Copyright Board Canada

CANADA

Commission du droit d'auteur Canada

March 8, 2018

[*CB-CDA 2018-040*]

File: SOCAN-Re:Sound – Pay Audio Services Tariffs, 2007-2016

NOTICE OF THE BOARD

There is a disagreement among the Parties on whether and how BDU affiliation payments to Stingray are to be allocated among the various services Stingray provides to the BDUs.

The Collectives' position is that all such revenues (both for pay audio and for other services) should be used to determine royalties for the provision of pay audio. The Objectors' position is that only those revenues attributable to the provision of pay audio should be used to determine royalties for the provision of pay audio.

After reviewing the evidence tendered by the Parties, and considering their submissions, the Board has formed a preliminary view that revenue allocation is appropriate for the purposes of establishing royalties for the proposed tariffs under consideration (as established in Notice 2016-002), as Stingray sold services during the tariff period 2009-2016 that included both pay audio services and other services.

The Board therefore seeks limited further information from the Parties as follows.

Several different methods for revenue allocation were raised by the Parties' respective experts, Mr. Mak, and Mr. Michelin. Mr. Mak raised the notion that "cost objects may attract revenues." (Exhibit Collectives-3 at para 36) Mr. Michelin discussed four distinct approaches to allocate revenues, namely: the market prices approach, the business-to-consumer approach, the business-to-business approach, and the cost-recovery approach. (Exhibit Objectors-10 at para 46) It appears to the Board that other approaches are also possible, such as apportionment of revenue based on relative viewer/listener-hours.

While the Board's intention is to set a revenue allocation method in the tariff, it is aware that for certain past years, there may be insufficient data, or insufficient disaggregated data, to be able to apply one or more of the revenue allocation methods identified above. The Board's present intention, therefore, is to establish a default allocation of affiliation payments for each tariff year, for each BDU (or group of BDUs), applicable in those cases where it is not possible to carry-out the specified allocation method.

Given the above, the Parties are invited to submit revenue allocation methods they propose the Board should consider. In support of their choices, the Parties should address, in particular:

- the appropriateness of the particular approach;
- feasibility of implementation;
- ease of calculation (for both past and future years);
- expected accuracy, on a per-year, per-BDU, basis; and
- reporting requirements, if any, in support of a determined allocation.

The Parties are to limit any submissions to the information sought in the paragraph above. Submissions, or parts thereof, that address other issues will not be considered by the Board. The Board notes that there is an outstanding motion on how the information filed by Stingray in response to Questions 2 and 3 of Notice 2017-098 will be treated. For the purpose of this Notice, the Parties may assume that the Board will not rely on that impugned information. If the Board intends to rely on this information in the future, the Board will inform the Parties, and rule on the motion in due course.

Parties are to make submissions by no later than **Friday, March 23, 2018**.

Parties may respond by no later than **Wednesday, April 4, 2018**.

Gilles McDougall
Secretary General