

Copyright Board
Canada



Commission du droit d'auteur
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Citation *SOCAN Tariffs 12.A & 12.B (2018-2022)*, 2021 CB 4

Member Katherine Braun

Proposed Tariffs SOCAN Tariff 12.A – Theme Parks, Ontario Place Corporation and Similar Operations, 2018-2020

Considered SOCAN Tariff 12.A – Theme Parks, Ontario Place Corporation and Similar Operations, 2021-2022
SOCAN Tariff 12.B – Paramount Canada's Wonderland Inc. and Similar Operations, 2018-2020
SOCAN Tariff 12.B – Paramount Canada's Wonderland Inc. and Similar Operations, 2021-2022

Approval of Proposed Tariffs

As

SOCAN Tariff 12.A – Theme Parks, Ontario Place Corporation and Similar Operations (2018-2022)

SOCAN Tariff 12.B – Paramount Canada's Wonderland Inc. and Similar Operations (2018-2022)

REASONS FOR DECISION

I. INTRODUCTION

[1] [1] This proceeding considers proposed tariffs filed with the Copyright Board of Canada (the "Board") for the years 2018-2020 and 2021-2022 by the Society of Composers, Authors and Music Publishers of Canada (SOCAN) in respect of the royalties that theme parks must pay for the public performance of musical works in SOCAN's repertoire.

[2] Proposed tariffs 12.A for Theme Parks, Ontario Place Corporation and Similar Operations for the years 2018-2020 and 2021-2022, respectively, were filed on March 31, 2017 and March 28, 2019. Proposed tariffs 12.B for Paramount Canada's Wonderland and Similar Operations for 2018-2020 and 2021-2022 were also filed on March 31, 2017 and March 28, 2019 respectively (the "Proposed Tariffs"). There are no objectors participating in the proceeding.

[3] Under section 66.501 of the *Copyright Act* (the “Act”), the Board is required to “fix royalty and levy rates and any related terms and conditions under the Act that are fair and equitable”¹. For the following reasons, we find the rates and related terms and conditions provided for in the Proposed Tariffs to be fair and equitable.

[4] The Proposed Tariffs provide for the same rates and related terms and conditions as those in the last Board approved tariffs, thereby creating no change. No market changes were observed and we conclude there are elements that suggest that the Proposed Tariffs are aligned with the public interest. The proposed rates are self-adjusting and thus do not require any adjustment to account for the COVID-19 pandemic.

[5] We therefore approve the Proposed Tariffs without modification as *SOCAN Tariff 12.A – Theme Parks, Ontario Place Corporation and Similar Operations (2018-2022)* and *SOCAN Tariff 12.B – Paramount Canada’s Wonderland Inc. and Similar Operations (2018-2022)*.

II. OVERVIEW

A. LAST APPROVED TARIFFS

[6] On May 6, 2017, the Board approved *SOCAN Tariff 12.A – Theme Parks, Ontario Place Corporation and Similar Operations, 2013-2017* and *SOCAN Tariff 12.B – Paramount Canada’s Wonderland Inc. and Similar Operations, 2013-2017*².

[7] In respect of both approved tariffs, the Board set different rates for 2013-2014 and for 2015-2017, where the Board adjusted the rates to account for inflation³. There were no other changes.

Rates Set by the Board for the Years 2013-2017

Period	Tariff 12.A	Tariff 12.B
2013-2014	\$2.41 per 1 000 persons in attendance on days on which music is performed, rounding the number of persons to the nearest 1 000 PLUS 1.5 per cent of “live music entertainment costs”	\$5.09 per 1 000 persons in attendance on days on which music is performed, rounding the number of persons to the nearest 1 000 PLUS 1.5 per cent of “live music entertainment costs”
2015-2017	\$2.59 per 1 000 persons in attendance on days on which music is performed, rounding the number of persons to the nearest 1 000 PLUS 1.5 per cent of “live music entertainment costs”	\$5.60 per 1 000 persons in attendance on days on which music is performed, rounding the number of persons to the nearest 1 000 PLUS 1.5 per cent of “live music entertainment costs”
“Live music entertainment costs” means all direct expenditures of any kind and nature (whether in		

¹ *Copyright Act*, RSC 1985, c C-42 [Act].

² *SOCAN – Various Tariffs, 2007-2017* (6 May 2017) C Gaz Supplement, Vol 151 No 18, at pp 24-26.

³ In the case of Tariff 12.A, the last inflation adjustment had been done in 2004. In the case of Tariff 12.B, it was done in 2002. *SOCAN – Various Tariffs, 2007-2017* (5 May 2017) Copyright Board decision, paras 5-8.

money or other form) paid by the licensee or on the licensee's behalf for all live entertainment during which live music is performed on the premises. It does not include amounts expended for stage props, lighting equipment, set design and costumes, or expenditures for renovation, expansion of facilities or furniture and equipment.

B. PROPOSED TARIFFS UNDER CONSIDERATION

[8] On March 31, 2017, SOCAN filed the following proposed tariffs in respect of the performance in public of musical works in its repertoire:

- *SOCAN Tariff 12.A – Theme Parks, Ontario Place Corporation and Similar Operations (2018-2020)*
- *SOCAN Tariff 12.B – Paramount Canada's Wonderland Inc. and Similar Operations (2018-2020)*

[9] On March 28, 2019, SOCAN filed the proposed tariffs listed below in respect of the performance in public of musical works in its repertoire:

- *SOCAN Tariff 12.A – Theme Parks, Ontario Place Corporation and Similar Operations (2021-2022)*
- *SOCAN Tariff 12.B – Paramount Canada's Wonderland Inc. and Similar Operations (2021-2022)*

[10] On April 29, 2017, proposed SOCAN Tariffs 12.A and 12.B for 2018-2020 were published in the Canada Gazette⁴. On May 18, 2019, proposed SOCAN Tariffs 12.A and 12.B for 2021-2022 were published in the Canada Gazette⁵.

[11] Restaurants Canada filed an objection to proposed SOCAN Tariffs 12.A and 12.B (2018-2020) on June 28, 2017. No objections to proposed SOCAN Tariffs 12.A and 12.B (2021-2022) were received.

[12] On December 16, 2020, the Board advised SOCAN and Restaurants Canada, the sole objector, that it was ready to proceed with the consideration of several proposed tariffs, including proposed SOCAN Tariff 12.A (2018-2020) and proposed SOCAN Tariff 12.B (2018-2020)⁶. It requested that Restaurants Canada confirm its intention to participate in the proceedings on or before January 15, 2021. The Board advised that failure to respond would result in Restaurants Canada being deemed not to participate in the proceeding. No response from Restaurants Canada was received and it was deemed not to be a participant. As a result, there are no objectors participating in the proceeding.

⁴ 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 (2018-2020), (29 April 2017) C Gaz Supplement, Vol 151 No 17, at p 35 et seq.

⁵ 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 (2021-2022), (18 May 2019) C Gaz Supplement, Vol 153 No 20, at p 33 et seq.

⁶ Notice of the Board CB-CDA 2020-056 (16 December 2020).

C. RATES PROVIDED FOR IN THE PROPOSED TARIFFS

i. Tariff 12.A – Theme Parks, Ontario Place Corporation and Similar Operations

[13] The fees proposed by SOCAN for a licence to perform works in its repertoire are identical in both proposed tariffs for the years 2018-2020 and 2021-2022 and remain unchanged from the rates fixed by the Board for 2015-2017.

[14] SOCAN proposes a fee comprised of \$2.59 per 1 000 persons in attendance on days where music is performed, rounding the number of persons to the nearest 1 000, plus 1.5 per cent of “live music entertainment costs.”

ii. Tariff 12.B – Theme Parks, Paramount Canada’s Wonderland Inc. and Similar Operations

[15] Similarly, the fees proposed by SOCAN for a licence to perform works in its repertoire for the years 2018-2020 and 2021-2022 are identical in both proposed tariffs and are unchanged from the rates fixed by the Board for 2015-2017.

[16] The fee proposed by SOCAN is comprised of \$5.60 per 1 000 persons in attendance on days where music is performed, rounding the number of persons to the nearest 1 000, plus 1.5 per cent of “live music entertainment costs.”

III. ISSUE

[17] The issue for the Board to decide is whether the rates and related terms and conditions set out in the Proposed Tariffs are fair and equitable and whether the Board should approve them.

IV. ANALYSIS

[18] Given our analysis, we are of the view that fixing the rates and related terms and conditions as set out in the Proposed Tariffs is fair and equitable. In making our determination, we examined four relevant matters that gave us confidence in our assessment, as detailed below.

A. DIFFERENCE BETWEEN THE LAST APPROVED TARIFFS AND THE PROPOSED TARIFFS

[19] The Board is required under the Act to fix royalty and related terms and conditions that are fair and equitable. To achieve this, and depending on the matter, the Board has historically taken into consideration various elements, including the extent to which proposed tariffs are similar to previously approved tariffs.

[20] Where a proposed tariff does not differ substantially from the previously approved tariff, the Board may rely on this fact as an indication that the proposed tariff is fair and equitable, particularly when there has been no change in the relevant market.

[21] The Proposed Tariffs provide for the same rates and related terms and conditions as those fixed in the last approved tariffs for 2015-2017. We are not aware of any market changes or other events since the last approval of the tariffs that would lead us to conclude that approving the

Proposed Tariffs is not fair and equitable. We believe therefore, that approving the rates and related terms and conditions as set out in the Proposed Tariffs, aligns with the interests of SOCAN repertoire users and rights holders.

B. RESULT THAT WOULD HAVE BEEN ARRIVED AT BY A WILLING BUYER AND A WILLING SELLER

[22] Modifications to the Act that came into force on April 1st, 2019 now require the Board to consider what would have been agreed upon between “a willing buyer and a willing seller acting in a competitive market with all relevant information, at arm’s length and free of external constraints” (“a willing buyer and a willing seller”). Section 66.501 of the Act reads as follows:

66.501 The Board shall fix royalty and levy rates and any related terms and conditions under this Act that are fair and equitable, in consideration of

- a. what would have been agreed upon between a willing buyer and a willing seller acting in a competitive market with all relevant information, at arm’s length and free of external constraints;
- b. the public interest;
- c. any regulation made under subsection 66.91(1); and
- d. any other criterion that the Board considers appropriate.

[23] The *Budget Implementation Act, 2018, No 27*, that amended the Act in 2019, provides that the Board is not required to consider the criteria set out in paragraphs 66.501(a) and (b) if a matter was commenced before the day on which this section came into force, that is April 1st, 2019⁷. The present matter was commenced on December 16, 2020 when the Board issued a notice advising parties that it was ready to proceed with examination of the Proposed Tariffs. Since the date of commencement is posterior to the date of the coming into force of s. 66.501, the Board must consider the criteria set out in paragraph 66.501(a) and (b) of the Act in this matter.

[24] The Board did not receive any submissions on those criteria from SOCAN, the only party to the proceeding. Given the facts of this proceeding, we have insufficient evidence to conclude what rates and related terms and conditions a willing buyer and willing seller would agree to under the characteristics of paragraph 66.501(a).

[25] However, the absence of information does not mean that the proposed rates and related terms and conditions are not fair and equitable. In our assessment, we found no indication of changes to market conditions or to other criteria that would warrant a change to the most recent rates and related terms and conditions fixed by the Board. We therefore conclude that approving the Proposed Tariffs for 2018-2022, is fair and equitable.

⁷ A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018, and other measures, SC 2018, c 27.

⁸ *Ibid.*, s. 299.

C. PUBLIC INTEREST

[26] Modifications to the Act now requires the Board to consider public interest in its assessment of fair and equitable.

[27] While we did not receive any submissions concerning public interest, we are of the view there are elements that suggest the Proposed Tariffs are aligned with the public interest. The Proposed Tariffs provide for a mechanism that simplifies lawful use of musical works by affected users in return for an acceptable fee. Rights holders are accordingly, assured compensation for the use of their works. And, as the Proposed Tariffs maintain the same rates and related terms and conditions as those fixed for 2015-2017, users of SOCAN's repertoire have continuity and predictability, thus supporting them in management of their costs and revenues.

D. THE COVID-19 PANDEMIC

[28] In determining whether a tariff is fair and equitable, the Board currently reviews all matters with the COVID-19 pandemic in mind, to determine if any adjustments are appropriate. In this proceeding, the rates in the Proposed Tariffs are based on a formula that combines a fee per persons in attendance on days when music is performed, along with a percentage of the "live music entertainment costs". As the proposed rates are self-adjusting to the use of music, we conclude that the COVID-19 pandemic has not had an impact on the fairness of the rates in the Proposed Tariffs and therefore, no change is warranted in this respect.

V. DECISION

[29] Given our review, we are satisfied that approving the Proposed Tariffs is fair and equitable, for the following reasons. The proposed rates and related terms and conditions are unchanged from those fixed in the last approved tariffs, providing users and rights holders familiar rates and related terms and conditions to 2022. We found no indication of market changes since approval of the last tariffs. And, we believe there is reason to conclude that the Proposed Tariffs are aligned with the public interest. Finally, the rates are self-adjusting and thus do not require any adjustment to account for the COVID-19 pandemic.

[30] We therefore approve the Proposed Tariffs without modification under the title *SOCAN Tariff 12.A – Theme Parks, Ontario Place Corporation and Similar Operations (2018-2022)* and *SOCAN Tariff 12.B – Paramount Canada's Wonderland Inc. and Similar Operations (2018-2022)*.