

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Citation *SOCAN Tariff 2.A – Commercial Television Stations (2014-2024) and SOCAN Tariff 17 – Transmission of Pay, Specialty and Other Television Services by Distribution Undertakings (2014-2024)*, 2024 CB 8

Member René Côté

Proposed Tariffs Considered SOCAN Tariff 2.A – Commercial Television Stations (2014-2024)
SOCAN Tariff 17 – Transmission of Pay, Specialty and Other Television Services by Distribution Undertakings (2014-2024)

Approval of Proposed Tariffs

As

SOCAN Tariff 2.A – Commercial Television Stations (2014-2024)

and

SOCAN Tariff 17 – Transmission of Pay, Specialty and Other Television Services by Distribution Undertakings (2014-2024)

REASONS FOR DECISION

I. OVERVIEW

[1] The Society of Composers, Authors and Musical Publishers of Canada (SOCAN) is a collective society that manages public performing rights of musical works on behalf of Canadian and foreign songwriters, composers and music publishers

[2] The proposed tariffs *SOCAN Tariff 2.A – Commercial Television Stations (2014-2024)* (“SOCAN 2.A”) and *SOCAN Tariff 17 – Transmission of Pay, Specialty and Other Television Services by Distribution Undertakings (2014-2024)* (“SOCAN 17”) (together the “SOCAN Commercial TV Tariffs”) are each approved on the basis of a jointly-submitted text (“JST”).

[3] SOCAN 2.A sets the royalties for the communication to the public by telecommunication by commercial television stations of works in SOCAN’s repertoire.

[4] SOCAN 17 sets the royalties for the communication to the public by telecommunication of works in SOCAN's repertoire, in connection with the transmission by a distribution undertaking of a signal of a programming undertaking for private or domestic use.

[5] The JSTs were jointly filed by SOCAN, the Canadian Association of Broadcasters ("CAB"), the Canadian Broadcasting Corporation ("CBC"), Stingray Digital Group Inc. ("Stingray") and the following Broadcasting Distribution Undertakings ("BDUs"): Bell Canada, Bragg Communications Inc., the Canadian Communications System Alliance, Cogeco Communications Inc., Québecor Média Inc., Rogers Communications Canada Inc., Shaw Communications Inc., and TELUS Communications Inc.

[6] The approved main rates are expressed in formulas that can be summarily described as follows:

- SOCAN 2.A: 1.9 % of a television station's gross income; and
- SOCAN 17: The payment for each BDU-Programming undertaking pair is 1.9 % of affiliation payments plus 1.9 % of other revenues of the programming undertaking (prorated to the portion of the signal recipients served by that BDU).

II. BACKGROUND

[7] SOCAN 2.A and 17 predecessor tariffs were approved by the Copyright Board in 2017 for the years up to and including 2013. At the time, they were approved after the parties also reached a "settlement".¹

[8] The substantive provisions in the JSTs are the same as the last-approved tariffs, but the JSTs include technical changes, which—as explained by the Parties—are intended to bring these tariffs into compliance with the Board's new practice directions on tariff drafting. There are also some changes to the administrative provisions to harmonize these provisions with SOCAN's other approved tariffs and to correct errors.

III. ISSUE

[9] The Panel identifies the following decision point: Should the Board approve the proposed tariffs on the basis of the JSTs?

IV. ANALYSIS

[10] The answer is yes. Each JST is supported by an appropriate proxy.

[11] In their joint request for approval on the basis of the JST (June 28, 2024), the Parties submit that the parties to the JST are fully representative of the industry affected by it. The proposed

¹ Because Board proceedings are not adversarial, the term "settlement", while commonly used by parties, is not entirely accurate.

Tariff 2.A JST applies to commercial television stations. The proposed Tariff 17 JST applies to pay, specialty, and other television services. The parties requesting the approval of these JSTs represent the majority of all services to which these tariffs apply. The CAB represents the vast majority of commercial television broadcasters and discretionary services operating in Canada. Similarly, the BDUs and Stingray that are parties to this request, represent more than 95% of all subscribers in Canada. Finally, the CBC operates specialty services covered by Tariff 17.

[12] The Parties are not aware of any other agreements for uses similar to those covered by the Tariff 2.A JST and Tariff 17 JST. The Board has no reason to believe otherwise.

[13] The last-approved tariffs are presumptively valid proxies. The Board has frequently held that it is appropriate, absent reasons to the contrary, to use the last-approved tariff as a proxy of what could be fair. Such reasons may include changes in the relevant market.

[14] In this case, the fact that the JSTs have the same rates as the last-approved tariffs supports the conclusion that there have been no changes in the relevant market.

[15] Finally, after reviewing the changes made to some terms and conditions compared to the last-approved tariff, the Board is of the opinion that they are appropriate.

[16] In particular, the JSTs for SOCAN 2.A and 17 both include modifications to the “Audit” provision. These modifications align with the audit provisions the Board has approved in *SOCAN Tariff 22.B – Commercial Radio and Satellite Radio (2007-2018)*² and *SOCAN Tariff 22.C – Other Audio Websites (2007-2018)*³.

[17] Further, both JSTs have added an “Adjustments” provision. This provision is appropriate: it merely requires the parties to work together to find a solution if an error is discovered in situations other than an audit.

[18] Lastly, the JST for SOCAN 17 includes additions to the “Confidentiality” provision, expanding and clarifying the categories of persons with whom information can be shared. Such expanded divulgation have also been recently approved by the Board.⁴

[19] The Board therefore amends the Proposed Tariffs to reflect these changes.

² *SOCAN Tariff 22.B – Commercial Radio and Satellite Radio (2007-2018)* 2023 CB 6-T-1 (October 28, 2023), Gaz C I, supplement, Vol. 157, No. 34.

³ *SOCAN Tariff 22.C – Other Audio Websites (2007-2018)* 2023 CB 6-T-2 2 (October 23, 2023), Gaz C I, Supplement, vol 157, No. 43.

⁴ *Re: Sound Tariff 8 – Non-Interactive and Semi-Interactive Streaming (2013-2018)* 2023 CB 12-T (December 2, 2023), Gaz C I Supplement, vol 157, No. 48. s. 11(2); *Commercial Radio Reproduction Tariff (2024-2026)* 2023 CB 3-T (July 8, 2023), Gaz C I, Supplement, Vol. 157, No. 27, s. 12(2).

V. DECISION

[20] Having reviewed the record, the Board is satisfied that the JSTs are supported by appropriate proxies, and that differences from those proxies are appropriate. Therefore, the royalty rates and related terms and conditions contained in the JSTs are fair and equitable.

[21] The Board therefore approves the Proposed Tariffs under the titles:

- *SOCAN Tariff 2.A – Commercial Television Stations (2014-2024)*;
- *SOCAN Tariff 17 – Transmission of Pay, Specialty and Other Television Services by Distribution Undertakings (2014-2024)*.