

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2017-05-19

Citation CB-CDA 2017-49

Regime Collective Administration of Performing and of Communication Rights
Copyright Act, subsection 68(3)

Members The Honourable Robert A. Blair
Mr. Claude Majeau
Mr. J. Nelson Landry

Proposed Tariffs Considered SOCAN Tariff 1.C – Radio – Canadian Broadcasting Corporation (2012-2014)
SOCAN Tariff 22.E – Internet – Canadian Broadcasting Corporation (2007-2013)

Statement of Royalties to be collected for the communication to the public by telecommunication, in Canada, of musical or dramatico-musical works

Reasons for decision

I. INTRODUCTION

[1] The present reasons deal with two single-user tariffs, filed by the Society of Composers, Authors and Music Publishers of Canada (SOCAN) and targeting the Canadian Broadcasting Corporation (CBC). Tariff 1.C pertains to the use of SOCAN's repertoire on CBC radio and Tariff 22.E pertains to the use of SOCAN's repertoire on CBC Internet sites.

[2] In March of 2006 through 2012, SOCAN filed proposed Tariffs 22.E for the years 2007 to 2013. CBC filed timely objections for all years.

[3] In March of 2011 through 2013, SOCAN also filed proposed Tariffs 1.C for the years 2012 to 2014. CBC filed a timely objection in 2012 but did not object to 2013 or 2014.

[4] On November 28, 2012, SOCAN wrote to the Board, attaching a copy of an agreement with CBC including a "Settlement Tariff" 22.E for the years 2007-2013. On January 11, 2013, SOCAN wrote to the Board, giving further explanations about the Settlement Tariff.

[5] On June 4, 2013, SOCAN wrote to the Board, making the following points about Tariff 1.C. First, SOCAN had not intended to request a higher rate for 2012 than for 2011. Once the decision in *CBC Radio, 2011*¹ was released, SOCAN filed the same rate as 2011 for 2013. Second, CBC agreed to withdraw its objection to the 2012 tariff if SOCAN agreed – which it did – to propose the same rate for 2012. Third, CBC agreed not to object to the 2014 tariff, since it was proposed at the same rate as 2011. As a result, the proposed Tariff 1.C is unopposed for the years 2012-2014.

II. THE AGREED TARIFFS

[6] With respect to Tariff 1.C, SOCAN and CBC agreed to a monthly payment of \$144,406.60, the same as the certified rate for 2011.

[7] With respect to Tariff 22.E, SOCAN and CBC agreed to two payment formulas, one relating to the tou.tv service and one relating to all other Internet services except cbc.music.ca and espace.mu. The parties agreed to carve out the latter two Internet services for future discussion between them.

[8] For tou.tv, the formula is

A x B, where

A is 1.9 per cent of tou.tv's Internet-related revenues; and

B is the ratio of audio page impressions to all page impressions relating to tou.tv, if that ratio is available, and 0.75 if not.

[9] For all other Internet services, the formula is

A x B, where

A is 10 per cent of the total amount payable by CBC to SOCAN under tariffs 1.C and 2.D (Television – CBC) or by agreement between the parties; and

B is the ratio of audio page impressions to all page impressions relating to online programming, if that ratio is available, and 0.15 if not.

[10] As SOCAN points out, the formula not relating to tou.tv is the same as the Board certified for the years 1996 to 2006. The formula relating to tou.tv is the same as the online audiovisual tariff, 22.D.1.²

¹ *SOCAN-Re:Sound CBC Radio Tariff, 2006-2011* (8 July 2011) Copyright Board Decision at paras 82-91.

² Statement of Royalties to Be Collected by SOCAN for the Communication to the Public by Telecommunication, in

III. ANALYSIS

[11] The two tariffs at issue here (1.C and 22.E) are both single-user tariffs where CBC is the sole user. As such, many of the considerations articulated about agreements in *Re:Sound 5* do not apply here.³

[12] Furthermore, both agreed-upon tariffs are substantially similar to the corresponding previously certified tariff versions. Accordingly, we certify Tariffs 1.C for the years 2012 to 2014 and 22.E for the years 2007 to 2013, as agreed by SOCAN and CBC, with one exception.

[13] The 22.E Settlement Tariff would allow CBC to communicate to the public by telecommunication musical works “for private or domestic use,” in connection with their over-the-air broadcasting operations. For reasons expressed in a recent decision of the Board,⁴ and that do not need to be repeated here, we do not include this wording in the tariff we certify.

[14] Our only comment is with respect to the 22.E Settlement Tariff use of page impression ratios, with defaults if these ratios are not available. Given the evolution in technology, such as web pages with dynamic elements and rich Internet applications, page impressions may no longer be relevant.

[15] For example, in *Re:Sound Tariff 8 – Non-Interactive and Semi-Interactive Webcasts, 2009-2012*, the Board noted as follows: “We agree with Re:Sound that, with the development of web pages with dynamic elements and rich Internet applications, page impressions no longer measure reliably the amount of music being listened to over the Internet.”⁵

[16] However, we understand that SOCAN and CBC will assess whether the page impression provision remains appropriate for the next proposed Tariff 22.E.



Canada, of Musical or Dramatico-Musical Works for the years 2007 to 2013, *Tariff No. 22.D.1 – Online Audiovisual Services (2007-2013)*, *Canada Gazette*, July 19, 2014.

³ *Re:Sound Tariff 5 – Use of Music to Accompany Live Events, 2008-2012 (Parts A to G)* (25 May 2012) Copyright Board Decision at para 10.

⁴ See *Commercial Radio Tariff (SOCAN: 2011-2013; Re:Sound: 2012-2014; CSI: 2012-2013; Connect/SOPROQ: 2012-2017; Artisti: 2012-2014)* (21 April 2016) Copyright Board Decision at paras 377- 385.

⁵ *Re:Sound Tariff 8 – Non-Interactive and Semi-Interactive Webcasts, 2009-2012* (16 May 2014) Copyright Board Decision at para 112. See also: *SOCAN Tariff 22.D.1 – Audiovisual Webcasts 2007-2013* (18 July 2014) Copyright Board Decision at para 55.

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