



Date 2025-11-07

Citation SOCAN Tariffs 15.A, 15.B and 16 - Background Music (2012-2019), 2025 CB 19

Member Katherine Braun

Proposed Tariffs SOCAN Tariff 15.A – Background Music (2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019)

Considered SOCAN Tariff 15.B – Telephone Music on Hold (2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019)
SOCAN Tariff 16 – Background Music Suppliers (2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019)

Approval of Proposed Tariffs

As

***SOCAN Tariff 15.A – Background Music Performed in an Establishment (2012-2019);
SOCAN Tariff 15.B – Telephone Music on Hold (2012-2019);
SOCAN Tariff 16 – Background Music Suppliers (2012-2019)***

Reasons for Decision

I. Overview

[1] This proceeding considers proposed tariffs filed with the Copyright Board (the “Board”) by the Society of Composers, Authors and Music Publishers of Canada (SOCAN) relating to musical works in its repertoire for the years 2012 to 2019 (the “Proposed Tariffs”).

[2] The Proposed Tariffs set the royalties to be paid to perform background music in an establishment (Tariff 15.A), to communicate background music over a telephone on hold (Tariff 15.B), and the royalties to be paid by a supplier, or authorized subscriber, who communicate background music to the public (Tariff 16).

[3] SOCAN and the remaining Objectors filed two jointly-submitted texts (JSTs) which were the result of signed agreements (the “Agreements”), and asked the Board to consider the JSTs for the purpose of approving the Proposed Tariffs. All the other Objectors either withdrew their objections or were deemed to have withdrawn (the complete list can be found in the Procedural History Section).¹

¹ Totem Medias Inc. was granted the status of intervener in 2018 but withdrew in 2019.

[4] I find that the Last Approved Tariffs may be used as proxies for the Proposed Tariffs. The JSTs, as amended to define “revenue” and clarify scope of the tariffs, may be used as the starting point for the text of the approved tariffs.

[5] For the reasons that follow, I approve the Proposed Tariffs based on the royalty rates and related terms and conditions as set out in the JSTs, with some minor adjustments, under the titles; *SOCAN Tariff 15.A – Background Music Performed in an Establishment (2012-2019)*, *SOCAN Tariff 15.B – Telephone Music on Hold (2012-2019)*, and *SOCAN Tariff 16 – Background Music Suppliers (2012-2019)*.

II. Background

A. The Last Approved Tariffs

[6] The Last Approved Tariffs were published in the Canada Gazette on June 30, 2012. Those tariffs were unchanged from the previous tariffs, save for Tariff 16 which included the addition of ‘television set’ in the description of activities, adopted by the Board for clarification. The Last Approved Tariffs included the following royalty rates:

Instruments	Royalty Rates
SOCAN Tariff 15.A – Background Music (2008 to 2011)	The royalty rate is \$1.23 per square metre or 11.46¢ per square foot, per year, subject to a minimum fee of \$94.51.
SOCAN Tariff 15.B – Telephone Music on Hold (2009 to 2011)	The royalty rate is \$94.51 for one trunk line, and an additional \$2.09 for each additional trunk line, per year.
SOCAN Tariff 16 – Background Music Suppliers (2010 and 2011)	The royalty rate for communications to the public by telecommunications is 2.25% of revenues from subscribers who received such a communication during a quarter, subject to a minimum fee of \$1.50 per quarter. The royalty rates for authorizing subscribers to perform musical works in public is 7.5% of revenues from subscribers who are so authorized, subject to a minimum fee of \$5.00 per premise per quarter.

B. The Proposed Tariffs

[7] The Proposed Tariffs for 2012-2018 considered in this proceeding include the same rates as the Last Approved Tariffs. The Proposed Tariffs for 2019 reflect an increase to the royalty rates:

Instruments	Proposed Royalty Rates
SOCAN Tariff 15.A – Background Music (2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019)	The proposed annual rates are \$1.23 per square meter (2012–2018), \$1.53 (2019) or 11.46 cents (2012–2018), 14.28 cents (2019) per square foot. These are subject to a minimum fee of \$94.51 (2012–2018), \$117.75 (2019).

SOCAN Tariff 15.B – Telephone Music on Hold (2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019)	The proposed annual rates are \$94.51 (2012–2018), \$117.75 (2019) for one trunk line, and an additional \$2.09 (2012–2018), \$2.60 (2019) for each additional trunk line.
SOCAN Tariff 16 – Background Music Suppliers (2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019)	The proposed royalty rate is 2.25% of revenues from subscribers who received such a communication during the quarter, subject to a minimum fee of \$1.50 (2012–2018), \$1.75 (2019) per premise per quarter. Also covered is authorization for subscribers to perform musical works in public. The proposed royalty rate is 7.5% of revenues from subscribers who are so authorized, subject to a minimum fee of \$5.00 (2012–2018), \$5.85 (2019) per premise per quarter.

C. Procedural History

[8] In March 2018, the Board advised parties that it was ready to consider the Proposed Tariffs for the years 2012-2018 in a consolidated proceeding.² Objectors were asked to confirm their participation. In response to the Board’s notice, the BDUs, Re:Sound and Stingray Digital Group Inc., requested that the Board consolidate Re:Sound - Background Music Tariffs 3.A (2014-2018) and 3.B (2016-2018) with SOCAN - Background Music Tariffs 15.A (2012-2018), 15.B (2012-2018) and 16 (2012-2018).³

[9] In July 2018, the Board added consideration of the proposed Re:Sound 3.A and 3.B tariffs to the present proceeding and fixed a Schedule of Proceedings.⁴

[10] By January 2020, Re:Sound had entered into agreements concerning activities covered by the Proposed Tariffs 3.A and 3.B, and based on the parties’ recommendation, the Board canceled the Schedule of Proceedings.⁵

[11] The Proposed Tariffs Re:Sound 3.A (2014–2018) were approved in October 2020, and the Proposed Tariffs Re:Sound 3.B (2016–2018) were approved in October 2021. As such, they are no longer under consideration in this proceeding. In July 2020, SOCAN informed the Board that it had reached an agreement with some Objectors concerning the proposed SOCAN Background Music tariffs, and that the majority of these parties had executed the agreement.⁶

[12] In February 2021, the Board provided notice to the parties in accordance with the *Time Limits in Respect of Matters Before the Copyright Board Regulations* that came into force in

² Notice CB-CDA 2018-043 (March 12, 2018).

³ Notice CB-CDA 2018-069 (April 9, 2018).

⁴ Order CB-CDA 2018-156 (July 17, 2018).

⁵ Notice CB-CDA 2020-042 (July 8, 2020); Notice CB-CDA-2020-047 (August 12, 2020).

⁶ SOCAN, letter to the Board (July 10, 2020).

December 2020. The Notice advised that further direction on suspended and cancelled proceedings would be provided in due time, including whether related hearings will be oral or written, or both.⁷

[13] On May 26, 2023, the Board ordered SOCAN to report on the settlement discussions for the 2012-2018 period for each of the Proposed Tariffs (15.A, 15.B, and 16). The Order also sought confirmation as to whether SOCAN had entered into discussions with the Objectors to the 2019-2021 and 2022-2024 periods for each of the proposed tariffs.⁸

[14] In response to the Board Order, SOCAN provided an update in June 2023 concerning its ongoing negotiations and confirmed it had concluded a settlement with most Objectors with respect to the Proposed Tariffs 15.A, 15.B and 16 for the years 2012-2019.⁹

[15] On September 21, 2023, SOCAN and the remaining Objectors¹⁰ requested the Board approve the Proposed Tariffs in the form of two JSTs filed with their request.¹¹ The JSTs submission included information required under the Board's *Practice Notice On Filing Of Jointly-Submitted Texts In A Proceeding* (PN 2022-05), but did not include the agreements SOCAN had with the Objectors.

Instrument	Objectors
Tariffs 15.A and 15.B:	Remaining Objectors that are parties to the JST: Hotel Association of Canada, Restaurants Canada, Retail Council of Canada Withdrew: Canadian Arts Presenting Association and Stingray Digital Group Inc. Deemed to have withdrawn: Fitness Industry Council and Goodlife Fitness Center Inc.
Tariff 16:	Remaining Objectors that are parties to the JST: the BDUs; (Bell Canada, Cogeco Communications Inc, Quebecor Média Inc., Rogers Communications Canada Inc.), Mood Media Corporation, and Zoom Media Inc. Withdrew: Hotel Association of Canada, Restaurants Canada, Stingray Digital Group Inc., and Canadian Arts Presenting Association Deemed to have withdrawn: Fitness Industry Council, Retail Council of Canada, Goodlife Fitness Center Inc., and SiriusXM

⁷ Notice CB-CDA 2021-008 (February 4, 2021).

⁸ Order CB-CDA 2023-030 (May 26, 2023).

⁹ SOCAN, Response to Order CB-CDA 2023-030 (June 16, 2023).

¹⁰ Supra note 1.

¹¹ SOCAN, letter to the Board, *Proceeding: Background Music* (SOCAN: 2012-2018), (September 21, 2023).

[16] In their letter, the remaining Objectors also jointly requested that the Board issue a confidentiality order in the proceeding. Following issuance of a Confidentiality Order in April 2024,¹² SOCAN filed the agreements it had with the Objectors.¹³

[17] On October 9, 2024, the Board acknowledged receipt of the submitted JSTs and confirmed its intent to proceed with consideration of the proposed tariffs for the years 2012-2018.¹⁴ The Board also requested clarification regarding some wording in the JSTs.

[18] SOCAN provided the requested clarification.¹⁵ In its response, SOCAN also requested that the year 2019 be added to the current proceeding. The BDUs supported this request.¹⁶ In December 2024, the Board confirmed inclusion of the year 2019 into the current proceeding.¹⁷ The Order also requested that remaining Objectors confirm their continued participation in the proceeding.

[19] Board Notice CB-CDA 2025-017 of February 20, 2025 advised parties that the Board was ready to proceed with a written hearing process and invited parties to file their final submissions by March 13, 2025. No submissions were received.

III. Issues

[20] I have identified the following two issues:

1. Should the Board approve the rates, terms, and conditions set out in the JSTs?
2. Are any modifications to the terms or conditions appropriate?

IV. Analysis

Issue 1. Should the Board approve the rates, terms, and conditions set out in the JSTs?

[21] SOCAN and the remaining Objectors asked the Board to approve the Proposed Tariffs in the form of the JSTs. That is, to use the wording (including the rates, terms and conditions) of the JSTs in the approved tariffs.

[22] The rates in the JSTs filed for the Proposed Tariffs, are the same as those last approved in 2012. The terms and conditions of the JST vary only slightly, with a change to

¹² Board Order CB-CDA 2024-026 (April 12, 2024).

¹³ SOCAN, letter to the Board, *SOCAN Tariff 15 Settlement Agreement* and *SOCAN Tariff 16 Settlement Agreement* (April 17, 2024).

¹⁴ Board Order CB-CDA 2024-079 (October 9, 2024).

¹⁵ SOCAN, Response to Order 2024-079 (October 23, 2024).

¹⁶ BDUs response to Order 2024-079 (November 6, 2024).

¹⁷ Board Order CB-CDA 2024-110 (December 13, 2024).

the definition of “revenues” in Tariff 16, further explained below.¹⁸ SOCAN informed the Board that there are no other agreements for uses similar to those covered by the JSTs.”¹⁹

[23] Approved tariffs are presumed to be fair for the period and subject-matter for which they are approved.²⁰ The Board has stated on numerous occasions that the Last Approved Tariff can serve as a proxy for a proposed tariff under consideration, provided there are no reasons to depart from it. One reason to question whether the Last Approved Tariff is an appropriate proxy, is if the relevant market has changed.

[24] I am not aware of any significant changes in the marketplace during or immediately preceding the tariff period that would render the Proposed Tariffs unfair or inequitable, compared to the Last Approved Tariffs.

[25] With no known market changes to the proposed tariffs, I consider it appropriate to use the Last Approved Tariffs as proxies for the Proposed Tariffs. Given that the JSTs are nearly identical to the Last Approved Tariffs, I maintain that the royalty rates and related terms and conditions of the JSTs can be used as basis for the text of the approved tariffs.

[26] I propose modifications to tariff wording concerning the definition of revenues and, to add clarity to tariff scope to ensure certainty and remove any ambiguity. The term “licence” has been removed from the approved tariffs to align with recent jurisprudence.

Issue 2. Are any modifications to the terms or conditions appropriate?

2.1 Change in Definition of Revenues and the Application

[27] The JST for Tariff 16 proposes a change to the definition of “revenues” from that used in the Last Approved Tariff. The table below compares the language from the Last Approved Tariff with SOCAN’s Proposed Tariff 16 and the JST.

Instrument	Definition of revenues
Last Approved Tariff SOCAN Tariff 16– Background Music Suppliers (2010 and 2011))	“any amount paid by a subscriber to a supplier, net of any amount paid by the subscriber for the equipment provided to him.”
Proposed Tariffs SOCAN Tariff 16 (2015, 2016, 2017, 2018 and 2019)	“any amount paid by a subscriber to a supplier.”

¹⁸ SOCAN, letter to the Board (September 21, 2023).

¹⁹ SOCAN, letter to the Board (September 21, 2023), section (f).

²⁰ SOCAN Tariff 8 – Receptions, Conventions, Assemblies and Fashion Shows (2018-2022); SOCAN Tariff 22.G – Game Sites (2007-2019); CBRA Media Monitoring Tariffs (2020-2022).

Jointly-Submitted Text	“any amount paid by a subscriber to a supplier, net of any reasonable and verifiable amount paid by the subscriber for the equipment provided to him.”
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[28] SOCAN explains that the proposed change to the definition of revenues is intended to address potential situations in which a background music supplier could report inflated equipment fees for the purpose of lowering the royalties payable under the tariff.²¹

[29] SOCAN states that the parties supporting the JST agree that the “revised definition will limit the potential for equipment fee manipulation going forward while still allowing background music suppliers to exclude legitimate equipment revenue when computing their royalties.”²²

[30] While this language does potentially increase the burden on users (since they need to ensure that the amounts remain “verifiable”) it does not, with the information available in this proceeding, appear to be problematic. I have no reason to believe that ensuring the amounts are verifiable presents an issue for users.

[31] I also note that, since this change is more favourable overall to users, as compared to the Proposed Tariffs (since this could decrease the royalties owed), it does not raise issues of procedural fairness. Therefore, the amended definition of revenues in the Approved Tariff 16 will read as:

“any amount paid by a subscriber to a supplier, net of any reasonable and verifiable amount paid by the subscriber for the equipment provided to him.”

[32] Lastly, SOCAN’s proposed change concerning the definition of “revenues” is not the only proposed modification. I note that it also proposes to modify the Application of the Tariff by adding the following text in bold:

2. (1) This tariff sets the royalties payable in 2012-2019 by a supplier who communicates to the public by telecommunication works in SOCAN’s repertoire or authorizes a subscriber to perform such works in public as background music, **including making such works available to the public by telecommunication in a way that allows a member of the public to have access to them from a place and at a time individually chosen by that member of the public**, and including any use of music with a telephone on hold **or by means of a television set**.

[33] I do not have any concerns with the proposed modification, since it brings further clarity and it was not opposed by any of the Objectors. I therefore approve the change and the amended subsection 2(1) wording will be included in the Approved Tariff 16.

²¹ SOCAN, letter to the Board (September 21, 2023).

²² SOCAN, letter to the Board (September 21, 2023).

2.2 Clarity of Scope: Removing references to other documents

[34] I note some issues with the clarity of tariff scope, in particular, circular language and ambulatory references in both the JSTs and the Proposed Tariffs, that in my opinion, could create confusion and uncertainty.²³

[35] Pursuant to the Board's *Practice Notice on Filing a Proposed Tariff* (PN 2019-004), tariffs are intended to be self-sufficient, as much as possible. The scope, terms, and conditions of a tariff should be clearly defined and readily ascertainable from the proposed tariff itself. Whether a tariff applies to a potential user should not require consulting other tariffs, apart from exceptional cases. References to other documents—ambulatory and circular references in particular—are strongly discouraged.²⁴

[36] As such, the Board asked SOCAN to provide clarification regarding the following provision appearing in the JSTs for Proposed Tariffs 15.A and 16: “Tariffs do not cover the use of music expressly covered in other tariffs.” The Board also asked SOCAN to provide a clear delineation of the activities covered by Proposed Tariffs 15.A and 16 and to specify which activities covered by other tariffs would take precedence over these proposed tariffs.²⁵

[37] In their reply,²⁶ SOCAN proposed the following wording for Proposed Tariffs 15.A and 16:

Tariff 15.A

(1) For greater certainty, this tariff does not apply to performances of musical works as part of events at receptions, conventions, assemblies, and fashion shows.

Tariff 16

(2) For greater certainty, this tariff does not apply to the:

(a) performance of musical works as part of events at receptions, conventions, assemblies, and fashion shows;

(b) performance of musical works in conjunction with physical exercises (dancercise, aerobics, body building and other similar activities) and dance instruction; and

(c) communication to the public by telecommunication of musical works in connection with a pay audio service.

²³ Board Order 2024-079 (October 9, 2024).

²⁴ An ambulatory reference is one that refers to a document that can change in the future. A circular reference is one that refers to a document that refers back to the proposed tariff.

²⁵ Board Order 2024-079 (October 9, 2024).

²⁶ October 23, 2024 letter from Gowling WLG, M. Estabrooks, “SOCAN Response to Board Order 2024-079”.

[38] The BDUs do not oppose SOCAN's proposed clarifications.²⁷

[39] I agree that this language meets the aims of PN 2019-004 and I incorporate the wording into the approved tariffs.

2.3 Clarity of Scope: Communications to the public by telecommunication

[40] The Last Approved Tariff 16, SOCAN's Proposed Tariff 16 (2012-2019) and the JSTs, state at subsection 2(1) that they apply to a "supplier who communicates to the public by telecommunication works in SOCAN's repertoire." Later wording found at subsection 3(1) clarifies that these communications are to the subscriber: "revenues from subscribers who received such a communication during the quarter."

[41] When SOCAN Tariff 16 was last approved (June 30, 2012), this would have included transmissions by background music suppliers that result in a copy (e.g., on a client's server).²⁸

[42] However, in *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada* (July 12, 2012), 2012 SCC 34,²⁹ the Supreme Court of Canada (SCC) stated that downloads are not communications for the purposes of the Copyright Act. The SCC decision set aside the decision of the Board that, the internet delivery of a permanent copy of a video game containing musical works amounted to a "communication" of the work to the public by telecommunication as provided by paragraph s. 3(1)(f) of the Copyright Act.

[43] I do not have evidence in the current proceeding as to whether this was a consideration for the signatory parties. That being said, the scope of this term is fundamentally different now, than it was when Tariff 16 was last approved. I have therefore, included a clarification in the Approved Tariff 16, which states that the tariff does not include transmissions that result in copies (such as downloads, or limited downloads). For example,

2(2) For greater certainty, this tariff does not apply to the [...]

(d) transmissions that result in a durable copy, such as a download or limited download.

2.4 Removing the term "licence" to align with recent jurisprudence

[44] The JSTs for Proposed Tariffs 15.A and 15.B reference the concept of a "licence" to refer to the permission obtained under the tariff, and "licensee" to refer to the user of the tariff.

²⁷ November 6, 2024 letter from Fasken Martineau DuMoulin LLP, Kiera Boyd, "BDUs Reply to SOCAN Response to Board Order CB-CDA 2024-079.

²⁸ This would have been the case if, for example, the client downloaded copies from the suppliers' servers, and then performed them at a later time. I do not have evidence whether, or to what extent, this occurs.

²⁹ At paras. 28, 43.

[45] The Board has previously removed references to “licences” to better reflect the legal distinction between a tariff and a licence.³⁰ This practice aligns with the Supreme Court of Canada’s reasoning in *York University v Canadian Copyright Licensing Agency* (30 July 2021), 2021 SCC 32, which clarified that a tariff approved by the Board is distinct from a licence granted by a collective society. While a collective may offer a licence under the terms of an approved tariff, it is the collective—not the Board—that issues such licences.

[46] Therefore, all references to “licences” are removed from the text of Approved Tariffs 15.A and 15.B. This change does not alter the scope of the application of the tariffs.

2.5 Adding Modalities to address Taxes and Late Payments in the terms and conditions

[47] On March 28, 2025,³¹ SOCAN contacted the Board to signal that they had identified an error with the JSTs and was working on a solution to modify them. SOCAN subsequently filed their updated JSTs with the Board on October 9, 2025. The proposed additions concerning taxes and interest on late payments are both reasonable and appropriate.

[48] Specifically, the terms and conditions suggested by SOCAN have been applied in numerous other SOCAN tariffs, and I consider them fair and equitable. Accordingly, I have included the following terms and conditions in the Approved Tariffs 15.A, 15.B, and 16:

All amounts payable under this tariff are exclusive of any federal, provincial or other governmental taxes or levies of any kind.

Any amount not received by the due date shall bear interest from that date until the date the amount is received. Interest shall be calculated daily, at a rate equal to 1% above the Bank Rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.

V. Decision

[49] Based on my examination, I conclude that the rates and terms and conditions of the Proposed Tariffs can be considered fair and equitable. This conclusion is supported by the fact that the Proposed Tariffs remain substantially unchanged from the Last Approved Tariffs. These elements together, lend support to the fairness and appropriateness of the Proposed Tariffs.

[50] The Proposed Tariffs are approved with the following royalty rates:

SOCAN Tariff 15.A	annual rates of \$1.23 per square meter or 11.46 cents per
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³⁰ [SOCAN Tariff 3.A – Cabarets, Cafes, Clubs, Cocktail Bars, Dining Rooms, Lounges, Restaurants, Roadhouses, Taverns, and Similar Establishments - Live Music, \(2018-2024\)](#) 2022 CB 5 (August 5, 2022) at paras 27-30; [SOCAN Tariff 9 – Sports Events \(2018-2023\) 2021 CB 9](#) (October 1, 2021) at para 30; and [SOCAN Tariff 4.B - Live Performances at Theatres or Other Places of Entertainment – Classical Music Concerts \(2018-2024\)](#) 2021 CB 11-T (November 26, 2021) *supra* note 7 para. 27.

³¹ March 28, 2025 email to the Board from M. Estabrooks, Gowling WLG.

	square foot—subject to a minimum fee of \$94.51
SOCAN Tariff 15.B	annual rates of \$94.51 for one trunk line, and an additional \$2.09 for each additional trunk line
SOCAN Tariff 16	2.25% of revenues from subscribers who received a communication to the public by telecommunication during a quarter—subject to a minimum fee of \$1.50 per premises and 7.5% of revenues from subscribers who were authorized to perform musical works in public—subject to a minimum fee of \$5.00 per premises per quarter

[51] Based on the JSTs, I modified the Proposed Tariffs to change the definition of “revenue,” (paras.**Erreur ! Source du renvoi introuvable.**–**Erreur ! Source du renvoi introuvable.**), and to clarify the scope (paras.**Erreur ! Source du renvoi introuvable.**–**Erreur ! Source du renvoi introuvable.**). Reference to “licences” are removed from the text of the Approved Tariffs 15.A and 15.B.

[52] I therefore approve the Proposed Tariffs based on the text of the JSTs, with the noted modifications, under the titles; *SOCAN Tariff 15.A – Background Music Performed in an Establishment (2012-2019)*, *SOCAN Tariff 15.B – Telephone Music on Hold (2012-2019)* and *SOCAN Tariff 16 – Background Music Suppliers (2012-2019)*.