

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Citation SOCAN Tariff 3.C – Adult Entertainment Clubs (2026-2028), 2025 CB 13

Member Drew Olsen

Proposed Tariff Considered SOCAN Tariff 3.C – Adult Entertainment Clubs (2026-2028)

**Approval of Proposed Tariff
As
SOCAN Tariff 3.C – Adult Entertainment Clubs (2026-2028)
Reasons for Decision**

I. Overview

[1] This decision relates to a tariff proposed by the Society of Composers, Authors and Music Publishers of Canada (SOCAN): Tariff 3.C – Adult Entertainment Clubs (2026-2028) (the “Proposed Tariff”).

[2] The Proposed Tariff covers performances in public of the musical works and dramatico-musical works in SOCAN’s repertoire. SOCAN describes users as clubs, bars, cabarets, etc. that feature adult entertainment accompanied by recorded music.

[3] I find that a tariff based on the Proposed Tariff is fair and equitable, and approve it with modifications to reflect the actual inflation rate, expressed as the percentage change in the Consumer Price Index (“CPI”) between January 2022 and December 2024.

[4] The approved rate is 6.71¢ per day, multiplied by the establishment’s authorized capacity (seating and standing).

II. Background

[5] The Proposed Tariff was filed with the Copyright Board on October 15, 2024. The tariff was duly published and users were provided with an opportunity to file objections, as provided for in section 68.3 of the *Copyright Act*.

[6] No objections were filed in regards to the Proposed Tariff and, as such, the Notice of Grounds for Proposed Tariff filed by SOCAN is the only submission in this proceeding.

[7] The previously approved tariff for the years 2023 to 2025 fixed the royalty rate at 5.5 cents per day, multiplied by the seating and standing capacity authorized under the establishment's liquor licence ("the Last-Approved Tariff")¹. Users were required to file annual reports on their authorized capacity and the number of days in operation.

[8] The Proposed Tariff includes a royalty rate of 6.75 cents per day per capacity, which is an increase of 1.25 cents per day per capacity from the Last-Approved Tariff. SOCAN explains that the proposed increase is based on inflation and calculated according to the Board's default methodology for adjusting royalties due to inflation.

[9] Like the Last-Approved Tariff, the Proposed Tariff includes the requirement to submit annual reports on authorized capacity and the number of days in operation to SOCAN no later than January 31 of the following year so the adjustment of the royalties can be made.

[10] One change from the Last-Approved Tariff is that SOCAN has proposed to delete a clause allowing for independent auditors to be appointed. SOCAN argues in its Notice of Grounds:

"This clause was removed from approved Tariff 3.B (2018-2015) [*sic*] in 2022. Since 2013, no Tariff 3 licensee has availed itself of the right to ask for an independent auditor to be appointed. In its decision approving Tariff 3.B (2018-2025), the Board removed this clause noting that (1) it had received no objections in respect of the removal of this clause, and (2) it is highly unlikely that harm will be caused to the users of the tariff as a result of its removal."²

III. Issues:

[11] In reviewing the record, I considered the following issues:

- a. Whether the Last-Approved Tariff is an appropriate proxy in this proceeding;
- b. The reasonableness of the proposed royalty-rate increase in light of inflation and the Board's default methodology;
- c. The impact of the removal of the independent auditor clause on the users of the

¹ SOCAN 3.C 2023-2025.

² SOCAN Notice of Grounds for Proposed Tariff 3.C 2026-2028.

tariff.

A. Whether the Last-Approved Tariff is an appropriate proxy in this proceeding.

[12] The Last-Approved Tariff is in my view an appropriate proxy in this proceeding.

[13] 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. In recent decisions, the Board has identified changes in the relevant market as one potential indicator of whether an adjustment to the royalty rate is appropriate or necessary.³

[14] The Last-Approved Tariff was issued in September 2023. In this proceeding, SOCAN has not proposed any market-based changes to the royalty rates beyond the adjustment for inflation and has not mentioned any other changes to the market.

[15] Since there is no information on the record that points to market-based changes relevant to the consideration of this Proposed Tariff, I have no reason to question the appropriateness of the proxy as a starting point.

B. The reasonableness of the proposed royalty rate increase in light of inflation and the Board's default methodology.

[16] SOCAN submits, in its Notice of Grounds, that its proposed increase to the royalty rate, compared to the Last-Approved Tariff, is an adjustment to account for inflation “according to the Board’s established CPI-adjustment formula.”

[17] The Board has found in the past that adjustments for inflation were appropriate as they preserved the purchasing power of rights owners’ royalties.⁴ In some circumstances, as noted by the Board,⁵ failing to adjust royalty payments for inflation would allow it to erode the value of music (or more precisely, the use of music). This statement is true in this proceeding as well.

[18] The Board’s default methodology⁶ is used to calculate the adjustment for inflation in this proceeding. The inflation is measured as the percentage change in the Consumer Price Index, all items, not seasonal-adjusted and not adjusted for taxes, from the month following the last adjustment period to the last full-year of data available, ending no later than the end of the year preceding the tariff’s effective period. I find this measure to be the most representative and most relevant for our purposes.

³ For example, *SOCAN Tariff 9 – Sports Events (2018-2023)*, 2021 CB 6.

⁴ For example, *SOCAN Tariff 14 – Performance of an Individual Work (2025-2027)*, 2024 CB 4.

⁵ *SOCAN, Re: Sound - Tariff for CBC Radio, 2006-2011*.

⁶ Copyright Board, *Inflation Adjustments to Royalty Rates: Default Methodology*, 2024 (the “Guidelines”).

[19] The last inflation adjustment period ended in December 2021, as mentioned in the September 2023 decision. Therefore, for the current proceeding, the inflation adjustment period runs from January 2022 to December 2024. The CPI for January 2022 is 145.3, and for December 2024 is 161.2. Applying the inflation calculation method,⁷ the inflation calculation yields the inflation rate of 10.94% for this period.

[20] Applying this 10.94% to the last approved minimum fee of 5.50 cents per day results in a new minimum annual royalty rate of 6.10 cents per day.

[21] SOCAN's Tariff 3.C, after adjusting for inflation, would represent 6.10 cents per day, multiplied by the establishment's authorized capacity. By contrast, Re:Sound's corresponding tariff, Re:Sound Tariff 6.C was recently approved with a rate of 6.29 cents per day per unit of seating and standing capacity for the period 2024 to 2028⁸. This would imply that the Re:Sound rate would be higher than SOCAN's for the same use of music.

[22] There is a long-standing principle of parity of rates between authors' rights and neighbouring rights, for the same activity and all other things being equal, since there are no reasons to believe that a sound recording is worth more to the same users than the underlying work in that sound recording.⁹ I agree with this approach and believe it applies here. As a matter of public interest, I therefore adjust the rate to preserve the parity principle between the SOCAN 3.C with the Re:Sound 6.C rates. I use the last calculated repertoire share set out in the 2021 Re:Sound 6.C¹⁰ decision of 93.72% and set the rate of SOCAN 3.C at 6.71 cents (per day, per authorized seating and standing capacity) for the period 2024 to 2028.

C. The impact of the removal of the independent auditor clause on the users of the tariff.

[23] As noted in paragraph 10 above, SOCAN has requested the removal of the following independent auditor clause in the Last-Approved Tariff:

The licensee may request that the examination be made by an independent auditor chosen by the licensee from a list of at least three auditors furnished by SOCAN. In such a case, only the auditor so appointed need be allowed access to the licensee's records. If the audit discloses that the licence fee owed to SOCAN has been understated by more than 10 per cent, the licensee shall pay the auditor's fees.

⁷ See the Guidelines under section "Step 1: Determination of the Inflation Rate" at p 4.

⁸ *Re:Sound Tariff 6.C – Use of Recorded Music to Accompany Adult Entertainment (2024-2028)*, 2025 CB 10-T.

⁹ *NRCC - Tariff 1.A (Commercial Radio), 1998-2002* - Copyright Board of Canada, p 20.

¹⁰ *Re:Sound Tariff 6.C - Use of Recorded Music to Accompany Adult Entertainment (2019-2023)*, 2021 CB 2 at para 16-20.

[24] The Board has in the past refused to remove this clause, given the potential adverse effects of such a removal.¹¹ However, I accept SOCAN's factual declaration that no user has availed themselves of the right to an independent audit since 2013.

[25] This suggests that a clause removal is unlikely to affect the users of the tariff. Its removal will also potentially spare SOCAN from the costs associated with administering this clause.

[26] However, to ensure consistency with Re:Sound 6.C, I consulted with SOCAN with a view to adding a clause aimed at circumscribing the use of information received under this tariff based on the text of Re:Sound 6.C.

[27] As per Order CB-CDA 2025-056, SOCAN suggested changes to the Re:Sound 6.C clause. I prefer not to include those suggested changes as they either defeat the purpose of a unified approach to dealing with these specific users' information or may have potential unintended consequences.

IV. Conclusion

[28] For these reasons, the Proposed Tariff, with changes to the royalty rate, removal of the independent auditor clause, and added framework for the treatment of confidential information, is approved under the title SOCAN Tariff 3 – Adult Entertainment (2026-2028). The royalty is set at 6.71 cents per day, multiplied by the establishment's authorized capacity (seating and standing).

¹¹ *SOCAN Tariff 3.C (2018-2022)*, 2020 CB 008.