



August 17, 2018

**[CB-CDA 2018-180]**

## **RULING OF THE BOARD**

**File: Online Audiovisual Services – Music [SOCAN: 2007-2018; CMRRA: 2014-2018; SODRAC: 2014-2018]**

On June 27, 2018, CMRRA and SODRAC (the “Collectives”) wrote to the Board regarding the interrogatories put to two Objectors under the grouping of the Networks, namely Rogers and Shaw (the “Shomi Objectors”). The Shomi Objectors previously operated an online audiovisual service called Shomi. This service ceased to exist in November 2016 and its employees were terminated. Notwithstanding this state of affairs, the Collectives want to obtain some information about Shomi.

The Collectives have offered to settle the deficiencies relating to Shomi by having the Shomi Objectors (either jointly or individually) answer six specific questions (with several unnumbered subparts in each question) which are as follows:

1. A description of the content provided on the Service while it was used, including musical works used independently or as part of the general type of content available, and how that content was made available (as sought by question 10 of the interrogatories);
2. A proportional sample of agreements with third parties that relate to Shomi, its content and its systems, directly or indirectly;
3. A description of the technical structure of the system or a comparison with the other systems described in the Shaw or Rogers interrogatories if Shomi used the same as other Services provided by the Objector;
4. The name of a former technical employee that could provide the information sought;
5. The revenues made from the Service, the pricing structure and numbers related to Free Trials (if any) as per Q40 to 65 of the interrogatories and its audited financial statements including all notes related thereto for the years it was live during the Tariff Period;
6. The number of End Users for the Service and Q63C of the interrogatories.

On June 29, 2018, the Shomi Objectors wrote to the Board, providing some answers to the six questions and explaining why they could not answer further. They also argued that further information about Shomi would not be relevant to the tariff-setting process, since the service was short-lived, had a limited subscriber base and ultimately proved unviable.

*Ruling*

The present ruling starts from the Shomi Objectors' answers to the six questions and rules as if a deficiency motion were pending on each one, with an answer given that there was nothing else that the Shomi Objectors could file in response.

1. SOCAN shall send to the Collectives, on a highly confidential basis, all music reports filed with it in respect of Shomi. Based on the answer to Q3, it is likely that Shomi did not offer limited downloads or permanent downloads, only on-demand streams. In that case, the reports filed with SOCAN should supply the quantitative information the Collectives are seeking.
2. The offer by the Shomi Objectors to attempt to access third-party agreements is accepted.
3. The answer by Shaw is sufficient for both.
4. To the extent the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 (*PIPEDA*) applies to the name of a former employee of (and the associated information that the person is a former employee), it appears that Rogers and Shaw may disclose such information under s. 7(3)(c) of *PIPEDA*. Therefore, the Board hereby orders Rogers and Shaw to jointly provide a name of a former employee, as requested in the question.
5. The answer is sufficient.
6. SOCAN shall send to the Collectives the subscriber numbers referenced in the question, if not already covered by the requirement to send the music reports above. Question 63C is both disproportionate and ambiguous; the Shomi Objectors need not answer.



Gilles McDougall  
Secretary General