



September 13, 2018

**[CB-CDA 2018-191]**

Files: SOCAN-Re:Sound - Pay Audio Services Tariffs, 2007-2016 ;  
Online Music Services [SOCAN: 2007-2018; Re:Sound: 2013-2018; CSI: 2014-2018]

## **RULING OF THE BOARD**

This ruling concerns whether “near simulcasts” of pay audio signals should be considered in the *Pay Audio* proceeding or in the *Online Music Services* proceeding.

### **Background**

On July 12, 2018, three BDUs wrote to the Board, asking for some further information on what later came to be called “near-simulcasts”. They asked the Board whether “near-simulcasts”, as BDUs described that term, were a part of the *Pay Audio* proceeding. In the alternative, they asked that the Board move near-simulcasts to the *Pay Audio* proceeding from the *Online Music* proceeding.

On July 13, the Board issued Ruling 2018-149, which contained the following determination:

The transmissions carried out through the Stingray Web Player and the Stingray Mobile App are not part of the Pay Audio proceeding. Instead, as semi-interactive services, they are part of the Online Music Services [SOCAN: 2007-2018; Re:Sound: 2013-2018; CSI: 2014-2018] proceeding (i.e., SOCAN Tariff 22 and Re:Sound Tariff 8).

As such, the Board concluded that services described as “near simulcasts” are semi-interactive services and ruled that they were therefore to be considered in the *Online Music Services* proceeding.

The Board then sought further information from the parties. The BDUs provided their comments on July 23, 2018. Stingray provided its response to the BDUs on August 1, 2018, and the Collectives did so on August 9, 2018. The BDUs replied to these responses on August 13, 2018.

### **Ruling 2018-149 conflicts with Notice 2016-002**

Unfortunately, Ruling 2018-149 is partially inconsistent with the Board’s prior Notice 2016-002. This notice explicitly provided that the following proposed tariffs are part of the *Pay Audio* proceeding:

- The pay audio component of SOCAN Tariff 22.2 – Audio Webcasts, 2007, 2008;
- The pay audio component of SOCAN Tariff 22.B – Audio Webcasts, 2009;
- The pay audio component of SOCAN Tariff 22.B – Audio Webcasts, 2010, 2011, 2012, 2013;
- The pay audio component of SOCAN Tariff 22.B – Commercial Radio, Satellite Radio and Pay Audio 2014, 2015, 2016.

These proposed tariffs apply to the following activities:

<b>Proposed Tariffs</b>	<b>Application</b>
SOCAN Tariff 22.2 – Audio Webcasts, 2007, 2008	“communications from Sites or Services whose content is similar to that of a pay audio service subject to the SOCAN-NRCC Pay Audio Services Tariff.”
SOCAN Tariff 22.B – Audio Webcasts, 2009	
SOCAN Tariff 22.B – Audio Webcasts, 2010, 2011, 2012, 2013	
SOCAN Tariff 22.B – Commercial Radio, Satellite Radio and Pay Audio	“communication of audio works on the Internet by a broadcaster that is subject to [...] the Pay Audio Tariff.”

As such, the Board’s statement in Ruling 2018-149, in respect of SOCAN, was incorrect: both formulations of the application cover the near-simulcasts, as described by the BDUs. As such, near simulcasts, as far as SOCAN is concerned, are properly in the *Pay Audio* proceeding. However, in respect of Re:Sound, the Board’s ruling remains applicable. Only the simulcast portion of Re:Sound Tariff 8 was included in Notice 2016-002. Near simulcasts, not being simulcasts, are not included in the *Pay Audio* proceeding. This must be so for the years 2009-2012, as non-simulcast webcasts covered by Re:Sound 8 have already been certified for 2009-2012. Non-simulcast webcasts covered by Re:Sound 8 for the years 2013-2016 are currently in the *Online Music Proceeding*.

### **Ruling**

Both the BDUs and the Collectives submit that near simulcasts should be included in the *Pay Audio* proceeding.

The Board understands the practical benefits associated with having near simulcasts covered by the same tariff as the main activity. It also understands the benefits of certifying the near-simulcast tariff for Re:Sound at the same time as it does so for SOCAN. As such, it is open to the possibility of moving the portion of Re:Sound 8 that applies to near-simulcasts of pay audio for the years 2013-2016 to the *Pay Audio* proceeding.

However, the Board does not wish to lengthen the *Pay Audio* proceeding any more than necessary. As such, to the extent the parties wish to include these portions of Re:Sound Tariff 8 in the *Pay Audio* proceeding, instead of the *Online Music Services* proceeding, all parties must agree that they will have no right to adduce additional evidence relating to these tariffs. The Board will rely instead on any evidence that has already been adduced in this proceeding, as well as any evidence adduced as a result of questions from the Board. In the alternative, the parties

may jointly make a submission on the manner in which the Board should value near simulcasts for the purposes of Re:Sound 8.

Barring agreement from all parties, the current allocation of proposed tariffs and their portions among the two proceedings will remain.

Parties may reply, jointly or separately to this Ruling by no later than **Wednesday, September 26, 2018**.

The Board notes that in their August 13 reply, the BDUs submitted that the Collectives' response of August 9 does not actually respond to the answers provided by the BDUs on July 23. The Board agrees that certain portions of the Collectives' August 9 response are not responsive to the Objectors' answers to the Board's questions. The Board will not rely on those portions of the Collectives' August 9 filing.

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

Gilles McDougall  
Secretary General