

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2022-08-17
Citation *SODRAC Tariff 5 (2017-2019)*, 2022 CB 8
Member Katherine Braun
Proposed Tariff Considered SODRAC Tariff 5 – Musical Works Embedded in Cinematographic Works for Theatrical Exhibition or Private Use, 2017-2019

Application to Withdraw Proposed Tariff
REASONS FOR DECISION

I. OVERVIEW

[1] On April 4, 2022, SOCAN¹ filed an application with the Copyright Board of Canada (the Board) pursuant to section 69 of the *Copyright Act*² (the “Act”), to withdraw the proposed SODRAC Tariff 5, 2017-2019 (the “Proposed Tariff”).

[2] Having considered SOCAN’s arguments and supporting documentation, I am satisfied that the criteria set out in subsection 69.1(1) of the Act have been met, and I grant the application.

II. PROCEDURAL HISTORY

[3] On March 31, 2016, SODRAC filed the Proposed Tariff, which was later published in the *Canada Gazette* on June 4, 2016.

[4] The Motion Picture Association – Canada (MPA-C), Québecor Média Inc. (QMI) and the Canadian Association of Film Distributors and Exporters (CAFDE) (collectively, the “Objectors”) objected to the Proposed Tariff.

¹ SOCAN acquired the Society of Reproduction Rights of Authors, Composers and Publishers Inc. (SODRAC) in July 2018. As a result, SOCAN is responsible for administering Tariff 5 and is the appropriate party to make this withdrawal application. See SOCAN’s application to withdraw the proposed tariff, para. 2.

² *Copyright Act*, RSC 1985 c C-42.

[5] On February 4, 2021, the Board issued Notice CB-CDA 2021-008 to advise Parties that a hearing on the Proposed Tariff would be held.

[6] On April 16, 2021, SOCAN informed the Objectors and the Board of its intention to make an application to withdraw the Proposed Tariff. SOCAN also advised it would publish a notice on its website and asked the Board to do the same, to provide public notice prior to filing its application. Having received no further correspondence from SOCAN on this matter, the Board issued Order CB-CDA 2022-005 on February 8, 2022, and asked SOCAN to provide additional details concerning its intention to file an application to withdraw the Proposed Tariff.

[7] On March 1, 2022, SOCAN informed the Board and the Objectors that it had posted a notice announcing its intention to withdraw the Proposed Tariff on its website, and also on SODRAC's website, on February 28, 2022, in English and French. SOCAN provided the Board with a copy of this notice and asked the Board to post it on its website, which it did on March 2, 2022, informing the Parties of the posting.

III. ISSUES

[8] Current Section 69 of the Act came into force in 2019. It permits a collective society that has filed a proposed tariff to make an application to withdraw that proposed tariff, in whole or in part, before it is approved by the Board.

[9] The Board must grant such an application if it is satisfied that the conditions set out in paragraphs 69.1(1)(a)–(c) of the Act are met.

[10] However, paragraph 69.1(1)(c) does not apply in respect of this application. Rather, it applies only in cases where an application is made with respect to a portion of the proposed effective period. Here, SOCAN has applied to withdraw the Proposed Tariff for the entire effective period.

[11] As such, I only need to consider the requirements in paragraphs 69.1(1)(a) and (b), namely:

1. Has SOCAN provided sufficient public notice of its intention to make the application?
2. Have all persons who paid royalties been addressed?

IV. ANALYSIS

A. HAS SOCAN PROVIDED SUFFICIENT PUBLIC NOTICE OF ITS INTENTION TO MAKE THE APPLICATION?

[12] Paragraph 69.1(1)(a) of the Act requires that the Board be satisfied that the collective society has provided sufficient public notice of its intention to make the application.

[13] Having reviewed the record, I find that SOCAN has provided sufficient public notice of its intention to withdraw the Proposed Tariff, and that the requirement of paragraph 69.1(1)(a) has been met :

- a. SOCAN posted its Notice of Intention to Withdraw the Proposed Tariff on its website and also on SODRAC's website, on February 28, 2022, in both English and French. The notice confirmed SOCAN's intention to make an application under section 69 of the Act, during or after the week of April 4, 2022, to withdraw the Proposed Tariff.
- b. On March 2, 2022, at the request of SOCAN, the Board posted the English and French versions of SOCAN's notice on its website. Objectors were copied on that request and on the Board's confirmation to SOCAN that it had published the notice.

[14] In making my decision, I examined past Board decisions on applications to withdraw a proposed tariff. These decisions have held that jointly posting a notice on a collective society's website and on the Board's website, is an adequate means of providing public notice. These decisions also held that doing so for a period of 30 days or more was a sufficient period of time.³

[15] In the present matter, the notice was published on the SOCAN and SODRAC websites on February 28, 2022, and on the Board's website on March 2, 2022. SOCAN filed its application to withdraw the Proposed Tariff on April 4, 2022, so public notice was available for more than 30 days from the time SOCAN made its application.

B. HAVE ALL PERSONS WHO PAID ROYALTIES BEEN ADDRESSED?

[16] Prior to approving an application to withdraw a proposed tariff, paragraph 69.1(1)(b) of the Act requires that the Board be satisfied that :

every person who, in respect of the proposed effective period, has paid royalties that would not be payable if the application were approved has:

- a. consented to the application,
- b. received a refund of the royalties, or
- c. entered into an agreement under subsection 67(3) that covers the act, repertoire or proposed effective period that is the subject of the application.

[17] SOCAN submits there are 15 users who have paid royalties to it or to SODRAC (prior to its acquisition), that could fall within the scope of Tariff 5.⁴ SOCAN explains that these users have either (a) paid royalties pursuant to direct licence agreements entered into with SOCAN prior to the application; (b) consented to the application to withdraw the Proposed Tariff; or (c) received a

³ See *Artisti - Tariffs for Online Music Services and Phonograms 2016-2021* (11 December 2019), CB-CDA 2019-085; *Artisti - CBC Tariff 2015-2020* (26 June 2020), 2020 CB 002 ; *CMRRA Online Music Services Tariff (Music Videos) (2014-2018)* (2 March 2022), 2022 CB 1 [*CMRRA OMS (2014-2018)*]; *CSI Online Music Services (2014-2018)* (25 March 2022), 2022 CB 3 [*CSI OMS (2014-2018)*].

⁴ See also e-mail from SOCAN to the Board dated April 8, 2022, confirming that number.

refund. SOCAN provided a list of these 15 users, along with their status (i.e. whether they paid under an agreement, consented or received a refund).⁵ I accept this list of users as factual.

[18] SOCAN indicates it had entered into direct licence agreements with nine of the users. While these agreements were not filed, the names of the users were. SOCAN submits that in respect of these users, the requirement of paragraph 69.1(1)(b) does not apply, because payments made by users under these agreements would be payable whether or not the application to withdraw is granted. SOCAN argues that such payments are not the type contemplated in paragraph 69.1(1)(b), namely payments “that would not be payable if the application were approved”. SOCAN submits this is consistent with a recent Board decision.⁶

[19] I agree with SOCAN’s reasoning that paragraph 69.1(1)(b) does not apply in respect of these nine users. Royalties paid under an agreement are payable regardless of the status of the proposed tariff covering the same uses as those covered by the agreements. The agreements would take precedence over any approved tariff (section 74 of the Act) and the related royalties would be payable even if the application to withdraw the tariff was approved.⁷

[20] Regarding the other six users, SOCAN notes that four users consented to the application and that two users received refunds. The consent letters signed by the four users and correspondence relating to the refunds were filed. SOCAN argues that in respect of these six users, the requirement of paragraph 69.1(1)(b) has been met.

[21] I am satisfied that the submitted letters are sufficient evidence that four users consented to the application and, that correspondence on the two users who received a refund is sufficient evidence of receipt of funds. Thus, I find that the requirement of paragraph 69.1(1)(b) is met.

V. CONCLUSION

[22] Having reviewed the record, I am satisfied that the requirements set out in subsection 69.1(1) of the Act have been met in this case. SOCAN provided sufficient public notice of its intention to make an application to withdraw the Proposed Tariff. Every person who in respect of the proposed effective period, has paid royalties that would not be payable if the application were approved, has consented to the application or received a refund.

[23] I therefore grant the application to withdraw the Proposed Tariff. The Registry shall mark the Proposed Tariff as withdrawn as of the date this decision is issued.

⁵ See Schedule A of the application to withdraw the Proposed Tariff. Schedule A contains information designated as confidential.

⁶ *CMRRA OMS (2014-2018)*, *supra* note 3, para. 15 to 18.

⁷ See *CMRRA OMS (2014-2018)* and *CSI OMS (2014-2018)*, *supra* note 3, at para. 15 to 18 and para. 41 respectively.