

Copyright Board  
Canada



Commission du droit d'auteur  
Canada

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**Citation** *CBC Radio Tariff (SOCAN: 2015-2018; Re:Sound: 2012-2019)*, 2020 CB 016

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**Proposed Tariffs Considered** SOCAN Tariff No. 1.C. Radio – Canadian Broadcasting Corporation (2015)  
SOCAN Tariff No. 1.C. Radio – Canadian Broadcasting Corporation (2016)  
SOCAN Tariff No. 1.C. Radio – Canadian Broadcasting Corporation (2017)  
SOCAN Tariff No. 1.C. Radio – Canadian Broadcasting Corporation (2018)  
Re:Sound Tariff No. 1.C – Canadian Broadcasting Corporation (CBC) (2012)  
Re:Sound Tariff No. 1.C – Canadian Broadcasting Corporation (CBC) (2013-2016)  
Re:Sound Tariff No. 1.C – Canadian Broadcasting Corporation (CBC) (2017-2019)  
Re:Sound Tariff 1.C.2 – CBC Radio Simulcasting (2016)  
NRCC Tariff 8 – Simulcasting and Webcasting (2009-2012) [simulcast of CBC only]  
Re:Sound Tariff 8 – Simulcasting, Non-Interactive Webcasting and Semi-Interactive Webcasting (2013) [simulcast of CBC only]  
Re:Sound Tariff 8 – Simulcasting, Non-Interactive Webcasting and Semi-Interactive Webcasting (2014) [simulcast of CBC only]  
Re:Sound Tariff 8 – Simulcasting, Non-Interactive Webcasting and Semi-Interactive Webcasting (2015) [simulcast of CBC only]

### **Approval of Proposed Tariffs**

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***Tariff 1.C – Radio – Canadian Broadcasting Corporation (SOCAN: 2015-2018; Re:Sound: 2012-2019)***

### **REASONS FOR DECISION**

## **I. INTRODUCTION**

[1] On November 29, 2019, Re:Sound, SOCAN and the Canadian Broadcast Corporation (the CBC) jointly requested that a tariff entitled *CBC Radio Tariff* be approved for the years 2012-2019

for Re:Sound and for the years 2015-2018 for SOCAN (“the Settlement Tariff”). The Settlement Tariff is for the communication made by the CBC to the public by telecommunication by over-the-air radio broadcasting and simulcast in Canada.

[2] For the following reasons, we approve the parties’ request, with minor changes.

## **II. OVERVIEW**

[3] The Settlement Tariff sets the royalties to be paid by the CBC, its sole user, on behalf of the radio networks and stations it owns and operates.

[4] It covers the communication to the public by telecommunication by over-the-air radio broadcasting and simulcast in Canada of musical and dramatico-musical works in the repertoire of SOCAN for the years 2015-2018, and the communication to the public by telecommunication by over-the-air radio broadcasting and simulcast of published sound recordings embodying musical works and performers’ performances of such works in the repertoire of Re:Sound for the years 2012-2019 for private or domestic use.

[5] While the submitted Settlement Tariff itself appears to be straightforward, it is derived from a complicated web of proposed and approved tariffs which we need to briefly recapitulate here.

### **A. THE SOCAN PROPOSED TARIFFS**

[6] In our view, the same reasoning applies also in this case. To address this issue, we modify the terms and conditions of the Settlement Tariff to specify that: “(a)ny overpayment resulting from an error or omission on the part of Re:Sound shall bear interest from the date of the overpayment until the overpayment is refunded.”

- 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 (2015), (June 21, 2014) C Gaz Supplement, Vol 148 No 25;
- 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 (2016), Canada Gazette (July 4, 2015) C Gaz Supplement, Vol 149 No 27;
- 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 (2017), (June 25, 2016) C Gaz Supplement, Vol 150 No 26;
- 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), (April 29, 2017) C Gaz Supplement, Vol 151 No 17.

[7] All four statements of proposed royalties are fully consolidated in the present Settlement Tariff and replicate the rate structure approved by the Board for 2012-2014 in its SOCAN CBC Radio

Tariff, 2012-2014<sup>1</sup> decision. They also cover the same activities: over-the-air radio broadcasting and simulcasting activities.

## **B. THE RE:SOUND PROPOSED TARIFFS**

[8] The history of Re:Sound's tariffs is less linear.

[9] Re:Sound filed the following proposed tariffs, applicable to the CBC, for approval by the Copyright Board:

- Statement of Proposed Royalties to Be Collected by NRCC for the Performance in Public or the Communication to the Public by Telecommunication, in Canada, of Published Sound Recordings Embodying Musical Works and Performers' Performances of Such Works (2009-2013), (May 31, 2008) C Gaz Supplement, Vol 142 No 22;
- Statement of Proposed Royalties to Be Collected by Re:Sound for the Performance in Public or the Communication to the Public by Telecommunication, in Canada, of Published Sound Recordings Embodying Musical Works and Performers' Performances of Such Works (2012), (June 4, 2011) C Gaz Supplement, Vol 145 No 23;
- Statement of Proposed Royalties to Be Collected by Re:Sound for the Performance in Public or the Communication to the Public by Telecommunication, in Canada, of Published Sound Recordings Embodying Musical Works and Performers' Performances of Such Works (2013-2016), (June 9, 2012) C Gaz Supplement, Vol 146 No 23;
- Statement of Proposed Royalties to Be Collected by Re:Sound for the Performance in Public or the Communication to the Public by Telecommunication, in Canada, of Published Sound Recordings Embodying Musical Works and Performers' Performances of Such Works (2014), (June 15, 2013) C Gaz Supplement, Vol 147 No 24;
- Statement of Proposed Royalties to Be Collected by Re:Sound for the Performance in Public or the Communication to the Public by Telecommunication, in Canada, of Published Sound Recordings Embodying Musical Works and Performers' Performances of Such Works (2015), (June 14, 2014) C Gaz Supplement, Vol 148 No 24;
- Statement of Proposed Royalties to Be Collected by Re:Sound for the Performance in Public or the Communication to the Public by Telecommunication, in Canada, of Published Sound Recordings Embodying Musical Works and Performers' Performances of Such Works (2016), (June 20, 2015) C Gaz Supplement, Vol 149 No 25;
- Statement of Proposed Royalties to Be Collected by Re:Sound for the Performance in Public or the Communication to the Public by Telecommunication, in Canada, of Published Sound Recordings Embodying Musical Works and Performers' Performances of Such Works (2017-2019), (June 18, 2016) C Gaz Supplement, Vol 150 No 25.

[10] The 2012 and 2013-2016 proposed 1.C tariffs of Re:Sound only cover the CBC's over-the-air radio activity, while its simulcasting activities were covered by other proposed tariffs over the same period. In fact, Re:Sound covered the CBC's activity of simulcasting in Tariff 8 - Simulcasting and Webcasting (2009-2012), Tariff 8 – Simulcasting, Non-Interactive Webcasting

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<sup>1</sup> *SOCAN Tariff 1.C – Radio – Canadian Broadcasting Corporation (2012-2014)*, (May 19, 2017) CB-CDA 2017-49 (decision) [*SOCAN Tariff 1.C (2012-2014)*]

and Semi-Interactive Webcasting (2013, 2014, 2015) and Tariff 1.C.2 – CBC Radio Simulcasting (2016).

[11] Contrary to previous versions, the proposed 1.C tariff for 2017-2019 includes both over-the-air radio broadcasting and simulcasting activities.

[12] The fee structure of Re:Sound in the Settlement Tariff is notably different from what was initially proposed in the above proposed tariffs.

[13] Currently, Re:Sound’s proposed statements of royalties generally contain provisions aiming to exclude a dual application of potentially overlapping tariffs.

### **C. THE SETTLEMENT TARIFF**

[14] On July 2, 2019, Re:Sound, SOCAN and the CBC reached an agreement in principle. The rate structure in the Settlement Tariff is based on the rate structure approved in *SOCAN-Re:Sound – CBC Radio Tariff, 2006-2011*<sup>2</sup> for 2011, replicated for SOCAN, and adjusted for inflation for Re:Sound.

[15] On November 29, 2019, after finalizing the language of the settlement, the parties filed a Joint Request for Certification of Tariff 1.C, CBC Radio Tariff (SOCAN: 2015-2018; Re:Sound: 2012-2019).

### **III. ISSUES**

[16] Whether the Settlement Tariff proposal jointly filed on November 29, 2019, by Re:Sound, SOCAN and the CBC is fair and equitable and as such, a tariff should be approved based on the language of the Settlement Tariff.

### **IV. ANALYSIS**

[17] Under section 66.501 of the *Copyright Act*, the Board is required to fix royalty rates and any related terms and conditions under the Act that are fair and equitable.

[18] In *Re:Sound Tariff 6.A (2013–2018)*, the Board indicated that “in circumstances where a tariff has previously been approved, and where there are no changes in the settlement tariff, or where those changes have been explained (either by the Parties or the Board), then the Board may use that as indication of the substantive fairness of the settlement”<sup>3</sup>.

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<sup>2</sup> *SOCAN-Re:Sound CBC Radio Tariff, 2006-2011* (July 9, 2011) C Gaz Supplement Vol 145 No 28

<sup>3</sup> *Re:Sound Tariff 6.A (2013–2018)*, 2020 CB 004 (July 31, 2020) at para. 16.

## **A. RATES**

[19] The SOCAN rates in the Settlement Tariff for the years 2015-2018 are the same as the approved rates for the years 2011-2014, while the Re:Sound rates in the Settlement Tariff for the years 2012-2019 are increased by less than the 12.8 per cent inflation applicable to the same period. In their request, the parties described the change in Re:Sound rates as a slight adjustment: we agree with that characterization. On that basis, we are satisfied that the fee structure for the Settlement Tariff is appropriate.

[20] Therefore, we are satisfied that the rates proposed in the Settlement Tariff are fair and equitable.

## **B. SCOPE OF USE**

[21] Subsection 3(1) of the Settlement Tariff refers to royalties paid for the communication to the public by telecommunication for “private and domestic use”. The Board considers that the use of the words “private or domestic use” is ambiguous and inappropriate: 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 compliance with the present tariff<sup>4</sup>. As a result, this wording is not being included in the approved tariff.

## **C. RELATIONSHIP WITH OTHER TARIFFS**

[22] As indicated in its August 2019 *Practice Notice on Filing of Proposed Tariffs*<sup>5</sup>, the Board discourages the use of references to other documents: vague, ambulatory and circular references can create uncertainty.

[23] Section 4 of the Settlement Tariff includes SOCAN rates ranging from 2012 to 2019. However, SOCAN rates for 2012, 2013 and 2014 have already been approved by the Board in *SOCAN Tariff No. 1.C – Radio – Canadian Broadcasting Corporation (2012-2014)*<sup>6</sup>. Because the Board is no longer seized of the matter for that period, SOCAN rates for 2012, 2013 and 2014 are not being included in the approved tariff.

[24] In a similar fashion, subsection 3(2) of the Settlement Tariff excludes its application to acts already covered by a series of pre-existing tariffs. While admittedly inserted to provide greater certainty, this statement does not adequately identify individual, static tariffs whose scope can be ascertained. For clarity purposes, subsection 3(2) of the Settlement Tariff is not being included in the approved tariff.

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<sup>4</sup> Commercial Radio Tariff (SOCAN: 2011-2013; Re:Sound: 2012-2014; CSI: 2012-2013; Connect/SOPROQ: 2012-2017; Artisti: 2012-2014) (April 21, 2016)(decision)

<sup>5</sup> Copyright Board, *Practice Notice on Filing of Proposed Tariffs* [PN 2019-004](August 2019)

<sup>6</sup> *SOCAN Tariff 1.C (2012-2014)*, supra note 1

#### **D. TERMS AND CONDITIONS**

[25] Compared with the last approved tariff, the parties have added the definitions of “device” “month” and “simulcast”. They have also made minor changes to the music use reporting requirements and added a section for delivery of notices and payments, consistent with other tariffs. These are being added to the approved tariff.

#### **V. CONCLUSION**

[26] For these reasons, we conclude that the Settlement Tariff meets the requirement of being fair and equitable and approve it as *Tariff 1.C – Radio – Canadian Broadcasting Corporation (SOCAN: 2015-2018; Re:Sound: 2012-2019)*. The Board issues a tariff based on the text of that settlement, but does not include the following:

- a. The reference to SOCAN rates for 2012, 2013 and 2014 in section 4;
- b. The reference to “private or domestic use” in subsection 3(1);
- c. Subsection 3(2).