

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2023-07-07

Citation *Commercial Radio Reproduction (2024-2026)*, 2023 CB 3

Member(s) Katherine Braun

**Proposed
Tariff(s)
Considered** Commercial Radio Reproduction (2024-2026)

Approval of Proposed Tariff(s)
As
Commercial Radio Reproduction (2024-2026)

REASONS FOR DECISION

I. OVERVIEW

[1] This proceeding considers one proposed tariff for Commercial Radio Reproduction for the years 2024 to 2026 (the “Proposed Tariff”).

[2] The Proposed Tariff was jointly filed by the Canadian Musical Reproduction Rights Agency (CMRRA), the Society of Composers, Authors and Music Publishers of Canada (SOCAN), Connect Music Licencing, the Société de gestion collective des droits des producteurs d'enregistrements sonores et de vidéoclips (SOPROQ) and Artisti (together, the “Collectives”) pursuant to an ongoing agreement with the Canadian Association of Broadcasters (the “CAB”).

[3] Having reviewed the evidence on record, the Board finds that the Proposed Tariff can serve as a basis to approve a fair and equitable tariff in this proceeding.

[4] For the following reasons, the Board approves the Proposed Tariff under the title *Commercial Radio Reproduction (2024-2026)*.

II. BACKGROUND

[5] The Board last-approved a tariff for reproductions by commercial radio stations in December 2020 for the years 2020-2023.¹ It did so based on previously approved tariffs and an ongoing agreement between the Collectives and the CAB.² The Board had previously relied on this agreement in approving tariffs for 2014-2018,³ and 2019.⁴

[6] The Proposed Tariff was published on the Board's website on November 18, 2022 and covers all reproductions by over-the-air broadcasting operations of the works in the repertoires of the Collectives. It also covers reproductions of works in the repertoires of CMRRA and SOCAN made in connection with simulcasts.

[7] A Notice of Grounds for Proposed Tariff was published alongside the Proposed Tariff.⁵ On December 28, 2022, the Collectives and the CAB filed additional submissions asking the Board to approve the Proposed Tariff.⁶

[8] The Board issued Notice CB-CDA 2023-019, in accordance with Rule 22 of the *Copyright Board Rules of Practice and Procedure*, advising that the Board had sufficient information to issue a decision.

[9] The Proposed Tariff contains four royalty rate tables providing different rates for low-use, regular-use, French language stations and English language stations. All proposed rates are based on a percentage of gross income. The rates and related terms in the Proposed Tariff are the same as in the last-approved tariff. No objections were filed in regard of this Proposed Tariff.

III. ISSUES

[10] In reviewing the evidence on record, the Board identified the following issue for consideration: Is the previously approved tariff an appropriate proxy for the Proposed Tariff?

¹ *Commercial Radio Reproduction Tariff (2020-2023)*, 2020 CB 018 (11 December 2020, online: CB < <https://decisions.cb-cda.gc.ca/cb-cda/decisions/en/item/489659/index.do> >.

² *Ibid* at paras 30-31.

³ *CSI, Connect/SOPROQ, Artisti – Tariff for Commercial Radio Stations - Application to Vary, 2012-2017; Determination, 2014-2018*, (14 December 2018) CB-CDA 2018-225 (14 December 2018), online: CB <<https://decisions.cb-cda.gc.ca/cb-cda/decisions/en/item/400765/index.do> >.

⁴ *CMRRA/SODRAC, Connect/SOPROQ, Artisti – Tariff for Commercial Radio Stations, 2019*, CB-CDA 2018-232 (21 December 2018), online: CB < <https://decisions.cb-cda.gc.ca/cb-cda/decisions/en/item/367498/index.do> >.

⁵ No hearing is taking place for the consideration of this proposed tariff. The Board is required to approve this tariff before January 1, 2024. Notice Pursuant to Section 5 of the *Time Limits in Respect of Matters Before the Copyright Board Regulations* CB-CDA 2023-003, 12 January 2023, at paras 4-5.

⁶ Letter from Eric Mayzel, Cassels to Lara Taylor, Copyright Board (28 December 2022) "Re: Proposed Tariff: Commercial Radio Reproduction Tariff (CMRRA, SOCAN, Connect/SOPROQ, Artisti: 2024-2026).

IV. ANALYSIS

Is the previously approved tariff an appropriate proxy for the Proposed Tariff?

[11] After reviewing the evidence, the Board concludes that the previously approved tariff is an appropriate proxy of what could be fair for the Proposed Tariff in this proceeding.

[12] The Board has frequently held that it is appropriate, absent reasons to the contrary, to use the last-approved tariff as a proxy of what could be fair.⁷ In recent decisions, the Board has 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] The ongoing agreement between the Collectives and the CAB is evidence that the commercial radio market has not changed since the Board last considered this agreement in *Commercial Radio Reproduction (2020-2023)*.

[14] The Collectives jointly submit that the Proposed Tariff is identical in substance to the 2020-2023 approved tariff.⁸ The Board has reviewed the comparison document of the proposed tariff and the last-approved tariff and agrees with this claim made by the Collectives.

[15] The Collectives also submit that their agreement with the CAB remains in force and that there have been no changes to the agreement since the last-approved tariff. Supporting their claim, the Collectives submitted the text of their ongoing agreement with the CAB, which provides for tri-annual filing of proposed tariffs with agreed terms, among other matters. The parties have amended this agreement twice: most recently in 2019 to add SOCAN as a party (in respect of its reproduction repertoire) and to bring the agreement in line with the amendments to the *Copyright Act* that came into force in 2019. Pursuant to the agreement, the CAB supports approval of the Proposed Tariff, including by not objecting to it. The Board accepts these submissions.

[16] When the agreement was signed in 2017, a majority of radio stations agreed to be bound to the agreement, representing 94% of the gross revenue of the 686 commercial radio stations who were paying royalties to CSI⁹ at that time. The Collectives further submit that no station or station group rejected the agreement, thus claiming that the commercial radio industry has generally embraced the agreement. The Board accepted these submissions in *Commercial Radio Stations (2012-2018)*¹⁰ and in *Commercial Radio Reproduction (2020-2023)*¹¹ and it does the same here.

[17] There is no information on the record that would lead the Board to question the appropriateness of the last-approved tariff as a proxy for the Proposed Tariff. The ongoing agreement between the CAB and the Collectives is evidence that no significant market-based

⁷ See e.g., *SOCAN Tariff 9 – Sports Events (2018-2023)*, 2021 CB 6 [*SOCAN 9 (2018-2023)*].

⁸ *Commercial Radio Reproduction (2020-2023)*, *supra*, note 1.

⁹ CSI was formed in 2002 as a joint venture between CMRRA and SODRAC Inc, to collect royalty for works in the repertoire of both parties. In 2018, SOCAN purchased SODRAC Inc., including its reproduction repertoire that is the subject of this tariff.

¹⁰ *Commercial Radio Stations (2012-2018)*, *supra* note 3 at paras 42-44.

¹¹ *Commercial Radio Reproduction (2020-2023)*, *supra* note 1 at para 31.

changes, relevant to the consideration of this tariff, have occurred. If the market had changed, the Board would expect the parties to seek some change to the agreement. This has not been the case. Rather, the lack of change to the agreement supports a conclusion that the last-approved tariff reflects a well-functioning and stable market, making it a good candidate for a proxy of what is fair for the period of 2024-2026.

V. DECISION

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

[19] The Board therefore approves the Proposed Tariff under the title *Commercial Radio Reproduction (2024-2026)*.