

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2024-08-23

Citation *SOCAN Tariff 23 (2025-2027)*, 2024 CB 5

Member Katherine Braun

**Proposed
Tariff
Considered** SOCAN Tariff 23 – Hotel and Motel In-Room Services (2025-2027)

Approval of Proposed Tariff

As

SOCAN Tariff 23 – Hotel and Motel In-Room Services (2025-2027)

REASONS FOR DECISION

I. INTRODUCTION

[1] The Society of Composers, Authors and Music Publishers of Canada (SOCAN) filed with the Copyright Board of Canada (“the Board”), a proposed tariff for the years 2025 to 2027. The tariff covers 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 Tariff”).

[2] We are of the view that the last approved tariff can serve as a basis to approve a fair and equitable tariff in this proceeding, subject to a modification in relation to uses that are excluded from the scope of Tariff 23.

[3] For the following reasons, we find that the proposed *SOCAN Tariff 23 – Hotel and Motel In-Room Services (2025-2027)* – with some modifications — is fair and equitable, and we approve it.

II. BACKGROUND

A. THE LAST APPROVED TARIFF

[4] The Board approved SOCAN *Tariff No. 23 – Hotel and Motel In-Room Services (2018-2024)* on July 8, 2023¹ (the “Last Approved Tariff”).

[5] Pursuant to the Last Approved Tariff, royalties are paid to SOCAN by companies that provide lodging establishments with in-room access to audiovisual works, mature audience films and musical services. In particular, the royalties payable are as follows:

- (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 license is required; and
- (c) 5.5 per cent of the revenues of the provider of any musical service.

B. THE PROPOSED TARIFF

[6] SOCAN filed its Proposed Tariff on October 16, 2023, and its Notice of Grounds for Proposed tariff on October 23, 2023. The Proposed Tariff was published on the Board’s website on November 15, 2023. The royalty rates are identical to those fixed in the Last Approved Tariff. No objections were filed or received.

[7] On February 15, 2024, the Board gave notice that it would not hold a hearing in respect of the Proposed Tariff.² This means that the Board must issue its decision before January 1, 2025, the beginning of the effective period.³

III. ISSUES

[8] We identify two issues for consideration:

1. Is the Last Approved Tariff an appropriate proxy for a fair and equitable tariff for the years 2025 to 2027?
2. Are changes to the wording of the Proposed Tariff warranted?

IV. ANALYSIS

A. ISSUE 1: IS THE LAST APPROVED TARIFF AN APPROPRIATE PROXY FOR A FAIR AND EQUITABLE TARIFF FOR THE YEARS 2025 TO 2027?

[9] When a proposed tariff does not substantially differ from the last approved tariff, it is reasonable for the Board to use the last approved tariff as a proxy of what could be fair and

¹ *SOCAN Tariff 23 – Hotel and Motel In-Room Services (2018-2024)* 2023 CB 2-T (July 8, 2023), C Gaz I, Supplement, vol 157, No 27.

² Notice of the Board CB-CDA 2024-13, February 15, 2024.

³ See paragraph 2(b) of the *Time Limits in Respect of Matters Before the Copyright Board Regulations*, SOR/2020-264.

equitable.⁴ For example, if there are changes in the relevant market, it may not be appropriate to use the Last Approved Tariff as a proxy.

[10] In this matter, there is no information suggesting that a change in the market has occurred.

[11] Given the foregoing, we find that the Last Approved Tariff can be used as a proxy to determine what rates and terms and conditions are fair and equitable for this tariff.

B. ISSUE 2: ARE CHANGES TO THE WORDING OF THE PROPOSED TARIFF WARRANTED?

[12] We are of the view that the wording of Section 4 should be modified; specifically, that references to other tariffs be removed. The Last Approved Tariff did not contain any reference to other tariffs, as they were removed by the Board upon approval.

[13] Section 4 of the Proposed Tariff refers to three other SOCAN tariffs – Tariffs 17, 22, and 26, clarifying that their activities are excluded from the Proposed Tariff.

[14] In its Notice of Grounds for Proposed Tariff, under the heading “Explanation of Changes from Previously Approved Tariff”, SOCAN explained the addition of this section as follows:

The application clause in the proposed tariff has been updated to improve clarity and consistency with other SOCAN tariffs and to comply with the Board’s Practice Notice on Filing of Proposed Tariffs [...] by limiting reliance on ambulatory references to other tariffs.

[15] On May 17, 2024, the Board issued a Notice⁵ in respect of Section 4 of the Proposed Tariff (the “Notice”). The Board expressed the view that references to Tariffs 17, 22 and 26, should be removed from Section 4. The Board explained that, pursuant to the Practice Notice on Filing of Proposed Tariffs,⁶ tariffs should be self-contained.

[16] On May 30, 2024, SOCAN commented on the Notice, noting that it was concerned about the removal of such references from the tariff. In its view, where other activities of a user are subject to other tariffs, referring to those numbered tariffs may allow users to identify the applicable tariff pertaining to those other activities. SOCAN suggested that the numbered tariffs be kept and that they be accompanied by the relevant years of the last-approved tariff.

[17] Notwithstanding the arguments put forward by SOCAN, explicit references to Tariffs 17, 22 and 26, have been removed in the approved Tariff.

[18] Pursuant to the Practice Notice on Filing a Proposed Tariff, the determination of whether a tariff applies to a potential user should not require consulting other tariffs. In exceptional cases, where the Board is of the view that referring to other tariffs would enhance understanding the scope of a tariff, it may decide to allow references to other previously approved tariffs. This could be the case where different tariffs and activities are closely related, such as in the *SOCAN*

⁴ See e.g., *SOCAN Tariff 9 – Sports Events (2018-2023)* 2021 CB 9 (October 1, 2021) at para 22.

⁵ Notice of the Board CB-CDA 2024-036, May 17, 2024.

⁶ *Practice Notice on Filing a Proposed Tariff PN 2019-004 rev. 4* (July 24, 2024).

Tariff 22.D.3 (2014-2024) proceeding, or where more than one tariff may apply to activities that are very similar, and an order of priority is necessary.

[19] We found no ambiguity requiring reference to other SOCAN tariffs. The activities are well defined, and the scope of the Proposed Tariff is easily ascertainable. Descriptions of the excluded activities makes it easy for users to determine whether they are users of Tariff 23. Referring to other tariffs is not only unnecessary, but it would also create a burden on potential users to consult and understand the other referenced tariffs.⁷

[20] Therefore, Section 4 is modified to read as follows:

4. (1) This tariff does not apply to:

(a) the communication to the public by telecommunication of musical works in connection with the transmission of a television signal for private or domestic use;

(b) the communication to the public by telecommunication of musical works by an online service, including an online music service, an online audiovisual service, a user generated content service, an allied audiovisual service or a game service; and

(c) the communication to the public by telecommunication of musical works in connection with a pay audio service.

(2) This tariff does not apply to Internet access services or to video games services.

V. DECISION

[21] For the above reasons, we approve the Proposed Tariff, with modifications to the wording of Section 4, under the title *SOCAN Tariff 23 – Hotel and Motel In-Room Services (2025-2027)*.

⁷ There could be several. For example, SOCAN 22 is a large family of tariffs.