primary activity.

In SiriusXM's response to Notice 2017-105, it asks the Board to confirm that the proposed tariffs that will be considered do not apply to SiriusXM's online features, submitting that these all relate to the simulcasting of its primary activity.

The Board's statement remains true. It notes, however, that the statement did not address online activities other than simulcasts. The Board is not in a position to confirm whether all of SiriusXM's online activities are simulcasts, or not.

The Board invites SiriusXM and the Collectives to file a joint statement by no later than **Friday, October 27, 2017**, regarding the scope of the proposed tariffs, or any agreement that may resolve SiriusXM's objection in the matter.

The participation of the ARC, ARCQ and NCCRA

The Board appreciates the concerns raised by ARC, ARCQ and NCCRA in their response of October 12, 2017, to Notice 2017-105 regarding the limited resources available to these associations and the nature of their members.

As such, the Board seeks input from CSI and Re:Sound who are invited to respond to the concerns raised by these associations by no later than **Friday, October 27, 2017**.

Confirmation of participation

Please note that in Notice 2017-106, YouTube was omitted from the List of Parties. It has objected to SOCAN Tariff 22.D for the years 2014 and 2015. It has now been added to the List of Parties for the Audiovisual Content and User Generated Content proposed merger (see Annex B).

Parties (listed in either of the Annexes) shall confirm their intent to fully participate in all procedural steps of the proceedings by no later than **Friday, October 27, 2017**. The participation of parties that do not provide such confirmation will be limited to the submission of comments.



Secretary General
Gilles McDougall

Annex A

**Online Music Services / Services de musique en ligne
[SOCAN: 2014-2018; Re:Sound: 2013-2018; CSI: 2014-2018;
CMRRA: 2014-2018; SODRAC: 2014-2018; Artisti: 2016-2018]**

List of Parties

Collectives

SOCAN
Re:Sound / Ré:Sonne
CSI
CMRRA
SODRAC
Artisti

Objectors

L'Alliance des radios communautaires (ARC), l'Association des radiodiffuseurs communautaires du Québec (ARCQ) and the National Campus and Community Radio Association (NCCRA)
L'Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ)
Apple Canada Inc. and Apple Inc. (Apple)
Bell Canada (Bell)
Canadian Association of Broadcasters (CAB)
Canadian Broadcasting Corporation (CBC)
CKUA Radio Network (CKUA)
Cineplex Entertainment LP (Cineplex)
Federation of Calgary Communities (FCC)
Fitness Industry Council of Canada (FIC)
GoodLife Fitness Centres Inc. (GoodLife)
Google Inc. (Google)
Music Canada
Motion Picture Association – Canada (MPA-Canada)
Netflix Inc. (Netflix)
Pandora Media Inc. (Pandora)
Pelmorex
Québecor Media Inc. (Quebecor)
Rdio, Inc. (Rdio)
Restaurants Canada
Retail Council of Canada (RCC)
Rogers Communications Inc. / Rogers Communications Partnership (Rogers)
Sasktel
Shaw Communications Inc. (Shaw)
Sirius XM Canada Inc. (Sirius)
Spotify AB (Spotify)
Stingray Digital Group Inc. (Stingray)
Vidéotron GP (Vidéotron)
Yahoo! Canada Co. (Yahoo)

Annex B

Internet – Audiovisual Content and User Generated content / Internet – Contenu audiovisuel et contenu généré par les utilisateurs [SOCAN: 2014-2018; CMRRA: 2016-2018; SODRAC: 2015-2018]

List of Parties

Collectives

SOCAN
CMRRA
SODRAC

Objectors

Apple Canada Inc. and Apple Inc. (Apple)
Bell Canada (Bell)
Bragg Communications Inc. (c.o.b. as Eastlink) (Bragg)
Canadian Association of Broadcasters (CAB)
Canadian Broadcasting Corporation (CBC)
Canadian Cable Systems Alliance (CCSA)
CKUA Radio Network (CKUA)
Cineplex Entertainment LP (Cineplex)
Cogeco Cable Inc. (Cogeco)
Entertainment Software Association / Entertainment Software Association of Canada (ESA)
Fitness Industry Council of Canada (FIC)
GoodLife Fitness Centres Inc. (GoodLife)
Google Inc. (Google)
Motion Picture Association – Canada (MPA-Canada)
MTS Inc. (MTS)
Netflix Inc. (Netflix)
Pelmorex
Québecor Media Inc. (Quebecor)
Retail Council of Canada (RCC)
Rogers Communications Inc. / Rogers Communications Partnership (Rogers)
Sasktel
Shaw Communications Inc. (Shaw)
Stingray Digital Group Inc. (Stingray)
Telus Communications Company (Telus)
Vidéotron GP (Vidéotron)
Yahoo! Canada Co. (Yahoo)
YouTube LLC (YouTube)

Intervenor / Intervenant

Facebook Inc. (Facebook)