

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2017-05-05

Citation CB-CDA 2017-038

Regime Collective Administration of Performing Rights and of Communication Rights
Copyright Act, subsection 68(3)

Members The Honourable Robert A. Blair
Mr. Claude Majeau
Mr. J. Nelson Landry

Proposed Tariffs Considered 1.B, 2.A, 2.B, 2.C, 2.D, 3.A, 3.B, 3.C, 4.A.1, 4.A.2, 4.B.1, 4.B.2, 4.B.3, 5.A, 5.B, 6, 7, 8, 9, 10.A, 10.B, 11.A, 11.B, 12.A, 12.B, 13.B, 13.C, 14, 17, 18, 20, 23

Statement of Royalties to be collected by SOCAN for the public performance or the communication to the public by telecommunication, in Canada, of musical or dramatico-musical works for the years 2007 to 2017

Reasons for decision

I. INTRODUCTION

[1] Pursuant to subsection 67.1(1) of the *Copyright Act*¹ (the “Act”), the Society of Composers, Authors and Music Publishers of Canada (SOCAN) filed proposed statements of royalties to be collected for the public performance or the communication to the public by telecommunication, in Canada, of musical or dramatico-musical works for the years 2007 to 2017.

[2] These proposals were published in the *Canada Gazette* accompanied by a notice indicating that prospective users or their representatives could object to the tariffs within the prescribed deadlines. Some of the tariffs addressed in these reasons were not opposed and are certified as filed, or with changes. Some other tariffs were opposed and are now being certified, reflecting in some cases agreements reached between the parties.

¹ R.S.C. 1985, c. C-42.

II. UNOPPOSED TARIFFS

A. UNCHANGED

[3] The following proposed tariffs were unchanged from the last time they were certified, and are certified as proposed.

For the years 2009 to 2017

Tariff 5.B (Exhibitions and Fairs)

For the years 2013 to 2017

Tariff 14 (Performance of an Individual Work) Tariff 23 (Hotel and Motel In-Room Services)

For the years 2014 to 2016

Tariff 6 (Motion Picture Theatres)

B. MODIFIED

Tariffs adjusted for inflation

[4] For the years 2013 and 2014, the following proposed tariffs are unchanged from the last time they were certified. For the years 2015 to 2017, they are adjusted for inflation.

For the years 2013 to 2017

Tariff 5.A (Exhibitions and Fairs)

Tariff 7 (Skating Rinks)

Tariff 8 (Receptions, Conventions, Assemblies and Fashion Shows)

Tariff 10.A (Parks, Parades, Streets and Other Public Areas – Strolling Musicians and Buskers; Recorded Music)

Tariff 10.B (Parks, Parades, Streets and Other Public Areas – Marching Bands; Floats with Music)

Tariff 11.A (Circuses, Ice Shows, Fireworks Displays, Sound and Light Shows and Similar Events)

Tariff 11.B (Comedy Shows and Magic Shows)

Tariff 12.A (Theme Parks, Ontario Place Corporation and Similar Operations)

Tariff 12.B (Paramount Canada's Wonderland and Similar Operations)

Tariff 13.B (Public Conveyances – Passenger Ships)

Tariff 13.C (Public Conveyances – Railroad Trains, Buses and Other Public Conveyances, Excluding Aircraft and Passenger Ships)

[5] SOCAN is asking that the tariffs mentioned in the preceding paragraph be adjusted in 2015 to take inflation into account. Using the formula the Board itself used in its 2004 decision on multiple SOCAN tariffs,² SOCAN applied an overall 7.3 per cent increase to all of the fixed-rate tariffs. The only exception is for Tariff 12.B for which the adjustment is 10.11 per cent to reflect the fact that the last inflation adjustment for this specific tariff was done for the year 2002, as opposed to 2004 for the others.

[6] The last time the Board performed a general inflation adjustment to SOCAN fixed-rate tariffs was in 2004, when the Board established a new inflation adjustment rule. At the time and for a number of reasons that do not need to be repeated here, the Board set the rule as the average annual variation of the Consumer Price Index (CPI) less 1 per cent. Using this rule, SOCAN arrived at the 7.3 per cent adjustment by cumulating the average annual variation from 2005 to 2013.

[7] In a more recent decision,³ when adjusting the CBC specific tariff, the Board used a different rule. Although it maintained that the CPI was still the best measure to adjust tariffs for inflation, the Board ruled that it would be preferable to measure inflation between January of the first year and December of the last year of the period for which an adjustment is needed. The Board also decided that the reasons that led to the adoption of the “CPI less 1 per cent” rule in 2004 were no longer relevant and that consequently, only the change in the CPI from January of a year to December of another year should be used, without further subtraction. Indeed, in *CBC 2011*, this is precisely what the Board did.

[8] We certify the tariffs as proposed by SOCAN, with an inflation adjustment of 7.3 per cent. We note, however, that had SOCAN used the new rule of adjustment decided by the Board in *CBC 2011*, the increase would have been 18.2 as opposed to 7.3 per cent.

Tariff 2.B (Television – Ontario Educational Communications Authority), 2014-2017

[9] SOCAN proposed to increase the annual royalty rate from \$300,080 to \$360,096 to account for TVO’s websites and other technological platforms. TVO did not object to this increase. We certify this rate.

Tariff 2.C (Television – Société de télédiffusion du Québec), 2013-2017

² SOCAN – Various Tariffs (19 March 2004) Copyright Board Decision.

³ *SOCAN-Re:Sound CBC Radio Tariff, 2006-2011* (8 July 2011) Copyright Board Decision. [*CBC 2011*]

[10] The parties reached an agreement on August 14, 2011, for the years 2011 to 2013. Under this agreement, the annual rate is increased from \$180,000 to \$216,000 to reflect *Télé-Québec*'s websites and other technological platforms. For the year 2013, the tariff was proposed as per the agreement. For the years 2014 to 2017, the status quo was proposed. This is what we certify.

Tariff 4.B.2 – Classical Music Concerts – Annual Licence for Orchestras, 2015-2017

[11] Tariff 4.B.2 for the years 2013 and 2014 was certified as per an agreement between SOCAN and Orchestras Canada. These rates included gradual increases relative to the 2012 rates. For the years 2015 to 2017, SOCAN proposed substantially increased rates. No one objected. However, in an email to the Board on April 6, 2017, SOCAN proposed new, lower rates for these years to better reflect the gradual increases that the Board certified for 2013-2014. We agree and certify the rates accordingly.

III. NO LONGER OPPOSED TARIFFS

Tariff 1.B (Non-Commercial Radio Other than the Canadian Broadcasting Corporation), 2007-2017

[12] Over the years, the *Alliance des radios communautaires du Canada*, the *Association des radiodiffuseurs communautaires du Québec* and the National Campus and Community Radio Association objected to this tariff as well as Tariffs 22.A (Online Music Services), 22.B (Audio Webcasts) and 22.C (Webcasts of Radio Station Signals).

[13] The objectors opposed the above-mentioned tariffs to the extent that they were unclear on the potential applicability of these tariffs to the Internet activities of their member stations.

[14] On December 14, 2015, SOCAN informed the Board of an agreement with the objectors on a Tariff 1.B that will cover non-commercial AM, FM or Internet-only radio stations, for the period 2007 to 2017. The objections were all withdrawn on December 16, 2015. We certify this tariff as per the agreement between the parties.

Tariffs 2.A (Commercial Television Stations) and 17 (Pay and Specialty Television Services), 2009-2013

[15] Tariffs 2.A (Commercial Television Stations) and 17 (Pay and Specialty Television Services) were certified last on March 20, 2008, for the years 2005 to 2008. For the years 2009 to 2012, SOCAN proposed the status quo. For the year 2013, SOCAN proposed that the applicable rate of 1.9 per cent of gross income included in both tariffs be increased to 2.1 per cent. SOCAN also proposed minor wording changes for that year.

[16] The Canadian Association of Broadcasters and the Canadian Broadcasting Corporation objected to both tariffs. Rogers Media, Bell Media, Shaw Media Inc., and *Groupe TVA Inc.*

objected to tariff 2.A and Rogers Communications Partnership, Bell Canada, Shaw Communications Inc., Quebecor Media Inc., Canadian Cable Systems Alliance, Cogeco Cable Inc., Bragg Communications (Eastlink) and TELUS Communications objected to tariff 17.

[17] On March 22, 2013, the Board invited the parties to submit an agreed-upon schedule of proceedings for the consideration of these two tariffs. Such a schedule was set by the Board on April 9, 2013, for a hearing to be held on March 25, 2014.

[18] On November 1, 2013, SOCAN informed the Board that parties were engaged in settlement discussions and on December 2, 2013, parties advised the Board that a settlement had been reached and that the hearing was no longer necessary. The Board cancelled the hearing on January 17, 2014.

[19] As part of the agreement, SOCAN withdrew its request for a rate increase in 2013 and the minor wording changes, and all the objectors withdrew their objections. The parties asked that the two tariffs be certified for the period 2009 to 2013 as last certified for 2008. This is what we do.

Tariff 2.D (Television – Canadian Broadcasting Corporation), 2013-2014

[20] For the years 2013 and 2014, SOCAN proposed an annual royalty rate of \$6,922,586, the same rate as certified for 2012. CBC objected to the tariff for the year 2014, but withdrew its objection on September 27, 2013. This is the rate we certify.

Tariffs 4.A.1 (Popular Music Concerts – Per Event Licence), 4.A.2 (Popular Music Concerts – Annual Licence), 4.B.1 (Classical Music Concerts – Per Concert Licence), 4.B.3 (Classical Music Concerts – Annual Licence for Presenting Organisations), 2015-2017

[21] For the years 2015 to 2017, the tariffs proposed by SOCAN are the same as those last certified, with the exception of the addition of a definition for “performers” to apply as of 2017. Initially, The Toronto Organizing Committee for the 2015 Pan American and Parapan American Games and Restaurants Canada at the outset objected to the Tariff. These objections were, however, both later withdrawn. We thus certify the tariffs as proposed, including the addition of the definition for “performers” to apply as of 2017.

Tariff 9 (Sports Events), 2013-2017

[22] For the year 2013, SOCAN has proposed a rate of 0.105 per cent of gross receipts from ticket sales. This is an increase compared to the rate of 0.1 per cent that was certified for 2011 and 2012. For the years 2014 to 2017, SOCAN proposed the rate of 0.1 per cent.

[23] On August 1, 2012, the National Hockey League and the Rogers Blue Jays Baseball Partnerships, owner of the Toronto Blue Jays Major League Baseball Team (the NHL and the

Blue Jays) filed an objection for the year 2013. The NHL and the Blue Jays objected on the basis that there is no justification for any increase in the rate from that applicable in 2011 and 2012.

[24] On June 4, 2013, SOCAN informed the Board that the NHL and the Blue Jays would withdraw their objection if SOCAN amended its proposal to a rate of 0.1 per cent. SOCAN agreed to amend its proposal and requested that the Board certify such rate for 2013. On September 30, 2015, the NHL and the Blue Jays confirmed that their objection was withdrawn.

[25] On August 26, 2013 and August 7, 2014, the Toronto Organizing Committee for the 2015 Pan American and Parapan American Games filed an objection for the years 2014 and 2015, respectively. However, on September 30, 2015 and on October 2, 2015, the Committee confirmed that it was withdrawing its objections for the two years.

[26] The tariff is thus no longer opposed. We certify for the years 2013 to 2017 the tariff at the same rate as that previously certified.

IV. OPPOSED TARIFFS

Tariff 3 (Cabarets, Cafes, Clubs, Cocktail Bars, Dining Rooms, Lounges, Restaurants, Roadhouses, Taverns and Similar Establishments), 2013-2017; Tariff 18 (Recorded Music for Dancing), 2013-2017; Tariff 20 (Karaoke Bars and Similar Establishments), 2013-2017

[27] The above-mentioned tariffs were last certified by the Board on June 29, 2012 for the years 2011 and 2012. For the years 2013 and 2014, SOCAN proposed that these tariffs remain the same as last certified. For the years 2015 to 2017, SOCAN proposed to apply an inflationary adjustment as described above. The rates last certified and proposed can be seen in the table in the Annex.

[28] Restaurants Canada and the Hotel Association of Canada (HAC) opposed the tariffs, claiming that the rates were excessive and unreasonable.

[29] Responding to a Notice of the Board of March 13, 2015, Restaurants Canada and the HAC further argued that because their members were facing intense financial pressure, it would be an unfair burden to require them to pay even an inflationary-only adjustment to the current rates when their own revenue has declined significantly.

[30] In its reply of April 17, 2015, SOCAN argued that because Tariff 3 rate is a percentage of fees paid to entertainers, to the extent decreasing revenues have allowed hotels and restaurants to reduce the compensation that they pay to entertainers, this would automatically reduce the amount of royalties payable to SOCAN. In addition, it argued that the rates it proposed, including the partially inflation-adjusted rates for the years 2015-2017, are fair and equitable.

[31] We agree with SOCAN and continue to believe, as the Board expressed in several past decisions, that fixed-rate tariffs need to be adjusted for inflation from time to time. Otherwise, the rates would slowly and gradually become insignificant. That would not be fair and equitable. In addition, as explained above, the inflationary adjustments applied by SOCAN are below what we would have applied, had we been asked to proceed to the adjustments. For these reasons, we certified Tariffs 3, 18 and 20 as proposed for SOCAN for the years 2013 to 2017.



Gilles McDougall
Secretary General

ANNEX

Tariff 3 (Cabarets, Cafes, Clubs, Cocktail Bars, Dining Rooms, Lounges, Restaurants, Roadhouses, Taverns and Similar Establishments), 2013-2017; Tariff 18 (Recorded Music for Dancing), 2013-2017; Tariff 20 (Karaoke Bars and Similar Establishments), 2013-2017

	CERTIFIED BY THE BOARD	PROPOSED BY SOCAN	
	2011-2012	2013-2014	2015-2017
TARIFF 3.A (LIVE MUSIC)	3% of compensation paid for entertainment Minimum annual fee: \$83.65	3% of compensation paid for entertainment Minimum annual fee: \$83.65	3% of compensation paid for entertainment Minimum annual fee: \$89.76
TARIFF 3.B (RECORDED MUSIC ACCOMPANYING LIVE ENTERTAINMENT)	2% of compensation paid for entertainment Minimum annual fee: \$62.74	2% of compensation paid for entertainment Minimum annual fee: \$62.74	2% of compensation paid for entertainment Minimum annual fee: \$67.32
TARIFF 3.C (ADULT ENTERTAINMENT CLUBS)	4.4¢ per day, per capacity	4.4¢ per day, per capacity	4.7¢ per day, per capacity
TARIFF 18 (RECORDED MUSIC FOR DANCING)	<i>Up to 100 patrons:</i> <u>1-3 days of operation</u> 6 months or less of operation: \$267.33/year More than 6 months of operation: \$534.66/year <u>4-7 days of operation</u> 6 months or less of operation:	<i>Up to 100 patrons:</i> <u>1-3 days of operation</u> 6 months or less of operation: \$267.33/year More than 6 months of operation: \$534.66/year <u>4-7 days of operation</u> 6 months or less of operation:	<i>Up to 100 patrons:</i> <u>1-3 days of operation</u> 6 months or less of operation: \$286.85/year More than 6 months of operation: \$573.69/year <u>4-7 days of operation</u> 6 months or less of operation:

	\$534.66/year More than 6 months of operation: \$1,069.32/year <i>More than 100 patrons:</i> 10 per cent more for each additional 20 patrons.	\$534.66/year More than 6 months of operation: \$1,069.32/year <i>More than 100 patrons:</i> 10 per cent more for each additional 20 patrons.	\$573.69/year More than 6 months of operation: \$1,147.38/year <i>More than 100 patrons:</i> 10 per cent more for each additional 20 patrons.
TARIFF 20 (KARAOKE BARS)	No more than 3 days a week: \$191.24 More than 3 days a week: \$275.56	No more than 3 days a week: \$191.24 More than 3 days a week: \$275.56	No more than 3 days a week: \$205.20 More than 3 days a week: \$295.68