

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Citation *SOCAN Tariffs 13.A, 13.B and 13.C (2018-2022)*, 2020 CB 011

Member Nathalie Théberge

Proposed Tariffs Considered SOCAN Tariff 13.A: Public Conveyances – Aircraft (2018-2020)
SOCAN Tariff 13.A: Public Conveyances – Aircraft (2020-2022), (18 May 2019)
SOCAN Tariff 13.B: Public Conveyances – Passenger Ships (2018-2020)
SOCAN Tariff 13.B: Public Conveyances – Passenger Ships (2020-2022)
SOCAN Tariff 13.C: Public Conveyances – Railroad Trains, Buses and Other Public Conveyances, Excluding Aircraft and Passenger Ships (2018-2020)
SOCAN Tariff 13.C: Public Conveyances – Railroad Trains, Buses and Other Public Conveyances, Excluding Aircraft and Passenger Ships (2020-2022)

Approval of Proposed Tariffs

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SOCAN Tariff 13.A – Public Conveyances – Aircraft (2018-2022)

SOCAN Tariff 13.B – Public Conveyances – Passenger Ships (2018-2022)

SOCAN Tariff 13.C – Public Conveyances – Railroad Trains, Buses and Other Public Conveyances, Excluding Aircraft and Passenger Ships (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 public conveyances, 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 (2018-2020), (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 (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. All objections raised by potential users were withdrawn for the time period covering the years 2018 to 2022.

[3] For the following reasons, we find that SOCAN Tariffs 13.A, 13.B and 13.C meet the requirement of being fair and equitable, and as a result, we approve them.

II. PROCEDURAL HISTORY

[4] On July 10, 2019, Stingray Digital Group Inc. (Stingray) filed its latest objections to proposed Tariff 13.A and 13.C for the years 2021-2022, among many other SOCAN tariffs, on the basis that the proposed terms and rates of these tariffs were “excessive and unreasonable”. Stingray has been the sole objector for both these proposed tariffs covering the time period 2018-2022. Proposed Tariff 13.B has not been opposed since it was last certified by the Board in May 2017.

[5] On January 28, 2020, the Board issued a Notice to all Parties that it intended to examine all three proposed tariffs (13.A, 13.B and 13.C) and proceed with a written hearing.

[6] On February 18, 2020, Stingray filed a statement withdrawing its objections to Tariffs 13.A (2018-2020, 2021-2022) and 13.C (2021-2022).

III. TARIFF 13.A: PUBLIC CONVEYANCES – AIRCRAFT

A. BACKGROUND

[7] 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 13.A) by aircraft from 2018 to 2022 on March 31, 2017 and March 28, 2019.

[8] The proposed tariffs would authorize users to perform in an aircraft, by means of recorded music (including music in audio-visual programming), any or all of the works in SOCAN’s repertoire at any time and as often as desired in the specified years.

[9] The proposed annual rate for Tariff 13.A (payable for each aircraft owned or operated by the licensee) is calculated as follows:

1. Music while on the ground: \$2.32 per seat for each aircraft in service during the year, prorated to the number of days in which the aircraft is in service during the year.
2. Music as part of in-flight programming: \$5.49 per seat for each aircraft in service during the year, prorated to the number of days in which the aircraft is in service during the year.

Where fees for an aircraft are paid under 2., no fees are payable for that aircraft under 1.

[10] For the purpose of the proposed tariffs, an aircraft is not “in service” if it is no longer owned, leased or under contract by the licensee or during any period of 15 consecutive days or more that it has not been used to carry the licensee’s passengers due to maintenance necessary for regulatory compliance.

[11] On or before January 31, SOCAN requires a report showing the number of aircraft operated by the licensee during the preceding year, as well as, for each aircraft, its seating capacity, the dates of any 15 consecutive days or more that it was not used to carry the licensee’s passengers due to maintenance necessary for regulatory compliance, and the applicable Tariff 13.A item (13.A.1 or 13.A.2). Any adjustment (over- or under-payment) of the fee payable to SOCAN from the estimated amount previously paid would be made at that time.

[12] SOCAN’s proposed tariffs set out a royalty rate and terms and conditions that are unchanged from the last approved Tariff 13.A (2015-2017).

[13] The Board is aware that the COVID-19 pandemic has had unexpected consequences for the transportation industry and that economic activity has been severely disrupted in 2020. In order to ensure tariff royalties remain fair and equitable, we amend Tariff 13.A to remove the reference to an aircraft not being in service “due to maintenance necessary for regulatory compliance” – so if an aircraft is not in service for a period of 15 consecutive days or more, fees will not be payable for that period. Using a minimum of 15 consecutive days of inactivity as the benchmark also takes into account the rights holders whose rights are being affected as well by the pandemic. The Board may reassess the matter during the process of the next proposed tariff to be filed for the same activities, if necessary.

B. REASONS FOR THE DECISION

[14] The proposed tariffs set the same royalty rate and terms and conditions as those in the last approved tariff. 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 aspect of the proposed tariffs, other than the one noted above, that should be modified.

IV. TARIFF 13.B: PUBLIC CONVEYANCES – PASSENGER SHIPS

A. BACKGROUND

[15] SOCAN filed with the Copyright Board for approval its proposed tariffs for the use of its repertoire (Tariff 13.B) by passenger ships from 2018 to 2022 on March 31, 2017 and March 28, 2019.

[16] Tariff 13.B would authorize users to perform in a passenger ship, by means of recorded music, any or all of the works in SOCAN's repertoire at any time and as often as desired in the specified years.

[17] The proposed rate for Tariff 13.B is \$1.13 per person per year, based on the authorized passenger capacity of the ship, subject to a minimum annual fee of \$67.32.

[18] On or before January 31 of the year covered by the tariff, users shall report the authorized passenger capacity and pay the applicable fee to SOCAN.

[19] For passenger ships operating for less than 12 months in each year, the proposed licence fee payable would be reduced by one twelfth for each full month during the year in which no operations occur.

[20] SOCAN's proposed tariffs set out a royalty rate and terms and conditions that are unchanged from the last approved Tariff 13.B (2013-2017).

[21] SOCAN's proposals were duly published and never opposed by any potential users.

B. REASONS FOR THE DECISION

[22] The proposed tariffs set the same royalty rate and terms and conditions as those in the last approved tariff. 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.

V. TARIFF 13.C: PUBLIC CONVEYANCES – RAILROAD TRAINS, BUSES AND OTHER PUBLIC CONVEYANCES, EXCLUDING AIRCRAFT AND PASSENGER SHIPS

A. BACKGROUND

[23] SOCAN filed with the Copyright Board for approval its proposed tariffs for the use of its repertoire (Tariff 13.C) by railroad trains, buses and other public conveyances, excluding aircraft and passenger ships from 2018 to 2022 on March 31, 2017 and March 28, 2019.

[24] Tariff 13.C would authorize users to perform in those public conveyances by means of recorded music, any or all of the works in SOCAN's repertoire at any time and as often as desired in the specified years.

[25] The proposed rate for Tariff 13.C is \$1.13 per person per year, based on the authorized passenger capacity of the car, bus or other public conveyance, subject to a minimum annual fee of \$67.32.

[26] On or before January 31 of the year covered by the tariff, users shall report the authorized passenger capacity and pay the applicable fee to SOCAN.

[27] SOCAN's proposed tariffs set out a royalty rate and terms and conditions that are unchanged from the last approved Tariff 13.C (for 2013-2017).

[28] The Board is aware that the COVID-19 pandemic has had unexpected consequences for the transportation industry and that economic activity has been severely disrupted in 2020. In order to ensure tariff royalties remain fair and equitable, we follow the practice of Tariff 13.B and include the condition that the fee paid is prorated on a monthly basis dependent on economic activity – so if a user operates for less than 12 months in each year, the fee payable shall be reduced by one twelfth for each full month during the year in which no operations occur. Inserting such a clause in a multi-year tariff does not affect the total royalties owing in any year in which economic activity operates for all months of the year. Using a full month of inactivity as the benchmark also takes into account the rights holders whose rights are being affected as well by the pandemic.

B. REASONS FOR THE DECISION

[29] The proposed tariffs set the same royalty rate and terms and conditions as those in the last approved tariff. 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 aspect of the proposed tariffs, other than the one noted above, that should be modified.

VI. CONCLUSION

[30] Compared to the last approved versions of SOCAN Tariffs 13.A, 13.B and 13.C, the royalty rates and terms and conditions in the tariff proposals are mostly unchanged for the years 2018, 2019, 2020, 2021 and 2022. For the reasons described above, with only minor modifications, we find these tariff proposals to be fair and equitable, and approve them as *SOCAN Tariff 13.A – Public Conveyances – Aircraft (2018-2022)*, *Tariff 13.B – Public Conveyances – Passenger Ships (2018-2022)* and *Tariff 13.C – Public Conveyances – Railroad Trains, Buses and Other Public Conveyances, Excluding Aircraft and Passenger Ships (2018-2022)*.