



April 20, 2018

[*CB-CDA 2018-084*]

RULING 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 of November 9, 2017, the Board considered a request of Netflix, Bell Canada, Google, Quebecor Media Inc., Rogers, Shaw, Spotify, and CBC to have the following tariffs considered in the *Online Audiovisual Services – Music* proceeding (the “OAS” proceeding), instead of in the *Online Music Services* proceeding (the “OMS” proceeding):

- 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.]

Facebook and MPA-Canada had supported this modification, while Apple, CMRRA, and SODRAC had opposed it.

The Board granted the request, concluding that

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.

Subsequent to Notice 2017-139, several parties that requested this change withdrew from either the OAS proceeding, the OMS proceeding, or both.

In particular, on February 28, 2018, Netflix wrote to the Board in relation to the OAS proceeding, stating that it is “withdrawing as a full participant in this matter.” Netflix was subsequently granted intervenor status with limited participation rights as set out in Ruling 2018-079.

On March 16, 2018, Apple wrote to the Board, submitting that

[w]ith Netflix now withdrawing from meaningful participation in the [OAS] Proceeding, parties like Apple, who are participating responsibly in both the [OAS] Proceeding and OMS Proceeding, at great cost in terms of both financial and managerial resources, would be severely prejudiced if music videos were to continue to be considered in the [OAS] Proceeding, instead of in the OMS Proceeding where Apple submits they more properly belong.

On March 27, 2018, CMRRA wrote to support Apple’s request.

On the same date SODRAC wrote to oppose Apple’s request, arguing that no material change has occurred since the Board’s determination in Notice 2017-139 of November 9, 2017, and that they would be prejudiced, given the fact that significant procedural steps have already occurred.

On the same date, the Canadian Association of Broadcasters and Stingray Digital Group Inc., while they taking no position on Apple’s request, expressed reservations about the manner in which such a modification would be implemented, particularly in view of the fact that interrogatories have already been posed and answered.

We have considered Apple’s request and conclude that it remains true that

- i) grouping the consideration of proposed tariffs by use is appropriate, and
- ii) that extracting only “music videos” from the proposed tariffs now under consideration in the OAS proceeding would be a difficult exercise, given that the proposed tariffs do not all delineate along the lines of short-form music videos and long-form videos that contain music, and not unambiguously.

Additionally, there would be significant procedural challenges that moving certain proposed tariffs, or portions of proposed tariffs, from one proceeding to another would entail.

As such, we do not modify the list of proposed tariffs that will be considered in OAS and OMS proceedings.



Gilles McDougall
Secretary General