

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Citation *SOCAN Tariff 1.B (2018-2021)*, 2020 CB 005

Member Nathalie Théberge

Proposed Tariffs SOCAN Tariff 1.B – Radio – Non-Commercial Radio Other than the Canadian Broadcasting Corporation (2018)

Considered SOCAN Tariff 1.B – Radio – Non-Commercial Radio Other than the Canadian Broadcasting Corporation (2019-2020)

SOCAN Tariff 1.B – Radio – Non-Commercial Radio Other than the Canadian Broadcasting Corporation (2021)

Approval of Proposed Tariffs

As

***SOCAN Tariff 1.B – Radio – Non-Commercial Radio
other than the Canadian Broadcasting Corporation (2018-2021)***

REASONS FOR DECISION

I. OVERVIEW

TARIFFS CONSIDERED

[1] The Society of Composers, Authors and Music Publishers of Canada (SOCAN) filed the following proposed tariffs, applicable to *non-commercial radio stations other than the Canadian Broadcasting Corporation*, for approval by the Copyright Board:

- Statement of Proposed Royalties to Be Collected by SOCAN for the Public Performance or the Communication to the Public by Telecommunication, in Canada, of Musical or Dramatico-Musical Works (2018), (29 April 2017) C Gaz Supplement, Vol 151 No 17;
- Statement of Proposed Royalties to Be Collected by SOCAN for the Public Performance or the Communication to the Public by Telecommunication, in Canada, of Musical or Dramatico-Musical Works (2019-2020), (5 May 2018) C Gaz Supplement, Vol 152 No 18;

- Statement of Proposed Royalties to Be Collected by SOCAN for the Public Performance or the Communication to the Public by Telecommunication, in Canada, of Musical or Dramatico-Musical Works (2021), (18 May 2019) C Gaz Supplement, Vol 153 No 20.

[2] The proposed tariffs were published in the Canada Gazette on the dates indicated above, and prospective users and their representatives were given notice of their right to file objections to the proposed tariffs. There were no objections raised by any users or their representatives for the years 2018 to 2021.

[3] For the following reasons, we find that SOCAN Tariff 1.B meets the requirement of being fair and equitable, and as a result, we approve it.

II. BACKGROUND

[4] Non-commercial radios such as community and campus radios rely on SOCAN's repertoire for their conventional and online radio programming. Their interests as users of copyright content have been represented in the past by the Alliance des radios communautaires du Canada, the Association des radiodiffuseurs communautaires du Québec and the National Campus and Community Radio Association (the Associations).

[5] SOCAN, a collective society administering certain aspects of copyright in musical works, filed with the Copyright Board for approval its proposed tariffs for the use of its repertoire (Tariff 1.B) by non-commercial radio stations from 2018 to 2021, on March 31, 2017, March 29, 2018, and March 28, 2019.

[6] The proposed Tariff 1.B would authorize users to perform over the air or over the Internet, at any time and as often as desired, for private and domestic use, any or all of the works in SOCAN's repertoire by a non-commercial AM, FM or Internet-only radio station other than a station of the Canadian Broadcasting Corporation.

[7] SOCAN's proposed tariffs set out a rate and terms and conditions that are unchanged from the last approved Tariff 1.B. (for 2007-2017), namely 1.9 per cent of the station's gross operating costs (including its gross Internet operating costs) in the years covered by the licence.

[8] SOCAN's proposals were duly published and never opposed by the Associations or any other potential users.

III. REASONS FOR THE DECISION

[9] The proposed tariffs set the same royalty rate as in the last approved tariff. We are not aware of any changes in the market that would lead us to conclude that such royalty rate is not fair and equitable for the years 2018 to 2021. Furthermore, we have not identified any other aspect of the proposed tariffs that should be altered, except for the modification described below.

[10] The tariffs proposed by SOCAN would allow non-commercial radio stations to communicate to the public by telecommunication works and published sound recordings “for private or domestic use,” in connection with their over-the-air broadcasting or internet operations.

[11] In the past, the Board explained that the qualifier related to “private or domestic use” is ambiguous and inappropriate in the sense that it may restrict the tariff to those communications that result in private or domestic use.¹ Without repeating in detail the Board’s reasons for rejecting this restriction, suffice it to emphasize that a broadcaster or webcaster has no control over the end-point use of its programming or any way of knowing anything about it, raising serious potential issues about enforcement and, in turn, compliance with the present tariff.

[12] Accordingly, we do not include this wording in the tariff we approve.

[13] Lastly, to facilitate the administration of the approved tariff, we are amending the last paragraph of the tariff to clarify that it does not apply to music in connection with the transmission by a distribution undertaking of a pay audio signal.² This change does not alter the scope of the tariff.

IV. CONCLUSION

[14] Compared with the last approved SOCAN Tariff 1.B (for 2007-2017), the rate and terms and conditions in the tariff proposals are mostly unchanged for the years 2018, 2019, 2020 and 2021. With only minor modifications to the language, we find the proposed tariffs to be fair and equitable, and approve them as *SOCAN Tariff 1.B – Radio – Non-Commercial Radio other than the Canadian Broadcasting Corporation (2018-2021)*.

¹ *Commercial Radio* (21 April 2016), Copyright Board at paras 377.

² The current applicable tariff for pay audio services is *SOCAN-NRCC Pay Audio Services Tariff, 2007-2009*.