



November 9, 2017

[CB-CDA 2017-139]

NOTICE OF THE BOARD

**Files: Online Music Services / Services de musique en ligne
[SOCAN: 2007-2018; Re:Sound: 2013-2018; CSI: 2014-2018; CMRRA: 2014-2018;
SODRAC: 2014-2018; Artisti: 2016-2018]**

**Online Audiovisual Services – Music / Services audiovisuels en ligne – Musique
[SOCAN: 2007-2018; CMRRA: 2016-2018; SODRAC: 2015-2018]**

This Notice establishes the proposed tariffs that are to be considered in each of the above-mentioned proceedings further to Notices 2017-105 and 2017-106, and sets the schedule for those proceedings.

In Notice 2017-105, the Board suggested that the following tariffs, primarily relating to the use of music in the provision of online music services (the “OMS Tariffs”) be heard together:

- SOCAN Tariff 22.A – Online Music Services (2014, 2015, 2016, 2017, 2018);
- Re:Sound Tariff 8 – Simulcasting, Non-Interactive Webcasting and Semi-Interactive Webcasting (2013, 2014, 2015);
- Re:Sound Tariff 8 – Non-Interactive and Semi-Interactive Webcasts (2016, 2017, 2018);
- CSI Tariff – Online Music Services (2014, 2015, 2016, 2017, 2018);
- CMRRA Tariff 4 – Online Music Services, Music Videos (2014, 2015, 2016, 2017, 2018);
- SODRAC Tariff 6 – Online Music Services, Music Videos (2014);
- SODRAC Tariff 6 – Reproduction of musical works embedded in musical audiovisual works for transmission by a service (2015, 2016, 2017, 2018); and
- Artisti Tariff – Online Music Services (2016-2018).

In Notice 2017-106, the Board suggested that the following tariffs, primarily relating to the use of music in the provision of online audiovisual services (the “OAS Tariffs”) be heard together:

- SOCAN Tariff 22.D – Internet – Other Uses of Music – Audiovisual Content (2014, 2015);

- SOCAN Tariff 22.D.1 – Internet – Other Uses of Music – Audiovisual Content (2016, 2017, 2018);
- SOCAN Tariff 22.D.2 – Internet – Other Uses of Music – User-Generated Content (2016, 2017, 2018);
- CMRRA Tariff 7 – Audiovisual Services (2016, 2017, 2018); and
- SODRAC Tariff 7 – Reproduction of musical works embedded in audiovisual works for transmission by a service (2015, 2016, 2017, 2018).

Modifications proposed

On October 20, 2017, in their responses to Notices 2017-105 and 2017-106, Netflix, Bell Canada, Google, Quebecor Media Inc., Rogers, Shaw, Spotify, and CBC proposed that the following tariffs be considered with the OAS Tariffs:

- CMRRA Tariff 4 – Online Music Services, Music Videos (2014, 2015, 2016, 2017, 2018);
- SODRAC Tariff 6 – Online Music Services, Music Videos (2014);
- SODRAC Tariff 6 – Reproduction of musical works embedded in musical audiovisual works for transmission by a service (2015, 2016, 2017, 2018); and
- SOCAN Tariff 22.A – Online Music Services (2014, 2015, 2016, 2017, 2018) [the “music video” component of the tariff.]

Netflix raised several arguments, including that the CMRRA and SODRAC tariffs cover a subset of subject-matter primarily being considered with the OAS Tariffs, and that a subset of audiovisual services should not be considered separately from other audiovisual services; that CMRRA, SODRAC, and SOCAN are already present in both proceedings, and therefore no prejudice would result from this modification; and that the inclusion of these tariffs in the OMS Tariffs proceeding is a vestige of past practice.

Facebook and MPA-Canada supported this modification.

However, several Parties opposed this modification. Apple, for example, argued that given that those businesses that provide music services also tend to provide short-form, single-track music videos, it makes sense to consider tariffs that apply to these different activities together. It also pointed to the fact that royalty rates for such videos have historically been based on the rates applicable to music-only files. It also submitted that this would require them to duplicate certain efforts. CMRRA put forward similar arguments as Apple. SODRAC argued that tariffs applying to all predominantly musical audiovisual works (regardless of their length) should be considered with the OMS Tariffs.

The Board recognizes the validity of many of the arguments raised by the Parties. In this respect, there is no perfect solution.

While the Board is mindful that adopting Netflix's proposal may require certain Parties to expend more resources, the same is true for other Parties if the Board does not adopt Netflix's proposal. Ultimately, the Board concludes it is more coherent to consider all proposed tariffs that deal with the use of music in online audiovisual services together. As the proposed tariffs are use-based, not user-based, grouping the consideration of proposed tariffs by use is appropriate. The Board also notes that proposed tariffs do not all delineate along the lines of short-form music videos and long-form videos that contain music, and not unambiguously. An attempt to extract those components from all proposed tariffs (which would then have to be considered in both proceedings) initially listed to be considered with the OAS Tariffs would likely not be a trivial exercise.

Proposed additions

In their response to Notice 2017-105, Bell Canada, Google, Quebecor Media Inc., Rogers, Shaw, Spotify, and CBC proposed to add the following tariffs to the OMS Tariffs:

- SOCAN Tariff 22.2 – Audio Webcasts (2007, 2008);
- SOCAN Tariff 22.B – Audio Webcasts (2009, 2010, 2011, 2012, 2013); and
- SOCAN Tariff 22.C – Other Audio Websites (2014, 2015, 2016, 2017, 2018).

In its response to Notices 2017-105 and 2017-106, SOCAN proposed to add the following tariffs to the OMS Tariffs:

- SOCAN Tariff 22.2 – Audio Webcasts (2007, 2008);
- SOCAN Tariff 22.B – Audio Webcasts (2009, 2010, 2011, 2012, 2013);
- SOCAN Tariff 22.B – Commercial Radio, Satellite Radio and Pay Audio (2014, 2015, 2016, 2017 2018); and
- SOCAN Tariff 22.C – Other Audio Websites (2014, 2015, 2016, 2017, 2018).

SOCAN also proposed to add the following tariffs to the OAS Tariffs:

- SOCAN Tariff 22.4 – Audiovisual Webcasts (2007, 2008);
- SOCAN Tariff 22.D – Audiovisual Webcasts (2009, 2010, 2011, 2012, 2013);
- SOCAN Tariff 22.5 – Webcasts of Television Station Signals (2007, 2008);
- SOCAN Tariff 22.E – Webcasts of Television Station Signals (2009, 2010, 2011, 2012); and
- SOCAN Tariff 22.F – Webcasts of Television Station Signals (2013).

Save for the issues initially raised by Sirius in its October 20, 2017 response to Notice 2017-105 and jointly by the NCCRA, the ARC, and ARCQ (the “Community Radio Associations”) in their October 12, 2017 response to Notice 2017-105, no party has objected to the addition of the proposed tariffs.

Without disposing of the issues raised by Sirius and the Community Radio Associations, the Board hereby amends the lists of tariffs to be considered with the OMS Tariffs and the OAS Tariffs as follows.

The following tariffs will be considered together under each of the proceedings identified below:

Online Music Services (2007-2018):

- SOCAN Tariff 22.A – Online Music Services (2014, 2015, 2016, 2017, 2018) [excluding digital files of audiovisual works];
- SOCAN Tariff 22.2 – Audio Webcasts (2007, 2008);
- SOCAN Tariff 22.B – Audio Webcasts (2009, 2010, 2011, 2012, 2013);
- SOCAN Tariff 22.B – Commercial Radio, Satellite Radio and Pay Audio (2014, 2015, 2016, 2017, 2018);
- SOCAN Tariff 22.C – Other Audio Websites (2014, 2015, 2016, 2017, 2018);
- Re:Sound Tariff 8 – Simulcasting, Non-Interactive Webcasting and Semi-Interactive Webcasting (2013, 2014, 2015);
- Re:Sound Tariff 8 – Non-Interactive and Semi-Interactive Webcasts (2016, 2017, 2018);
- CSI Tariff: Online Music Services (2014, 2015, 2016, 2017, 2018); and
- Artisti Tariff – Online Music Services (2016-2018).

Online Audiovisual Services – Music (2007-2018):

- SOCAN Tariff 22.A – Online Music Services (2014, 2015, 2016, 2017, 2018) [excluding digital files of audio works];
- SOCAN Tariff 22.D – Internet – Other Uses of Music – Audiovisual Content (2014, 2015);
- SOCAN Tariff 22.D – Internet – Other Uses of Music – Audiovisual Content (2009, 2010, 2011, 2012, 2013);
- SOCAN Tariff 22.D.1 – Internet – Other Uses of Music – Audiovisual Content (2016, 2017, 2018);

- SOCAN Tariff 22.D.2 – Internet – Other Uses of Music – User-Generated Content (2016, 2017, 2018);
- SOCAN Tariff 22.4 – Audiovisual Webcasts (2007, 2008);
- SOCAN Tariff 22.5 – Webcasts of Television Station Signals (2007, 2008);
- SOCAN Tariff 22.E – Webcasts of Television Station Signals (2009, 2010, 2011, 2012);
- SOCAN Tariff 22.F – Webcasts of Television Station Signals (2013);
- CMRRA Tariff 7 – Audiovisual Services (2016, 2017, 2018);
- CMRRA Tariff 4 – Online Music Services, Music Videos (2014, 2015, 2016, 2017, 2018);
- SODRAC Tariff 6 – Online Music Services, Music Videos (2014);
- SODRAC Tariff 6 – Reproduction of musical works embedded in musical audiovisual works for transmission by a service (2015, 2016, 2017, 2018); and
- SODRAC Tariff 7 – Reproduction of musical works embedded in audiovisual works for transmission by a service (2015, 2016, 2017, 2018).

The Board is aware that, in both of the above matters, there may be components of proposed tariffs for which it may not be possible or desirable to consider them in these proceedings. For example, as previously mentioned, the Board is of the preliminary view that components of the above-mentioned tariffs relating to simulcasting activities should be considered with the tariff targeting the primary activity. The Board expects to determine the appropriate course of action for these components shortly.

In response to Notice 2017-134, SOCAN provided a list of parties that have not objected to SOCAN's tariffs. However, given the changes to the list of proposed tariffs that are to be considered in each of the two matters, the Board asks that SOCAN identify, for each of their proposed tariffs, the parties that have not objected thereto by no later than **Tuesday, November 14, 2017**.

Schedule

In both Notices 2017-105 and 2017-106, the Board asked Parties to file a schedule of proceedings.

In its response of October 27, 2017, Apple submits that it would be preferable for the Board not to proceed with the consideration of any of the proposed tariffs identified above, until after the disposition of the applications for judicial review of the *Online Music Services* (CSI: 2011-2013; SOCAN: 2011-2013; SODRAC: 2010-2013) decision and the related *Scope of section 2.4(1.1) of the Copyright Act – Making Available* decision. In the alternative, it requests that the Board

forbear from requiring any Party to file its statement of case until after the Federal Court of Appeal has ruled in each of these judicial review applications.

The Board is mindful of the fact that the disposition of these applications for judicial review by the Federal Court of Appeal may have a significant impact on these proceedings. However, this is not a rare occurrence; a practice whereby the Board were to delay proceedings (if only the requirement to file statements of case) until all possible relevant legal disputes were finally disposed of, would not promote timely consideration of proposed tariffs, and the resolution of any associated proceedings. For the same reasons expressed in Notices 2017-105 and 2017-106, the Board continues to be of the view that it is appropriate to proceed with the consideration of the OMS and OAS Tariffs.

On October 27, 2017, Mr. Jay Kerr-Wilson wrote to the Board on behalf of 6 collectives, and 19 objectors and intervenors, with proposed schedules for the OMS and OAS Tariff proceedings. The Board would like to thank the Parties for their collaborative efforts in establishing the schedules of proceedings and hereby adopts the proposed schedules (see Annexes A and B).

Directives on procedure will follow shortly.

A handwritten signature in black ink, appearing to read 'Gilles McDougall', written in a cursive style.

Secretary General
Gilles McDougall

ANNEX A

Schedule of Proceedings Online Audiovisual Services – Music / Services audiovisuels en ligne – Musique [SOCAN: 2007-2018; CMRRA: 2016-2018; SODRAC: 2015-2018]

Exchange of interrogatories: no later than **Wednesday, December 20, 2017**

Parties to submit proposed form of Confidentiality Order to the Board: no later than **Friday, January 12, 2018**

Responses to interrogatories including any objections to interrogatories: no later than **Friday, March 2, 2018**

Motions re: unsatisfactory responses to interrogatories and responses to objections to interrogatories: no later than **Thursday, March 29, 2018**

Filing of responses to motions re: unsatisfactory responses to interrogatories and responses to objections to interrogatories: no later than **Friday, April 20, 2018**

[Board Ruling on responses and objections to interrogatories]

Complete responses to interrogatories: no later than **Friday, May 25, 2018**

Filing of Collectives' Statement of Case: no later than **Friday, August 3, 2018**

Filing of Objectors' Statement of Case: no later than **Friday, October 19, 2018**

Filing of Reply Statement of Case: no later than **Friday, November 9, 2018**

Hearing: **Tuesday, January 22, 2019 at 10:00 a.m., Copyright Board hearing room**

ANNEX B

Schedule of Proceedings
Online Music Services / Services de musique en ligne
[SOCAN: 2007-2018; Re:Sound: 2013-2018; CSI: 2014-2018; CMRRA: 2014-2018;
SODRAC: 2014-2018; Artisti: 2016-2018]

Parties to submit proposed form of Confidentiality Order to the Board: no later than **Friday, January 12, 2018**

Exchange of interrogatories: no later than **Friday, February 9, 2018**

Responses to interrogatories including any objections to interrogatories: no later than **Friday, April 6, 2018**

Motions re: unsatisfactory responses to interrogatories and responses to objections to interrogatories: no later than **Friday, May 4, 2018**

Filing of responses to motions re: unsatisfactory responses to interrogatories and responses to objections to interrogatories: no later than **Friday, May 25, 2018**

[Board Ruling on responses and objections to interrogatories]

Complete responses to interrogatories: no later than **Friday, June 29, 2018**

Filing of Collectives' Statement of Case: no later than **Friday, September 28, 2018**

Filing of Objectors' Statement of Case: no later than **Friday, January 11, 2019**

Filing of Reply Statement of Case: no later than **Friday, March 1, 2019**

Hearing: **Tuesday, March 26, 2019 at 10:00 a.m., Copyright Board hearing room**