

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Citation *SOCAN Tariff 11.B (2018-2022)*, 2021 CB 8

Members Katherine Braun
The Honourable Luc Martineau
Adriane Porcin

Proposed Tariffs Considered SOCAN Tariff 11.B – Comedy Shows and Magic Shows, 2018-2020
SOCAN Tariff 11.B – Comedy Shows and Magic Shows, 2021-2022

Approval of Proposed Tariffs

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SOCAN Tariff 11.B – Comedy Shows and Magic Shows (2018-2022)

REASONS FOR DECISION

I. INTRODUCTION

[1] This proceeding considers proposed tariffs filed with the Copyright Board of Canada (“the Board”) by the Society of Composers, Authors and Music Publishers of Canada (SOCAN) in respect of the royalties to be paid for the public performance of musical works in SOCAN’s repertoire, by comedy shows and magic shows.

[2] Proposed Tariff 11.B for Comedy Shows and Magic Shows (2018-2020) was filed on March 31, 2017, and Proposed Tariff 11.B for Comedy Shows and Magic Shows (2021-2022) was filed on March 28, 2019 (the “Proposed Tariffs”).

[3] No objections were received in respect of the years 2018-2020. As for the years 2021-2022, a joint objection was filed by the Canadian Association for the Performing Arts (CAPACOA) and the Canadian Live Music Association (CLMA)(the “Objectors”). After careful consideration of all submissions, we conclude that the objections raised by the Objectors are beyond the scope of this proceeding.

[4] The *Copyright Act* (“the Act”) provides that the Board shall “fix royalty and levy rates and any related terms and conditions under the Act that are fair and equitable.”¹ Based on our assessment, we find the royalties and related terms and conditions set out in the Proposed Tariffs to be fair and equitable. The Proposed Tariffs set the same royalties and related terms and conditions as those fixed in the last approved tariff, therein creating no change. We have no indication of any market changes since our last decision. Finally, the proposed royalties are fee-per-event and as such, do not require any adjustment to account for the COVID-19 pandemic.

[5] We therefore approve the Proposed Tariffs under the title *SOCAN Tariff 11.B - Comedy Shows and Magic Shows (2018-2022)* with some minor modifications as noted later in this decision.

II. OVERVIEW

A. LAST APPROVED TARIFFS

[6] The Board approved *SOCAN Tariff 11.B - Comedy Shows and Magic Shows (2013-2017)* on May 6, 2017.² A royalty of \$36.60 per event for 2013-2014 was fixed and then modified by the Board to adjust for inflation, resulting in an increase in royalties to \$39.27 per event for the years 2015-2017.

B. PROPOSED TARIFFS UNDER CONSIDERATION

[7] Proposed Tariff 11.B (2018-2020) was filed on March 31, 2017, and subsequently published in the *Canada Gazette* on April 29, 2017.³

[8] Proposed Tariff 11.B (2021-2022) was filed on March 28, 2019, and published in the *Canada Gazette* on May 18, 2019.⁴

C. ROYALTIES PROVIDED FOR IN THE PROPOSED TARIFFS

[9] The royalties proposed by SOCAN for the years 2018-2020 and 2021-2022 are identical in both Proposed Tariffs, at \$39.27 per event, and remain the same as those fixed in the last approved tariff for the years 2015-2017.

D. ISSUE

[10] The issue for the Board to decide is whether the royalties and related terms and conditions set out in the Proposed Tariffs are fair and equitable and whether the Board should approve them.

¹ *Copyright Act*, RSC 1985, c C-42. [Act]

² *SOCAN – Various Tariffs, 2007-2017* (6 May 2017) C Gaz Supplement, Vol 151 No 18, at p 23.

³ 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; at pp 34-35.

⁴ 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, at p 32.

III. ANALYSIS

[11] The Act provides that the Board fix royalty and levy rates and related terms and conditions that are fair and equitable.⁵ To achieve this, and depending on the matter, the Board has historically taken into consideration various elements, including whether the objections have been addressed and the extent to which the proposed tariffs are similar to previously approved tariffs.

[12] Given our analysis, we conclude that the royalties and related terms and conditions set out in the Proposed Tariffs are fair and equitable. In making our determination, we carefully examined the objections raised in respect of the proposed tariff for the years 2021-2022, in addition to four relevant matters that gave us confidence in our decision, as explained below.

A. THE OBJECTIONS HAVE BEEN CONSIDERED AND THERE ARE NO OUTSTANDING ISSUES

[13] On January 28, 2020, the Board issued Notice CB-CDA 2020-008⁶ indicating that it was ready to proceed with a written examination of the Proposed Tariffs and asked Objectors to file detailed grounds in support of their objections filed on July 17, 2019, in respect of the years 2021-2022.

[14] Use of recorded music at live events falls under one of the various tariffs approved by the Board, namely Re:Sound Tariffs 5.A to 5.J, most of which have an equivalent SOCAN tariff. In the case at hand, Re:Sound Tariff 5.I pertains specifically to comedy shows and magic shows and is equivalent to the SOCAN Tariff 11.B.

[15] In 2017, the Board approved *Re:Sound Tariff 5.K (2008-2015)* to address the use of recorded music in respect of Theatrical, Dance and Other Similar Live Performances not otherwise covered by one of the Re:Sound Tariffs 5.A to 5.J.

[16] In its response to the Notice⁷, CAPACOA submits that tariff administration is too complex and that its members want to report all live events using just one tariff - Re:Sound Tariff 5.K. CAPACOA claims that Re:Sound Tariff 5.K is simpler and less costly from a tariff-administration standpoint than using the applicable tariffs, Re:Sound Tariff 5.I and SOCAN Tariff 11.B. CAPACOA noted that it had arranged with Re:Sound to allow its members to report all live events using Re:Sound Tariff 5.K. However, the use of Tariff 5.K for activities targeted by other Re:Sound tariffs has created invoicing problems for CAPACOA members. CAPACOA calls for SOCAN to introduce a tariff equivalent to Re:Sound Tariff 5.K to make it easier for its members to report and pay the royalties pertaining to various live events.

[17] In its response⁸, SOCAN claims that Tariff 11.B is well-established and has operated satisfactorily since it was first approved by the Board. SOCAN argues that using a single tariff for all types of live events, such as a Re:Sound Tariff 5.K equivalent, fails to recognize that the value

⁵ *Supra* note 1, s. 66.50

⁶ *Re:Sound Tariffs 5.A to 5.G (2013-2015) and 5.H to 5.K (2008-2015) – Use of Music to Accompany Live Events*, (2 September 2017) C Gaz Supplement, Vol 151 No 35.

⁷ Detailed grounds for objection filed by CAPACOA on March 8, 2020, in response to Notice of the Board CB-CDA 2020-008 (January 28, 2020).

⁸ SOCAN's response was filed on March 27, 2020.

of music is different from one type of live event to another. SOCAN submits that issues arising from the administration of SOCAN and Re:Sound tariffs are beyond the scope of this proceeding.

[18] On January 5, 2021, the Board issued Notice CB-CDA 2021-001⁹ asking parties to file their submissions on any outstanding issues concerning the proposed tariffs in order to proceed with a written hearing. CAPACOA filed its remaining issues on January 27 and repeated its call for a SOCAN tariff equivalent to Re:Sound Tariff 5.K. On February 16, SOCAN replied to CAPACOA's filing and echoed their earlier view that CAPACOA's objection fell outside the scope of this proceeding.

[19] After careful study of all the submissions, we determine that the issues raised by CAPACOA are beyond the scope of this proceeding. The Proposed Tariffs pertain to a specific type of activity, namely comedy shows and magic shows, and therefore, this proceeding should examine only the matters set out in the proposed tariffs. As CAPACOA did not file submissions specifically related to the royalties and related terms and conditions set out in the Proposed Tariffs, we conclude there are no outstanding matters.

B. DIFFERENCE BETWEEN THE LAST APPROVED TARIFF AND THE PROPOSED TARIFFS

[20] Where a proposed tariff does not differ substantially from the previously approved tariff, the Board may rely on this fact as an indication that the proposed tariff is fair and equitable, particularly when there have been no changes in the relevant market.

[21] The Proposed Tariffs provide for the same royalties and related terms and conditions as those fixed in the last approved tariff for 2015-2017. We are not aware of any events since our last approval that would lead us to conclude that approving the Proposed Tariffs is not fair and equitable.

C. RESULTS THAT WOULD HAVE BEEN ARRIVED AT BY A WILLING BUYER AND A WILLING SELLER

[22] Modifications to the Act that came into force on April 1st, 2019, provide that the Board shall fix royalty and levy rates and any related terms and conditions in consideration of what would have been agreed upon between a willing buyer and a willing seller, acting in a competitive market with all relevant information, at arm's length and free of external constraints ("a willing buyer and a willing seller"). The list of criteria mentioned in Section 66.501 of the Act is not exhaustive: consideration of a willing buyer and willing seller is one of several matters considered by the Board in its determination. Section 66.501 of the Act is as follows:

66.501 The Board shall fix royalty and levy rates and any related terms and conditions under this Act that are fair and equitable, in consideration of

(a) what would have been agreed upon between a willing buyer and a willing seller acting in a competitive market with all relevant information, at arm's length and free of external constraints;

⁹ SOCAN's submissions were filed on February 16, 2021.

- (b) the public interest;
- (c) any regulation made under subsection 66.91(1); and
- (d) any other criterion that the Board considers appropriate.

[23] The *Budget Implementation Act, 2018, No 2*¹⁰ provides that the Board is not required to consider the criteria set out in paragraphs 66.501 (a) and (b) of the Act if a matter was commenced before the day on which this section came into force, that is April 1st, 2019. The present matter was commenced on January 28, 2020, when the Board issued a Notice advising parties that it was ready to proceed with the examination of the Proposed Tariffs.¹¹ Since the date of commencement is posterior to the date of the coming into force of Section 66.501, the Board will consider the criteria set out in paragraphs 66.501 (a) and (b).

[24] The Board did not receive any submissions on the criteria in paragraph 66.501(a). Given the facts of this proceeding, we have insufficient evidence to conclude what royalties and related terms and conditions a willing buyer and willing seller would agree to under the characteristics enumerated in paragraph 66.501(a).

[25] However, the absence of information does not mean that the proposed royalties and related terms and conditions are not fair and equitable. In our evaluation, we found no indication of changes in market conditions or to other criteria that would warrant a change to the last approved tariff. Royalties have remained relatively unchanged since 2004, with a cumulative inflation adjustment in 2015.

D. PUBLIC INTEREST

[26] As aforementioned, paragraph 66.501(b) of the Act provides that the Board will also consider public interest in determining whether a proposed tariff is fair and equitable. There is nothing in this proceeding that raises particular concerns with respect to public interest. In addition none of the submissions or evidence submitted by the parties suggests that there is an issue in respect of public interest.

E. THE COVID-19 PANDEMIC

[27] Pursuant to paragraph 66.501(d) of the Act, the Board may also consider “any other criterion that the Board considers appropriate”. In deciding that a proposed tariff is fair and equitable, the Board may consider the potential impacts of the COVID-19 pandemic to determine if any adjustment to a proposed tariff is appropriate for the period of 2020 and beyond. In this proceeding, the royalties set out in the Proposed Tariffs is a fee-per-event in which music is performed, so royalties are only payable when the event actually takes place. As such, we conclude that the COVID-19 pandemic has not had an impact on the fairness of the Proposed Tariffs and therefore,

¹⁰ *A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018, and other measures*, SC 2018, c 27, section 299.

¹¹ Notice of the Board CB-CDA 2020-008 (January 28, 2020).

no modification to the proposed royalties and related terms and conditions is warranted in this respect.

IV. DECISION

[28] Given our examination and having duly considered the criteria set out in paragraphs 66.501 (a) and (b) of the Act, and “any other criterion that the Board considers appropriate”, we conclude that approving the Proposed Tariffs is fair and equitable.

[29] The proposed royalties and related terms and conditions are unchanged from those fixed in the last approved tariff, providing users and rights holders familiar tariff conditions to support management of their costs and revenues to 2022. The Proposed Tariffs provide for a mechanism that simplifies lawful use of musical works by users in return for an acceptable fee, thus ensuring compensation to rights holders for the use of their works. We found no indication of market changes since approval of the last tariff. Finally, the proposed royalty is a fee-per-event and thus, does not require any adjustment to account for the effects of the COVID-19 pandemic.

[30] We made minor modifications in respect of some paragraphs of the General Provisions section of the Proposed Tariffs that are inappropriate in the context of a tariff.¹² In particular, where the Proposed Tariffs provide that the “fees payable for any licence granted by SOCAN shall be due and payable upon grant of the licence”, the approved tariff now provides that the royalties are payable at the latest 30 days after the event, thereby making the interest provision functional.

[31] With the above modifications, we approve the Proposed Tariffs under the title *SOCAN Tariff 11.B - Comedy Shows and Magic Shows (2018-2022)*.

¹² See as an example *SOCAN - Tariff 21 (Recreational Facilities Operated by a Municipality, School, College, University, Agricultural Society or Similar Community Organizations), 2013-2020*, (7 December 2018), Copyright Board Decision at para 18; *SOCAN Tariff 7 – Skating Rinks (2018-2022)*, 2021 CB 7 (20 August 2021), Copyright Board Decision at para 13.