

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Citation *SOCAN Tariff 22.E – Canadian Broadcasting Corporation (2014-2018)*,
2024 CB 9

Member The Honourable Luc Martineau

Proposed Tariffs Considered SOCAN Tariff 22.E – Canadian Broadcasting Corporation (2014)
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Approval of Proposed Tariffs

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SOCAN Tariff 22.E – Canadian Broadcasting Corporation (2014-2018)

REASONS FOR DECISION

I. OVERVIEW

[1] *SOCAN Tariff 22.E – Canadian Broadcasting Corporation* for the years 2014 to 2018 (“Tariff 22.E”) is approved on the basis of a jointly-submitted text (“JST”) filed by SOCAN (the Society of Composers, Authors and Music Publishers of Canada) and the Canadian Broadcasting Corporation (“CBC”) on January 25, 2023.

[2] Tariff 22.E covers the communication to the public by telecommunication (including making available) of music in SOCAN’s repertoire as part of the CBC’s Internet services. This includes online music services (such as music.cbc.ca and espace.mu (also known as icimusique.ca)), online audiovisual services (such as Gem and tou.tv), and other online programming.

[3] The approved rate is 1.9 per cent of Internet-related revenues from the CBC Online Audiovisual Service, and 5.3 per cent of Internet-related revenues from the CBC Online Music

Services. (Subject to possible adjustments based on an audio to non-audio webpages impressions ratio)

[4] The approved effective rate for other online programming services is 1.25 per cent of the total amount payable by the CBC pursuant to Tariffs 1.C (Radio – Canadian Broadcasting Corporation – 2015-2018) and 2.D (Television – Canadian Broadcasting Corporation – 2013-2014).

II. BACKGROUND

[5] The Board approved Tariff 22.E for the years 2007 to 2013¹ (the “Approved Tariff 22.E”) following an agreement between SOCAN and CBC. That agreement did not extend to CBC’s Internet-distributed audio services, “cbc.music.ca” and “espace.mu”.

[6] The JST is modeled on the Approved Tariff 22.E, with changes to: (1) incorporate the previously-excluded uses, (2) to adjust the default page-impression ratio for online audiovisual services, (3) to bring the reporting requirements into alignment with SOCAN’s other Internet tariffs, and (4) to include the confidentiality provisions which are consistent with other SOCAN’s tariffs.

[7] Compared to the Approved Tariff 22.E, the proposed tariffs (for the years 2014, 2015, 2016, 2017, and 2018) provide for: 2.1 per cent of tou.tv’s (and similar online audiovisual services that may be launched by CBC) Internet-related revenues (vs. last-approved 1.9 per cent), subject to a 1 ratio (vs. 0.75 audio page impressions ratio in Approved Tariff 22.E); a specific rate-structure for “cbcmusic.ca” and “espace.mu” (and any similar music intensive CBC online services) (vs. none in Approved Tariff 22.E); and the same rate as in Approved Tariff 22.E for other online programming services.

[8] The Parties however were able to agree on streamlined rates as per the JST. The Parties explain that the JST reflects the fact that CBC’s online uses of music have evolved to incorporate [more fully] both online music services as well as online audiovisual services.

[9] As part of the joint request for tariff approval on the basis of the JST, the Parties filed submissions as required by the Board’s *Practice Notice on Filing of Jointly-Submitted Texts in a Proceeding*².

[10] The Board noted that the agreement that underpins the JST would take precedence over any eventual approved tariff for the years in question (and therefore potentially making the approval process moot). However, in the present case, after taking into account the parties’ submissions

¹ *SOCAN Tariff No. 22.E Internet – Canadian Broadcasting Corporation (2007-2013)* (approved tariff) (May 20, 2017), C Gaz Supplement Vol. 151, No 20.

² *Practice Notice on Filing of Jointly-Submitted Texts in a Proceeding PN 2022-005 rev. 1* (March 1, 2023).

(but without ruling on their merit), the Board concluded that consideration of the proposed tariff could be more expeditious and less costly than assessing whether the matter is truly moot.

III. ISSUE

[11] The Board identifies the following decision-point: Does the JST provide an appropriate benchmark for the proposed tariff under consideration?

IV. ANALYSIS

[12] The Board considers whether the JST is an appropriate benchmark for the Proposed Tariff.

[13] In their joint request for approval on the basis of the JST, the Parties submit that Tariff 22.E has a single user: the CBC and the JST achieves certainty over the royalties that are payable for CBC's online activities during the 2014 to 2018 period.

[14] Because the effective period is completely in the past, and because there is only one user during that period who supports the JST, the Board agrees with the Parties' submission.

[15] The Board also observes that the JST is consistent with the last approved Tariff 22.E regarding the "tou.tv (and similar online audiovisual services)" and the "Other online programming" categories. With respect to the "tou.tv" category (online audiovisual services), the default page-impression ratio changes from .75 (in the last approved Tariff 22.E) to 1. The "Other online programming" category renews the .15 default page-impression ratio (as found in the last approved Tariff 22.E).

[16] Compared to the last approved Tariff 22.E, the JST includes a new category: online music services that offer semi-interactive or non-interactive streams. Both types of streams are subject to the same rate: 5.3 per cent of internet-related revenues. This rate is consistent with past Board-approved rates applicable to similar streaming services where a single rate applied to different types of streams (non-interactive, semi-interactive and interactive).³

[17] The Board, however, makes four changes.

[18] First, as per its *Practice Notice on Filing a Proposed Tariff*⁴, the Board modifies subsection 4(c) by ensuring that all references to other tariffs are fixed in time (and not ambulatory). To this end, the approved tariff sets out a fixed royalty per month, which is 10 per cent (as per the JST) of the total of the SOCAN tariffs 1.C rates approved for the year 2014⁵ and for the years 2015-

³ The Board indicated that the market would reflect how interactivity is valued through revenue levels: See *CSI, SOCAN, SODRAC - Tariff for Online Music Services 2010-2013*, CB-CDA 2017-086 (reasons) (August 8, 2017) at para 233-238.

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

⁵ *SOCAN Tariff No. 1.C Radio – Canadian Broadcasting Corporation (2012-2014)* (approved tariff) (May 20, 2017), C Gaz Supplement Vol. 151, No. 20.

2018⁶ (\$144,406.90 per month) and the SOCAN tariff 2.D rate approved for the years 2013-2014⁷ (\$6,922,586 per year, which equals to \$576,882.17 per month). The total monthly amount is \$72,128.91.

[19] Second, section 5 of the JST (Payment of royalties) is modified such that it no longer refers to Tariffs 1.C and 2.D, as applicable, for the purpose of the time periods to be used in calculating royalties, and the dates at which payments must be effected. Instead, the rules are integrated directly into the approved tariff: CBC shall pay, per month, on the first day of each month the amount set out in section 4 of the approved tariff.

[20] Third, while last approved Tariff 22.E and the JST include a rate which refers to “an agreement with SOCAN” under the “Other online programming” category, the Board believes it is not appropriate to include this reference in the approved tariff. While Parties can enter into agreements that supersede a tariff, the royalty rates approved by the Board should not be a function of agreements.

[21] Finally, as is routinely the case, references to the word “licence” are excluded from the approved tariff.

V. DECISION

[22] Having given consideration to the record, and subject to the changes made by the Board, it is satisfied that the royalty rates and related terms and conditions in the JST are fair and equitable.

[23] The Proposed Tariffs, with changes based on the JST, are approved under the title *SOCAN Tariff 22.E – Canadian Broadcasting Corporation (2014-2018)*.

⁶ *Tariff 1.C – Radio – Canadian Broadcasting Corporation (SOCAN: 2015-2018; Re:Sound:2012-2019)* (approved tariff) (November 14, 2020), C Gaz Supplement Vol. 154, No. 46.

⁷ *SOCAN Tariff No. 2.D (2013-2014)* (approved tariff) (May 6, 2017), C Gaz Supplement Vol. 151, No. 18.