

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Citation Non-Commercial Radio Reproduction Tariff (2018, 2020-2023),
2025 CB 7

Member Drew Olsen

Proposed Tariffs Considered CSI – Non-Commercial Radio Stations (2018)
CMRRA/SOCAN – Non-Commercial Radio Reproduction Tariff (2020)
CMRRA/SOCAN – Non-Commercial Radio Reproduction Tariff
(2021-2023)

Approval of Proposed Tariffs
As
CSI – Non-Commercial Radio Reproduction Tariff (2018)
and
CMRRA/SOCAN – Non-Commercial Radio Reproduction Tariff (2020-2023)
Reasons for Decision

I. Overview

[1] This decision approves proposed tariffs filed by CSI and CMRRA/SOCAN¹ (the “Collectives”) regarding the reproduction of musical works in their repertoire by non-commercial radio stations for the years 2018 and 2020-2023.

[2] No proposed tariff was filed for the year 2019. As a result, the Board cannot approve a tariff for that year.

[3] The approved tariffs are based on Jointly Submitted Texts as set out below.

[4] The rates approved are as follows:

- a. For 2018, for reproductions made in the context of radio broadcasting, including simulcasts, 0.16 % of the station’s first \$625,000 of gross operating costs, 0.31 % of the station’s next \$625,000 and 0.46 % on the rest of such costs to CSI.

¹ In 2019, SOCAN purchased the assets of SODRAC.

- b. For 2020 to 2023, for reproductions made in the context of radio broadcasting, including simulcasts, the same rates as those for 2018, split between CMRRA and SOCAN. For reproductions made in the context of the transmissions of musical works via the Internet (excluding simulcasts), \$96 to CMRRA and \$4 to SOCAN.

II. Background

[5] The proposed tariffs cover the reproductions of musical works in the repertoire of CSI for the year 2018 and SOCAN and CMRRA for the years 2020 and 2021-2023 by conventional over-the-air non-commercial radio stations.

[6] L'Alliance des radios communautaires du Canada, l'Association des radiodiffuseurs communautaires du Québec and the National Campus and Community Radio Association/L'Association nationale des radios étudiantes et communautaires (the "Associations") objected to the proposed tariffs for 2018 and 2020. No objections were filed with respect to the proposed tariff for 2021-2023.

[7] On March 10, 2020, the Collectives and the Associations (the "Parties") informed the Board that they had reached an agreement in relation to the years 2003 to 2023 (the "Agreement") and asked the Board to approve the non-commercial radio reproduction tariffs based on three jointly-submitted texts (in the text, the expression "jointly-submitted text" is referred to as "JST").

[8] On October 7, 2021, the Board decided to split the proceeding. It informed the parties that it would examine the proposed tariffs for the years 2003 to 2017 and that the examination of the proposed tariffs for the years 2018, 2020 and 2021-2023 would take place at a later time. In 2022, the Board approved the *Non-Commercial Radio Reproduction Tariff (2003-2017)*.²

This proceeding thus deals with the proposed tariffs for the years 2018, 2020 and 2021 to 2023.

A. The Proposed Tariffs

[9] The proposed tariff for 2018 covers the reproductions made in connection with the over-the-air broadcasting operations of non-commercial radio stations, including simulcasts, while the proposed tariffs for 2020 and 2021-2023 cover the reproductions made in connection with the over-the-air broadcasting operations, including simulcasts, and those made in connection with the transmission of musical works via the Internet.

² *Non-Commercial Radio Reproduction Tariff (CMRRA: 2003-2010, CSI: 2011-2017)* 2022 CB 12-T (September 3, 2022), C Gaz I, Supplement, vol 156, No. 36.

[10] The rate structure of the proposed tariffs is based on a percentage of a station's annual operating costs. The total percentage of the gross operating costs proposed for 2018 is the same as that for 2020. For 2021-2023, it is lower. For 2020 and 2021-2023, the rates are broken down between CMRRA and SOCAN and the share of each depends on whether the station is a French-language or not a French-language station (e.g., English, Indigenous language station).

Table 1: Proposed Royalty Rates

Type of reproductions made	Proposed Tariff for 2018	Proposed Tariff for 2020	Proposed Tariff for 2021-2023
Radio broadcasting operations (including simulcast)	0.20 % of the station's first \$625,000 of gross operating costs 0.39 % of the next \$625,000 0.59 % on the rest of such costs	<u>Not French-language station:</u> On the first \$625,000 of gross operating costs: 0.184% to CMRRA and 0.016% to SOCAN On the next \$625,000 : 0.3588% to CMRRA and 0.0312% to SOCAN On the rest: 0.5428% to CMRRA and 0.0472% to SOCAN <u>French language station:</u> On the first \$625,000 of gross operating costs: 0.0460% to CMRRA and 0.1540% to SOCAN On the next \$625,000 : 0.0897% to CMRRA and 0.3003% to SOCAN On the rest: 0.1357% to CMRRA and 0.4543% to SOCAN	<u>Not French-language station:</u> On the first \$625,000 of gross operating costs: 0.1472% to CMRRA and 0.0128% to SOCAN On the next \$625,000: 0.2852% to CMRRA and 0.0248% to SOCAN On the rest: 0.4232% to CMRRA and 0.0368% to SOCAN <u>French language station:</u> On the first \$625,000 of gross operating costs: 0.0368% to CMRRA and 0.1232% to SOCAN On the next \$625,000: 0.0713% to CMRRA and 0.2387% to SOCAN On the rest: 0.1058% to CMRRA and 0.3542% to SOCAN
Internet (other than simulcast)	N/A	\$96 to CMRRA and \$4 to SOCAN	\$96 to CMRRA and \$4 to SOCAN

[11] The terms and conditions provided in the proposed tariff for 2018 are essentially the same as those in the proposed tariff for 2020, except that for 2020, since the proposed tariff covers reproductions made in the context of the Internet transmissions of musical works, the proposed tariff provides reporting requirements for those types of reproductions.

[12] The terms and conditions of the proposed tariff for 2021-2023 are either the same or less onerous than those of proposed tariffs 2018 and 2020. As an example, reports on music use shall be kept for 6 months under the proposed tariffs 2018 and 2020, but only one month in the proposed tariff 2021-2023. Similarly, the proposed tariffs for 2018 and 2020 state that an audited station must pay the cost of an audit where such audit discloses that royalties due have been understated by more than 10 %. In the proposed tariff 2021-2023, for an audited radio station to pay for the audit, the understatement must be of 15 % or more.

B. The Agreement and the JSTs

[13] As mentioned above, on March 10, 2020, the Parties informed the Board that they had entered into an Agreement pertaining to the royalty rates to be paid by non-commercial radio stations for the reproductions of musical works in the repertoire of the Collectives for the years 2003 to 2023. In connection with the Agreement, they jointly requested that the Board approve tariffs based on three JSTs. The first JST pertains to the years 2003-2010, the second JST, to the years 2011-2018 ("Second JST"), and the third JST, to the years 2020-2023 ("Third JST").

[14] Given that the Board has approved a tariff for the years 2003 to 2017, this proceeding deals with the proposed tariffs for the years 2018, 2020 and 2021 to 2023. As a result, only the Second JST and the Third JST are relevant in this proceeding. The rates provided for in the Second JST and Third JST are set out below. The total royalty rates payable under the Agreement are the same as those of the Second JST and Third JST.

Table 2: Rates in the Second JST and Third JST

Type of reproductions made	2018	2020-2023
Radio broadcasting operations (including simulcast)	0.16 % of the station's first \$625,000 of gross operating costs 0.31 % of the station's next \$625,000 0,46 % on the rest of such costs	The total of the royalty rates payable per year is the same as that for 2018, but the rates are broken down between CMRRA and SOCAN and the share of each depends on whether the station is a French-language or non-French-language station
Internet (other than simulcast)	n/a	\$96 to CMRRA and \$4 to SOCAN per year.

[15] The Parties submit that the JSTs are fair and equitable and that the Board should approve the non-commercial radio reproduction tariff in the form of the JSTs for the following reasons.

[16] First, with respect to the rates, the Parties explain that the JSTs cover the same activities as the proposed tariffs but with royalty rates that are either lower than those of proposed tariffs 2018 and 2020 or equal to those of the proposed tariff for 2021-2023.

[17] Second, the Parties submit that the Associations can represent the interests of all users. The Associations contend to represent 154 campuses and community radio stations licensed under the *Broadcasting Act*, accounting for approximately 70%, of all non-commercial radio stations. In addition, after the Agreement was executed, the Associations reached out to the stations they represent in order to have the stations countersign the Agreement and agree to be bound by its terms; 82% of their members did. The rest has not responded. They note that no station refused to be bound by the terms of the Agreement.

[18] Finally, the Parties submit that the JSTs account for any comments that could have been made by users. They claim that users had multiple opportunities to object to the proposed tariffs, and that only the Associations have filed objections (and only with respect to proposed tariff 2018 and proposed tariff 2020). They also outline that no one sought to intervene or file letters of comment. The Parties submit that it is therefore reasonable to conclude that no other user has any objection to the proposed tariffs. In addition, since the JSTs are more favourable to users than the proposed tariffs, they argue that it is also reasonable to conclude that no user would have any objection to the JSTs.

III. Issue

[19] The Board has identified one issue: Should the Agreement and JSTs be used as a basis for a tariff, and if so, are there any changes warranted?

IV. Analysis

[20] The Associations represent a majority of non-commercial campus and community radio stations. Their memberships also include a number of stations that serve predominantly Indigenous communities and broadcast at least partially in Indigenous languages as well as stations that primarily broadcast religious programming.

[21] The extent to which Indigenous and religious stations are encompassed in the group “community stations” is not part of the record of this proceeding. I cannot therefore conclude that the Agreement is representative in respect of those two groups. However, there is nothing on the record that suggests that those stations would be

negatively impacted by the rates and terms of the Agreement. I am therefore of the view that the Agreement constitutes a good basis to approve fair and equitable tariffs.

[22] In their objections to the proposed tariffs for 2018 and for 2020, the Associations argued that the royalties were too high and the reporting obligations too burdensome. In contrast, the Parties argue that the royalties in the Agreements and JSTs are fair because the royalties payable under the Second JST and Third JST, are lower than or equal to those of the proposed tariffs. Since the rates of the Agreement and JSTs are lower than those of these proposed tariffs, and the reporting requirements less onerous, I am of the view that the issues put forward by the Associations' objections have been addressed.

[23] In respect of tariff wording, no major changes need to be made to the JSTs except for the following: the JSTs contain references to "licences". Under the *Copyright Act* ("the Act"), the Board's mandate is to fix royalty rates and related terms and conditions. It does not include the issuance of licences; this is the role of collective societies. I have therefore removed all references to "licences."

[24] In addition, according to the Supreme Court in *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association*, 2022 SCC 30, authorization, under section 3 of the Act, occurs when a person sanctions, approves, or countenances an act reserved for the rights holder.³ I have therefore modified section 2 of the tariffs (Application) to use the notion of "authorization" only in the context of an act reserved to a rights holder to avoid any confusion as the proposed text used the term also in its common meaning of "permitting" or "allowing".

[25] Finally, to be consistent with the Agreement, I have modified the tariffs to include a date before which payments must be made, and set out interest factors that will apply after such date.

V. Decision

[26] Having given consideration to the record, I am satisfied that the royalty rates and related terms and conditions in the Second JST and Third JST are fair and equitable. Subject to the changes I set out above, the proposed tariffs are approved on that basis, under the *titles CSI – Non-Commercial Radio Reproduction Tariff (2018)* and *CMRRA/SOCAN – Non-Commercial Radio Reproduction Tariff (2020-2023)*, and fix the rates as follows:

- a. For 2018, for reproductions made in the context of radio broadcasting, including

³ *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association*, 2022 SCC 30 at para 104.

simulcasts, 0.16 % of the station's first \$625,000 of gross operating costs, 0.31 % of the station's next \$625,000 and 0.46 % on the rest of such costs to CSI.

- b. For 2020 to 2023, for reproductions made in the context of radio broadcasting, including simulcasts, the same rates as those for 2018, split between CMRRA and SOCAN. For reproductions made in the context of the transmissions of musical works via the Internet (excluding simulcasts), \$96 to CMRRA and \$4 to SOCAN.