

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Member Katherine Braun
Proposed Tariff Considered SOCAN Tariff 14 – Performance of an Individual Work (2025-2027)

Approval of Proposed Tariff

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SOCAN Tariff 14 – Performance of an Individual Work (2025-2027)

REASONS FOR DECISION

I. INTRODUCTION

[1] The Society of Composers, Authors and Music Publishers of Canada (SOCAN) filed with the Copyright Board of Canada (the “Board”) a proposed tariff for the years 2025 to 2027. The proposed tariff covers the performance of an individual musical work or an excerpt therefrom, by a performer or contrivance at any single event, when that work is the sole work performed from SOCAN’s repertoire (the “Proposed Tariff”).

[2] We are of the view that the last approved tariff may serve as a basis to approve a fair and equitable tariff in this proceeding, subject to revision of the inflation adjustment used in respect of the proposed royalties and a minor change in tariff wording.

[3] For the following reasons, we find that *SOCAN Tariff 14 – Performance of an Individual Work (2025-2027)* – with some modifications – is fair and equitable, and we approve it thus.

II. BACKGROUND

A. THE LAST APPROVED TARIFF

[4] The Board approved SOCAN *Tariff 14 – Performance of an Individual Work (2018-2024)* on April 17, 2021¹ (the “Last Approved Tariff”).

[5] Tariff 14 covers the performance of an individual work at a single event. If more than one work from SOCAN’s repertoire is performed during any particular event, Tariff 14 no longer applies, and other applicable tariffs determine the royalties to be paid.

[6] The royalties set out in the Proposed Tariff depend on two factors: the potential audience and, performance time. In particular, the performance time is either

(a) three minutes or less, or

(b) more than three minutes.

Users are not required to report information about the musical work performed.

[7] When the performance of the work does not last more than three minutes, the royalties fixed in the Last Approved Tariff are shown in Table 1:

Table 1: Royalties fixed in the Last Approved Tariff when the performance of a work does not last more than three minutes

| Potential Audience | Musical Group or Orchestra with or without Vocal Accompaniment | Single Instrument with or without Vocal Accompaniment |
|--------------------|--|---|
| 500 or less | \$5.35 | \$2.72 |
| 501 to 1 000 | \$6.27 | \$4.11 |
| 1 001 to 5 000 | \$13.37 | \$6.68 |
| 5 001 to 10 000 | \$18.66 | \$9.36 |
| 10 001 to 15 000 | \$24.01 | \$12.03 |
| 15 001 to 20 000 | \$29.30 | \$14.65 |
| 20 001 to 25 000 | \$34.60 | \$17.33 |
| 25 001 to 50 000 | \$40.05 | \$17.48 |
| 50 001 to 100 000 | \$45.45 | \$22.72 |

¹ *SOCAN Tariff 14 – Performance of an Individual Work (2018-2024)* 2021 CB 3-T (April 17, 2021), C Gaz Supplement Vol. 155, No. 16.

| Potential Audience | Musical Group or Orchestra with or without Vocal Accompaniment | Single Instrument with or without Vocal Accompaniment |
|--------------------|--|---|
| 100 001 to 200 000 | \$59.33 | \$26.63 |
| 200 001 to 300 000 | \$66.68 | \$33.31 |
| 300 001 to 400 000 | \$79.94 | \$39.95 |
| 400 001 to 500 000 | \$93.36 | \$46.68 |
| 500 001 to 600 000 | \$106.67 | \$53.26 |
| 600 001 to 800 000 | \$119.94 | \$59.58 |
| 800 001 or more | \$133.25 | \$66.68 |

[8] When the performance of a work lasts more than three minutes, Table 1 royalties are increased by the percentage rates shown in Table 2:

Table 2: Rates fixed in the Last Approved Tariff when the performance of a work lasts more than three minutes.

| Increase | (%) |
|---------------------------------------|-----|
| Over 3 and not more than 7 minutes | 75 |
| Over 7 and not more than 15 minutes | 125 |
| Over 15 and not more than 30 minutes | 200 |
| Over 30 and not more than 60 minutes | 300 |
| Over 60 and not more than 90 minutes | 400 |
| Over 90 and not more than 120 minutes | 500 |

B. THE PROPOSED TARIFF

[9] SOCAN filed its Proposed Tariff on October 16, 2023, and it was published on the Board’s website on November 15, 2023. No objections were filed.

[10] On February 15, 2024, the Board gave notice that it would not hold a hearing in respect of the Proposed Tariff.²

[11] In its Proposed Tariff, SOCAN increased royalties for inflation by 88.33% compared to royalties fixed in the Last Approved Tariff. Since the inflation increase is applied uniformly to all

² Notice of the Board CB-CDA 2024-013, February 15, 2024.

royalties payable in Table 1, we do not repeat Table 1; however, we review this inflation adjustment below.

[12] When the performance of a work lasts more than three minutes, the Proposed Tariff provides that the royalties increase by the same percentage rates as in the Last Approved Tariff, shown in Table 2.

III. ISSUES

[13] We identify three issues for consideration:

1. Is the Last Approved Tariff an appropriate proxy of what could be fair and equitable for the years 2025 to 2027?
2. What should the inflation adjustment be?
3. Are changes to the wording of the Proposed Tariff warranted?

IV. ANALYSIS

A. ISSUE 1: IS THE LAST APPROVED TARIFF AN APPROPRIATE PROXY OF WHAT COULD BE FAIR AND EQUITABLE FOR THE YEARS 2025-2027?

[14] When a proposed tariff does not substantially differ from the last approved tariff, it is reasonable for the Board to use the last approved tariff as a proxy of what could be fair and equitable.³ For example, if there are changes in the relevant market, it may not be appropriate to use the Last Approved Tariff as a proxy. In this matter, there is no information suggesting that a change in the market has occurred—other than inflation. Royalties in the Proposed Tariff have been increased to reflect inflation.

[15] Given the foregoing, we are of the view that the Last Approved Tariff can be used as a proxy to determine what royalties and related terms and conditions are fair and equitable in this proceeding.

B. ISSUE 2: WHAT SHOULD THE INFLATIONARY ADJUSTMENT BE?

[16] We adjust the inflation measure used by SOCAN in its Proposed Tariff to align with the Board's methodology.

[17] Inflationary adjustments are appropriate because they preserve the purchasing power of right holders, and because the absence of such adjustments would lead to an erosion in the value of royalties received by collective societies through tariffs.

[18] SOCAN's proposed royalties are 88.33% higher compared to those fixed in the Last Approved Tariff. In its Notice of Grounds for Proposed Tariff SOCAN explains that it projected the inflationary increase for its Proposed Tariff based on the measured Consumer Price Index (CPI) from Statistics Canada.

³ See *e.g.*, *SOCAN Tariff 9 – Sports Events (2018-2023)* 2021 CB 9 (October 1, 2021) at para 22.

[19] SOCAN's proposed royalties are 88.33% higher compared to those fixed in the Last Approved Tariff. In its Notice of Grounds for Proposed Tariff⁴ SOCAN explains that it projected the inflationary increase for its Proposed Tariff based on the measured Consumer Price Index (CPI) from Statistics Canada.

[20] The Board generally calculates inflation using Statistics Canada's CPI monthly series for Canada, all-items, not seasonally-adjusted and not adjusted for taxes. Inflation is the percentage change in CPI between January of the first year after the last adjustment was made, and December of the last full year of the period for which data is available.

[21] We see no reason not to apply the above methodology for inflation adjustment in this case. To apply the methodology, we need to determine the "first year" and the "last year." On March 20, 2004, the Board approved a tariff for the years 2000 to 2004 at a base rate⁵ of \$2.65 for 2000 to 2003, and \$2.72 for 2004⁶, which has remained the same until now. Since the decision was published in 2004, the Board could only have applied an inflationary increase using data for 2003.

[22] Thus, the first year is 2004: the starting point for the inflation calculation is January 2004. The last full-year of currently available inflation data is 2023: thus, the end-point for the inflation calculation is December 2023.

[23] The CPI of January 2004 was 103.3, while that of December 2023 was 158.3. The ratio of the latter to the former yields an inflation measure of 53.24%. This is consistent with the methodology used in recent Board decisions and, in our opinion, the simplest and most direct method of calculating the rate of inflation. This inflation adjustment of 53.24% is the maximum SOCAN is entitled to. We note that SOCAN has requested the maximum inflation adjustment in its Notice of Grounds for Proposed Tariff.

[24] Based on our calculations, we approve a tariff that is 53.24% more than the Last Approved Tariff. SOCAN did not propose any other changes to the percentages shown in Table 2. We do not change these percentages.

C. ISSUE 3: ARE CHANGES TO THE WORDING OF THE PROPOSED TARIFF WARRANTED?

[25] SOCAN made only minor changes in its Proposed Tariff compared to the Last Approved Tariff. SOCAN notes, in its Notice of Grounds for Proposed Tariff, that changes are intended to make the Proposed Tariff consistent with changes made by the Board in recently approved tariffs. These changes concern the removal of references to the notion of license and the addition of a Terms and Conditions section. We accept these changes.

[26] An additional change we made is to replace the word "contrivance" used in the English version of the Proposed Tariff, which, in our view, is antiquated. Instead, we use "device", which

⁴ SOCAN, Notice of Grounds for Proposed Tariff for SOCAN Tariff 14 – Performance of an Individual Work (2025-2027), October 23, 2023.

⁵ The "base rate" is the amount payable where the performance of the individual work is by way of a single instrument with or without vocal accompaniment, the duration of the single work does not exceed three minutes, and the audience does not exceed 500 people.

⁶ *SOCAN Tariff 14 – Performance of an Individual Work (2000-2004)* (approved tariff) (March 20, 2004), C Gaz Supplement Vol. 138, No. 12.

is modern and better aligned with the term “appareil” used in the French-language version of the Tariff.

V. DECISION

[27] For the reasons above, we approve the Proposed Tariff, with the above modifications, under the title *SOCAN Tariff 14 – Performance of an Individual Work (2025-2027)*.