

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Citation *SOCAN Tariff 2.B (2018-2022)*, 2020 CB 006

Member Nathalie Théberge

Proposed Tariffs SOCAN Tariff 2.B: Television – Ontario Educational Communications Authority (2018)

Considered SOCAN Tariff 2.B: Television – Ontario Educational Communications Authority (2019-2020)
SOCAN Tariff 2.B: Television – Ontario Educational Communications Authority (2021-2022)

Approval of Proposed Tariffs

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SOCAN Tariff 2.B: Television – Ontario Educational Communications Authority (2018-2022)

REASONS FOR DECISION

I. OVERVIEW

TARIFFS CONSIDERED

[1] The Society of Composers, Authors and Music Publishers of Canada (SOCAN) filed the following proposed tariffs, applicable to the Ontario Educational Communications Authority (the Authority), for approval by the Copyright Board:

- Statement of Proposed 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 (2018), (29 April 2017) C Gaz Supplement, Vol 151 No 17;
- Statement of Proposed 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 (2019-2020), (5 May 2018) C Gaz Supplement, Vol 152 No 18;
- Statement of Proposed 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 (2021-2022), (18 May 2019) C Gaz Supplement, Vol 153 No 20.

[2] The proposed tariffs were published in the Canada Gazette on the dates indicated above, and prospective users and their representatives were given notice of their right to file objections to the proposed tariffs. There were no objections raised by any users or their representatives for the years 2018 to 2022.

[3] For the following reasons, we find that SOCAN Tariff 2.B meets the requirement of being fair and equitable, and as a result, we approve it.

II. BACKGROUND

[4] The Authority, an Ontario crown corporation, operates TVOntario, a public television network, and other digital platforms, offering content which includes musical works protected by copyright.

[5] SOCAN, a collective society administrating certain aspects of copyright in musical works, filed with the Copyright Board for approval its proposed tariffs for the use of its repertoire (Tariff 2.B) by the Authority from 2018 to 2022 on March 31, 2017, March 29, 2018, and March 28, 2019.

[6] SOCAN's proposals were duly published and never opposed by the Authority.

[7] SOCAN's proposed tariffs set out a rate and terms and conditions that are unchanged from the last approved Tariff 2.B (for 2014-2017).

III. REASONS FOR THE DECISION

[8] The proposed tariffs set the same royalty rate as in the last approved tariff, namely a \$360,096 annual fee. We are not aware of any changes in the market that would lead us to conclude that such royalty rate is not fair and equitable for the years 2018 to 2022. Furthermore, we have not identified any other aspect of the proposed tariffs that should be modified, except the clarification explained in the next paragraph and the minor modification explained in the subsequent paragraphs.

[9] As requested by SOCAN, and for clarity, the words "operated by the Authority" are included in item (b) of the approved Tariff 2.B for the years 2018 to 2022.

[10] The tariffs proposed by SOCAN would authorize television stations and websites operated by the Authority to communicate to the public by telecommunication works "for private or domestic use," in connection with their over-the-air broadcasting or internet operations.

[11] In the past, the Board explained that the qualifier related to "private or domestic use" is ambiguous and inappropriate in the sense that it may restrict the tariff to those communications that result in private or domestic use.¹ Without repeating in detail the Board's reasons for rejecting this restriction, suffice it to emphasize that a broadcaster or webcaster has no control over the end-

¹ *Commercial Radio* (21 April 2016), Copyright Board at paras 377.

point use of its programming, or any way of knowing anything about it, raising serious potential issues about enforcement and, in turn, compliance with the present tariff.

[12] Accordingly, we do not include this wording in the tariff we approve.

IV. CONCLUSION

[13] Compared with the last approved SOCAN Tariff 2.B (for 2014-2017), the royalty rate and terms and conditions in the tariff proposals are mostly unchanged for the years 2018, 2019, 2020, 2021 and 2022. With only minor modifications to the language, we find the proposed tariffs to be fair and equitable, and approve them as SOCAN Tariff 2.B – Television – Ontario Educational Communications Authority (2018-2022).