



[CB-CDA 2021-053]

ORDER OF THE BOARD

November 10, 2021

Introduction

This year, in light of the new Government regulations, *Time Limits in Respect of Matters Before the Copyright Board* (SOR/2020-264), the Board is directing Collectives to provide grounds for proposed tariffs they file (“*Notice of Grounds for Proposed Tariff*”), where the Board is considering the proposed tariff for an approval process with no hearing.

This requirement for Collectives will be mirrored by an obligation for objectors to file grounds for their objection (“*Notice of Grounds for Objection*”).

The intent of these Notices of Grounds is to provide the Board and parties with important information to support a tariff-approval process that is as informal and expeditious as the circumstances and considerations of fairness permit.

These documents, along with any reply by the Collective to an objection, will also provide the Board with the information necessary to determine whether it should hold a hearing in respect of a proposed tariff (*Time Limits in Respect of Matters Before the Copyright Board Regulations*, SOR/2020-264, s. 5).

The Board expects to expand this requirement to all proposed tariffs and objections filed with the Board in the future.

Purpose of the *Notice of Grounds for Proposed Tariff*

The *Notice of Grounds for Proposed Tariff* will provide potential users with detailed information about the Proposed Tariff early in the process. This information should permit users to determine whether it applies to them and their activities, and to what aspects, if any, they will object. Understanding the scope and basis for the Proposed Tariff also permits users that do object to identify the specific basis for their objection, and provide an informed *Notice of Grounds for Objection*.

As such, the *Notice of Grounds for Proposed Tariff* should use plain language and provide concrete examples that would be understood by potential users of the Proposed Tariff.

In cases where the Board does not hold a hearing, it may rely solely on the *Notice of Grounds for Proposed Tariff*, any *Notice of Grounds for Objection*, and any reply, to make its decision.

The Board is aware that the information provided in the Notices of Grounds will reflect the information available to a party at the time of filing of their Notice, and—in cases where there is a hearing—this will not prevent parties from introducing information obtained in the course of the hearing, or to take positions based on this new information.

Order

SOCAN is required to file a *Notice of Grounds for Proposed Tariff* for each of the following proposed tariffs filed with the Board for the years 2023 to 2025:

- SOCAN Tariff 2.B – Television - Ontario Educational Communications Authority
- SOCAN Tariff 2.C – Television - *Société de télédiffusion du Québec*
- SOCAN Tariff 3.C – Adult Entertainment Clubs
- SOCAN Tariff 7 – Skating Rinks
- SOCAN Tariff 10.A – Parks, Parades, Streets and Other Public Areas - Strolling Musicians and Buskers; Recorded Music
- SOCAN Tariff 10.B – Parks, Parades, Streets and Other Public Areas - Marching Bands; Floats with Music
- SOCAN Tariff 11.A – Circuses, Ice Shows, Fireworks Displays, Sound and Light Shows, Dance Shows and Similar Events
- SOCAN Tariff 11.B – Comedy Shows and Magic Shows
- SOCAN Tariff 12.A – Theme Parks, Ontario Place Corporation and Similar Operations
- SOCAN Tariff 12.B – Canada’s Wonderland and Similar Operations
- SOCAN Tariff 13.A – Public Conveyances - Aircraft
- SOCAN Tariff 13.B – Public Conveyances – Passenger Ships
- SOCAN Tariff 13.C – Public Conveyances - Railroad Trains, Buses and Other Public Conveyances, Excluding Aircraft and Passenger Ships
- SOCAN Tariff 21 – Recreational Facilities Operated by a Municipality, School, College, University, Agricultural Society or Similar Community Organizations

The Board requires these *Notices of Grounds for Proposed Tariff* to be filed by no later than **December 17, 2021**, but invites SOCAN to file them as soon as practicable.

Each *Notice of Grounds for Proposed Tariff* may be filed in the official language of your choice, and will be published by the Board on its website along with the Proposed Tariff. For this reason, it cannot contain any information designated as confidential.

Contents of the *Notice of Grounds for Proposed Tariff*

The *Notice of Grounds for Proposed Tariff* should include:

1. A description of the uses covered by the Proposed Tariff

These descriptions must be sufficient to permit a user to readily determine whether their activities would be subject to the Proposed Tariff or not. Where possible, uses should be described with terminology from the relevant industry.

To assist with understanding the scope of the Proposed Tariff, any uses that are typically carried out in close association with uses covered by the Proposed Tariff, but that are not covered by the Proposed Tariff should be identified, if applicable.

If the Proposed Tariff is based on a previously-approved tariff, provide examples of activities to which that previous tariff applied, as appropriate.

2. A description of the group of users covered by the Proposed Tariff

This description should permit a user to readily determine whether or not they belong to the group of users targeted by the Proposed Tariff. If the Proposed Tariff limits its application to only a specific set of users that carry out an activity, describe this set of users.

If the person who carries out the activity is not the same person that would be required to pay royalties under the Proposed Tariff, identify and describe both.

Provide examples of users that are well known in the relevant industry, as appropriate.

3. An explanation of how the royalty rates or levies are determined

The explanation should be sufficient to permit potential users and the Board to understand the basis for the proposed royalty rates.

This explanation should include relevant details on any source of the rate and rate structure, including any minimum fees (*e.g.*, previously approved tariff, licensing agreements, theoretical or economic model, estimates, hypotheses). If there is no such source, indicate this. If the proposed rates differ from this source, explain how the adjustment was determined (*e.g.*, inflation, gradual adjustments, changes in the market).

The explanations should address all proposed royalties, including minimum fees. These should be sufficient that—in the case the Board does not hold a hearing—the Board can make a determination based on this information.

4. Grounds to support any terms and conditions regarding the collection of information

These should include an explanation of how the collected information in the reporting requirements of the Proposed Tariff would be used and shared.

If information is being sought to permit distribution of royalties, provide sufficient information about the distribution process to permit potential users and the Board to understand why the information sought in the Proposed Tariff is necessary.

5. In the case of a Proposed Tariff based on a previously-approved tariff, identification and explanation of all changes not already explained pursuant to any of the points above

This should permit potential users and the Board to readily identify and understand such changes.

Where the effects of changes are obvious (e.g., a change from 30 days to 60 days), identify such changes, and explain the reason for the changes.

Where the intended effects of such changes are not obvious (e.g., adding a provision where a collective may disclose information to a “service provider”), also explain the expected effects of the changes.

As noted earlier, these should be sufficient that—in the case the Board does not hold a hearing—the Board can make a determination based on this information.

Next Steps

The Board will publish the Proposed Tariffs, along with the respective *Notice of Grounds of Proposed Tariff* on its website in January 2022.

Objectors who file an objection to one of the Proposed Tariffs identified in this Order will be required to provide a *Notice of Grounds for Objection*. The Board will provide SOCAN with any such *Notices of Grounds for Objection* when it provides copies of objections. The Board will issue further directions in this respect, including setting deadlines for the filing of any *Notice of Grounds for Objection*.

If it so chooses, SOCAN may reply to an objection (*Copyright Act*, s. 68.4(1)) within 14 days of its receipt.

Assistance

This is the first time a *Notice of Grounds for Proposed Tariff* is required in a systematic way. The Board understands that this Order may not address all situations that may arise. As such, if you require any directions or clarifications with any aspects of this Order, please contact the Secretary General at registry-greffe@cb-cda.gc.ca.



Lara Taylor
Secretary General