



December 13, 2017

[*CB-CDA 2017-157*]

NOTICE OF THE BOARD

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

**Online Audiovisual Services – Music / Services audiovisuels en ligne – Musique
[SOCAN: 2007-2018; CMRRA: 2014-2018; SODRAC: 2014-2018]**

In Notice 2017-139, the Board identified the proposed tariffs that would be considered in the *Online Music Services (2007-2018)* proceeding, and those that would be considered in the *Online Audiovisual Services – Music (2007-2018)* proceeding (the “Proposed Tariffs”). However, the Board indicated that it was aware that there may be components of the Proposed Tariffs for which it may not be possible or desirable to have them considered in these proceedings.

The Board is now ready to address those components, and has set-out the scope of the Proposed Tariffs that will be considered in these proceedings in the tables below. The Board draws to the Parties’ attention that unless an activity is explicitly excluded in the tables, subject to any comments sought from parties in this Notice, that activity will be considered in these proceedings.

Particular Cases and Considerations

Simulcasts

The Board will exclude certain simulcasts from these proceedings, as defined in Re:Sound’s *Tariff No. 8 – Non-Interactive and Semi-Interactive Webcasts (2009-2012)*. These are simulcasts of programming by CBC radio, commercial radio stations, multi-channel subscription satellite radio service, and programming licensed by the CRTC as a pay audio service (jointly the “Excluded Simulcasts”).

Community Radio Associations

On October 12, 2017, NCRA, ARC, and ARCQ (jointly the “Associations”) wrote to the Board inquiring whether all of their broadcasting and related internet activities should be considered in a separate proceeding.

The Board acknowledges the discussions among the Associations, CSI, and Re:Sound, and thanks all of these parties for working together to put forward practical solutions to some of the resource issues raised by the Associations.

That being said, given the non-commercial nature of the members of these associations, and given the comparatively low royalty rates for such tariffs, the Board concludes that it will consider all proposed tariffs relating to all audio-only activities of the Associations in a separate, simplified proceeding. Those proposed tariffs, or portions thereof, are thus excluded from the *Online Music Services (2007-2018)* proceeding. The Board will issue a Notice dealing with such a proceeding in the near future.

Sirius

Sirius also submitted that all of their broadcasting and all related internet activities should be considered in a single proceeding.

The Board has considered the submissions of Sirius and the Collectives on this issue, and concludes that while it is appropriate to consider simulcasts of satellite radio with the main tariff (even if this may require the consideration of simulcasting for years for which the main tariff is not under consideration), it is preferable to consider non-simulcast activities on the internet in these proceedings.

Pay Audio

We draw attention to the fact that by virtue of Notice 2016-002, and as elaborated on in 2016-047, 2016-068, and 2016-085, the ongoing *Pay Audio Services (2007-2016)* proceeding already consider the simulcast/webcast of residential programming licensed by the CRTC as a pay audio service. These activities are therefore excluded from these proceedings.

Certified SOCAN Tariffs for CBC

The Board has previously certified SOCAN tariffs in relation to audio-only performances by the internet of CBC and audiovisual performances by internet of CBC (Tariff 22.E). To the extent such activities would have been captured by any of the Proposed Tariffs, the Board will exclude those portions therefrom. In relation to audio-only performances, the Board is of the preliminary view that there are no such proposed tariffs; however, it appears that there may be such proposed tariffs in relation to audiovisual performances.

Therefore, CBC and SOCAN shall, jointly or separately, identify any certified SOCAN tariffs that apply to activities covered by any of the Proposed Tariffs and identify the portions that must be excluded therefrom as a result by no later than **Friday, December 22, 2017**.

SOCAN Tariff 22.4 (2007, 2008) and SOCAN Tariff 22.D (2009, 2010, 2011, 2012, 2013)

On November 29, 2014, the Board certified SOCAN's Tariff 22.D.1 – Online Audiovisual Services, and Tariff 22.D.2 – User-Generated Content, both for the years 2007-2013 (with an amended tariff following a redetermination for Audiovisual Services, published January 28, 2017).

In Notice CB-CDA 2017-125, the Board sought SOCAN’s submission on what, if any, portion of proposed Tariff 22.D – Audiovisual Webcasts (2009-2013) remained uncertified. On October 25, 2017, SOCAN responded that:

Tariff 22.D (2009-2013) covers online audiovisual communications of content similar to that of conventional television. This includes on-demand access to content originally broadcast on a conventional television service (i.e. a licensee under Tariff 2) or a pay and specialty television service (i.e. a licensee under Tariff 17) as well as similar and ancillary audiovisual content that is made available through an app or website (or otherwise) that is operated by a programming or broadcasting undertaking.

After reviewing SOCAN’s response, the Board is of the preliminary view that all aspects of SOCAN’s *Tariff 22.4 – Audiovisual Webcasts (2007, 2008)*, and *Tariff 22.D – Audiovisual Webcasts (2009, 2010, 2011, 2012, 2013)* have been certified. As such, there are no components left to consider.

SOCAN and any other party may comment on the Board’s view by no later than **Friday, December 22, 2017**.

Table 1
Proposed Tariffs and their Scope to be Considered in *Online Music Services (2007-2018)*

Proposed Tariff	Remarks
SOCAN	
SOCAN Tariff 22.2 – Audio Webcasts (2007, 2008) [excluding simulcast of programming of a multi-channel subscription satellite radio service and a pay audio service; and excluding 22.2(d) – non-simulcast performance over the internet by non-commercial radio]	<p>SOCAN’s proposed <i>Tariff 22.3 – Webcasts of Radio Station Signal</i> appears to apply to simulcasts of commercial radio, CBC radio, and non-commercial radio stations; therefore, such simulcasts do not have to be excluded from 22.2. Other simulcasts in the group of Excluded Simulcasts still require exclusion.</p> <p>Internet activities of non-commercial radio stations are excluded.</p>
SOCAN Tariff 22.B – Audio Webcasts (2009, 2010, 2011, 2012, 2013) [excluding simulcast of programming of a multi-channel subscription satellite radio service and a pay audio service; and excluding 22.B(iv) – non-simulcast performance over the internet by non-commercial radio]	<p>SOCAN’s proposed <i>Tariff 22.C – Webcasts of Radio Station Signal</i> appears to apply to simulcasts of commercial radio, CBC radio, and non-commercial radio stations; therefore, such simulcasts do not have to be excluded from 22.B. Other simulcasts in the group of Excluded Simulcasts still require exclusion.</p> <p>Internet activities of non-commercial radio stations are excluded.</p>

<p>SOCAN Tariff 22.A – Online Music Services (2014, 2015, 2016, 2017, 2018) [excluding digital files of audiovisual works]</p>	<p>SOCAN’s proposed <i>Tariff 1.B – Non-Commercial Radio Other than the Canadian Broadcasting Corporation</i> from 2014 onwards no longer excludes activities covered by SOCAN’s 22-series of tariffs, and includes gross internet operating costs in its royalty calculations. As such, from 2014 onwards, it appears that all internet activities of non-commercial radio stations are not covered by SOCAN’s proposed 22.A, 22.B, or 22.C, and need not be excluded from the scope of the Proposed Tariffs.</p>
<p>SOCAN Tariff 22.B – Commercial Radio, Satellite Radio and Pay Audio (2014, 2015, 2016, 2017, 2018) [excluding simulcasts of commercial radio, satellite radio, and pay audio]</p>	
<p>SOCAN Tariff 22.C – Other Audio Websites (2014, 2015, 2016, 2017, 2018)</p>	
<p>Re:Sound</p>	
<p>Re:Sound Tariff 8 – Simulcasting, Non-Interactive Webcasting and Semi-Interactive Webcasting (2013, 2014, 2015) [excluding Excluded Simulcasts; and excluding performance over the internet by non-commercial radio]</p>	<p>Re:Sound’s <i>Tariff 8</i> is included in this proceeding only for the years 2013 onward, given that Tariff 8 for 2009-2012 has been certified by the Board on May 17, 2014, save in relation to Excluded Simulcasts.</p>
<p>Re:Sound Tariff 8 – Non-Interactive and Semi-Interactive Webcasts (2016, 2017, 2018) [excluding performance over the internet by non-commercial radio]</p>	<p>For the years 2012-2016 as well as 2017-2021, Re:Sound’s proposed tariffs 1.B for non-commercial radio do not include activities on the internet, such as simulcasting and webcasting. As such, they would be captured by Tariff 8. Since such activities of non-commercial radio stations will be heard separately, they are excluded here.</p>
<p>CSI</p>	
<p>CSI Tariff – Online Music Services (2014, 2015, 2016, 2017, 2018) [excluding reproductions made by non-commercial radio stations]</p>	<p>The proposed <i>CMRRA-SODRAC Inc. – Non-Commercial Radio Tariff</i> for the years 2014, 2015, 2016, 2017, and 2018 do not apply to reproductions made for the purposes of performance by internet, other than simulcasting. These activities would therefore be covered by this proposed Online Music Services tariff, and need to be excluded.</p>
<p>Artisti</p>	
<p>Artisti Tariff – Online Music Services (2016-2018) [excluding reproductions made by non-commercial radio stations]</p>	<p>Given the breadth of the proposed tariff (“a service that delivers a stream or a download to a user”), it appears to apply to internet activities of non-commercial radio stations. They are therefore excluded herefrom.</p>

Table 2
Proposed Tariffs and their Scope to be Considered in *Online Audiovisual Services – Music*
(2007-2018)

Proposed Tariff	Remarks
SOCAN	
SOCAN Tariff 22.A – Online Music Services (2014, 2015, 2016, 2017, 2018) [excluding digital files of audio works]	
[SOCAN Tariff 22.4 – Audiovisual Webcasts (2007, 2008)]	It appears that all components of SOCAN’s <i>Tariff 22.4 – Audiovisual Webcasts (2007, 2008)</i> have been certified. As such, there are no components left to consider.
[SOCAN Tariff 22.D – Audiovisual Webcasts (2009, 2010, 2011, 2012, 2013)]	It appears that all components of SOCAN’s <i>Tariff 22.D – Audiovisual Webcasts (2009, 2010, 2011, 2012, 2013)</i> have been certified. As such, there are no components left to consider.
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)	
SOCAN Tariff 22.5 – Webcasts of Television Station Signals (2007, 2008)	To the extent that the certified tariff <i>SOCAN – CBC Internet Tariff, 2007-2013</i> (Tariff 22.E) applies to activities captured by these proposed tariffs, those portions will be excluded.
SOCAN Tariff 22.E – Webcasts of Television Station Signals (2009, 2010, 2011, 2012)	
SOCAN Tariff 22.F – Webcasts of Television Station Signals (2013)	
CMRRA	
CMRRA Tariff 4 – Online Music Services, Music Videos (2014, 2015, 2016, 2017, 2018)	
CMRRA Tariff 7 – Audiovisual Services (2016, 2017, 2018)	

SODRAC	
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)	
SODRAC Tariff 7 – Reproduction of musical works embedded in audiovisual works for transmission by a service (2015, 2016, 2017, 2018)	

Any Party wishing to comment on the scope of the proposed tariffs identified above may do so by no later than **Friday, December 22, 2017**. After that time, the Board will consider all components of the Proposed Tariffs, unless they are explicitly excluded by the Board.



Gilles McDougall
Secretary General