

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2023-07-07

Citation *SOCAN Tariff 23 (2018-2024)*, 2023 CB 2

Member Katherine Braun

Proposed Tariffs Considered SOCAN Tariff 23 – Hotel and Motel In-Room Services (2018-2020)
SOCAN Tariff 23 – Hotel and Motel In-Room Services (2021)
SOCAN Tariff 23 – Hotel and Motel In-Room Services (2022-2024)

Approval of Proposed Tariffs

As

SOCAN Tariff 23 – Hotel and Motel In-Room Services (2018-2024)

REASONS FOR DECISION

I. OVERVIEW

[1] The Society of Composers, Authors and Music Publishers of Canada (SOCAN) filed three proposed tariffs for the years 2018-2020, 2021 and 2022-2024, relating to the communication to the public by telecommunication of musical works in SOCAN's repertoire, by means of hotel or motel in-room audiovisual or musical services (the "Proposed Tariffs").

[2] Having reviewed the evidence, we find that the last-approved tariff can serve as a basis to approve a fair and equitable tariff in this proceeding, subject to some minor modifications.

[3] For the following reasons, we approve the Proposed Tariffs, with modifications, under the title *SOCAN Tariff 23 – Hotel and Motel In-Room Services (2018-2024)*.

II. BACKGROUND

A. THE LAST-APPROVED TARIFF

[4] The Board approved *SOCAN Tariff 23 – Hotel and Motel In-Room Services (2013-2017)* on May 6, 2017.¹ Royalties are paid to SOCAN, by default, by companies that provide lodging with in-room access to audiovisual works, mature audience films, and musical services.² The tariff provides for three royalty rates:

- (a) 1.25 per cent of the fees paid by guests to view audiovisual works, other than mature audience films;
- (b) 0.3125 per cent of the fees paid by guests to view mature audience films containing any work in which a SOCAN licence is required; and
- (c) 5.5 per cent of the revenues of the provider of any musical service.

B. THE PROPOSED TARIFFS

[5] SOCAN filed proposed tariffs for the years 2018-2020 on March 31, 2017; for 2021 on March 28, 2019; and for the years 2022-2024, on October 15, 2020. The Proposed Tariffs were published in the Canada Gazette or on the Board's website.

[6] The rates and terms of conditions of the Proposed Tariffs are identical to those of the last-approved tariff.

[7] The Hotel Association of Canada filed an objection in respect of all three periods. Stingray filed an objection in respect of the years 2018-2020 and 2021 (the "Objectors").

[8] On February 4, 2021, the Board advised the parties that a written hearing would be held to consider the Proposed Tariffs.

[9] Board Notice CB-CDA 2022-008 of February 17, 2022, instructed the Objectors to provide detailed grounds for their objections, including explanations pertaining to changes to the market for audiovisual and audio services in hotels since 2006. On March 16, 2022, the Objectors advised the Board that they intended to withdraw their objections.

¹ *SOCAN Various Tariffs (2007-2017)* (6 May 2017), Gazette Supplement Vol. 151 No. 18, online: CB <<https://decisions.cb-cda.gc.ca/cb-cda/certified-homologues/en/366481/1/document.do>>.

² *SOCAN Tariff 23 – Hotel and Motel In-Room Services (2001-2006)* (reasons) (30 June 2006), online: CB <<https://decisions.cb-cda.gc.ca/cb-cda/decisions/en/item/366599/index.do>>, para. 48. See also *SOCAN Various Tariffs (2006-2013)* (reasons) (29 June 2012), paras. 20-23.

III. ISSUES

[10] Having reviewed the evidence on record, we identified the following three issues to examine:

1. Is the last- approved tariff an appropriate proxy of what is fair and equitable for the years 2018 to 2024?
2. Is an adjustment for the COVID-19 pandemic required in respect of some of the years covered by the Proposed Tariffs?
3. Are changes to the wording of the Proposed Tariffs warranted?

IV. ANALYSIS

A. ISSUE 1: IS THE LAST-APPROVED TARIFF AN APPROPRIATE PROXY OF WHAT IS FAIR AND EQUITABLE FOR THE YEARS 2018 TO 2024?

[11] We find that the last-approved tariff can serve as an appropriate proxy in this proceeding.

[12] The Board has frequently held that when a proposed tariff does not substantially differ from the last-approved tariff it is appropriate, absent reasons to the contrary, to use the last-approved tariff as a proxy of what could be fair.³ In recent decisions, the Board identified changes in the relevant market as one potential indicator of when it may not be appropriate to use the last-approved tariff as a proxy.

[13] In this matter, the rates and terms and conditions of the Proposed Tariffs are identical to those of the last-approved tariff. There is no information on the record suggesting that a change in the market has occurred.

[14] We therefore have no reason to question the appropriateness of the last-approved tariff serving as a proxy for what is fair and equitable for the term of the Proposed Tariffs, 2018 to 2024.

B. ISSUE 2: IS AN ADJUSTMENT FOR THE COVID-19 PANDEMIC REQUIRED IN RESPECT OF SOME OF THE YEARS COVERED BY THE PROPOSED TARIFFS?

[15] An adjustment for the COVID-19 pandemic is not required in respect of the years covered by the Proposed Tariffs.

³ See *SOCAN Tariff 9 – Sports Events (2018-2023)*, 2021 CB 9 (1 October 2021), online: CB <<https://decisions.cb-cda.gc.ca/cb-cda/decisions/en/item/512205/index.do?q=2021+CB+9>>, para 22.

[16] Royalties set out in the Proposed Tariffs are based on either a percentage of fees paid by guests, or a percentage of the revenues of providers of musical services. Royalty rates structured in this manner take into account a reduction in fees paid or revenue.⁴ For example, if a hotel or motel was closed during the applicable period, fees paid by guests to view content and revenues to music providers will be lower. Consequently, royalties paid to SOCAN will be lower.

C. ISSUE 3: ARE CHANGES TO THE WORDING OF THE PROPOSED TARIFFS WARRANTED?

[17] In approving the Proposed Tariffs, we make the following modifications. These changes do not alter the scope of the application of the tariff.

1. Removal of references to licences and licensees in situations where the use of the word licence could suggest that a tariff is a licence. Under the *Copyright Act*, when seized of proposed tariffs, the Board's mandate is to fix royalty rates and related terms and conditions.⁵ The Board's mandate in approving tariffs does not include the issuance of licences. This role belongs to collective management societies.⁶
2. However, distinct from the above modification, we have retained reference to licence where the word licence is used concerning situations where films do not contain any work requiring a SOCAN licence.⁷ Such films attract specific reporting requirements in the Proposed Tariffs. A similar distinction in respect of the various contexts in which the word licence can be used was made in a recent Board decision.⁸
3. Removal of the General Provisions section. Some provisions of this section pertaining to licences were deleted from the Proposed Tariffs for reasons outlined above. A Terms and Conditions section has been added to the approved tariff to address the remaining provisions pertaining to the calculation of interest and taxes.
4. Reflective of the Board's Practice Notice on Filing of Proposed Tariffs⁹, we have removed references to other tariffs, which are unnecessary and may introduce confusion in understanding the tariff.

⁴ See *SOCAN Tariff 4.B (2018-2024)*, 2021 CB 11 (26 November 2021), online: CB <<https://decisions.cb-cda.gc.ca/cb-cda/decisions/en/item/516586/index.do?q=2021+CB+11>>, paras. 28 (4.B.1), 34 (4.B.2) and 39 (4.B.3).

⁵ *Copyright Act*, s. 66.501.

⁶ *York University v. Canadian Copyright Licensing Agency (Access Copyright)* (30 July 2021), 2021 SCC 32, online: SCC <<https://www.canlii.org/en/ca/scc/doc/2021/2021scc32/2021scc32.html?resultIndex=1>>.

⁷ See in the Proposed Tariffs, under Terms and Condition, (b)(ii) and (iii).

⁸ See *SOCAN 22.D.3 (2007-2013)*, 2023 CB 1 (24 February 2023), online: CB <<https://decisions.cb-cda.gc.ca/cb-cda/decisions/en/item/521010/index.do>>.

⁹ *Practice Notice on Filing of Proposed Tariffs* (1 March 2023), PN 2019-004 rev. 3, online: CB <<https://cb-cda.gc.ca/sites/default/files/inline-files/PN-004%20rev3%20-%20Filing%20of%20Proposed%20Tariffs.pdf>>.

V. DECISION

[18] Having reviewed the evidence on record, we are satisfied that the last-approved tariff is an appropriate proxy for approving the Proposed Tariffs, and that the royalty rates and related terms and conditions set out in the Proposed Tariffs are fair and equitable.

[19] We therefore approve the Proposed Tariffs, with minor modifications, as a single tariff under the title *SOCAN Tariff 23 – Hotel and Motel In-Room Services (2018-2024)*.