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Citation	SOCAN Tariff 24 – Ringtones (2014-2021), 2025 CB 20
Proceeding	SOCAN Tariff 24 – Ringtones (2014-2021)
Proposed Tariffs Considered	SOCAN Tariff 24 – Ringtones and Ringbacks (2014) SOCAN Tariff 24 – Ringtones and Ringbacks (2015) SOCAN Tariff 24 – Ringtones and Ringbacks (2016) SOCAN Tariff 24 – Ringtones and Ringbacks (2017) SOCAN Tariff 24 – Ringtones and Ringbacks (2018) SOCAN Tariff 24 – Ringtones and Ringbacks (2019) SOCAN Tariff 24 – Ringtones and Ringbacks (2020-2021)
Member	Drew Olsen

Refusal of Approval

Reasons for Decision

I. Overview

[1] SOCAN has proposed tariffs for the years 2014 through to 2021 that would apply to the communication to the public by telecommunication of musical works in ringtones and ringbacks.

[2] SOCAN states that it will not continue to seek approval of the Proposed Tariffs, and no Objector has indicated that they wish to participate in the consideration of the Proposed Tariffs.

[3] For the reasons below, I decline to approve the Proposed Tariffs.

A. Background

[4] The Board has previously described ringtones and ringbacks as follows:

A ringtone is a digital audio file that is played to indicate an incoming telephone call. A ringback is a digital audio file that is heard by the calling party after dialling and before the call being answered.¹

[5] In *SOCAN - Tariff 24 (Ringtones)*, 2003-2005, the Board dealt with technical and legal issues in detail.² The salient aspects of that decision are that end-users download ringtones from providers,³ and that the Board concluded that the transmissions by those providers to end-users constituted a communication to the public by telecommunication for which SOCAN was entitled to royalties.⁴

[6] In short, the approved tariff set royalties for the transmissions of ringtones to customers that resulted in permanent copies on the customer's device.

[7] The most recent approved tariff covering such activities was approved in 2012 for the years 2006-2013, on the basis of an agreement with several users.⁵

B. Analysis

[8] However, since the time of the Board's approval, the Supreme Court of Canada has held

- that neither the downloading of a work, nor the making available of a work for download, engages the right to perform a work in public; and
- that the right to communicate a work to the public by telecommunication is an example of the right to perform a work in public.⁶

[9] This means that neither the downloading, nor making available for download, of ringtones or ringbacks engages the right to communicate to the public by telecommunication.

[10] In Notice CB-CDA 2020-043, the Board stated that it will need to consider evidence to determine whether SOCAN is even entitled to any royalties in respect of the Proposed Tariffs.

[11] SOCAN—in response to an Order from the Board—now states that it will not continue to seek approval of the Proposed Tariffs. It submits that

¹ *SOCAN - Various Tariffs, 2006-2013 (reasons)* (June 29, 2012) at para 35.

² *Ibid*, paras 24-34.

³ *Ibid*, para 31.

⁴ *Ibid*, paras 69-71.

⁵ *Ibid*, paras 39-44.

⁶ *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 34 and *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30.

- the market for ringtones is practically non-existent; and
- it would be inefficient for SOCAN to prepare an application to withdraw the Proposed Tariffs.

[12] All objectors to any of the Proposed Tariffs have ceased to participate in this proceeding.

[13] Without the participation of any parties, it would be difficult for the Board to obtain evidence about whether or not there are any activities for ringtones and ringbacks that actually engage the right to communicate to the public by telecommunication (e.g., whether any streams occur or are made available).

[14] As no present or past objector is asking the Board to approve the Proposed Tariffs, and given that I accept SOCAN's submission that the relevant market is "practically non-existent," it would be disproportionate for the Board to seek out such evidence itself. In any case, the Board does not have an obligation to do so.⁷

II. Conclusion

[15] It is open to the Board not to approve a proposed tariff in situations such as where there is insufficient evidence,⁸ or where the right administered by the collective society is not engaged.⁹

[16] Given that

- SOCAN is not entitled to any royalties for the downloading, or making available for downloads, of ringtones and ringbacks,
- there is no evidence that there are other activities associated with ringtones and ringbacks for which SOCAN would be entitled to royalties, and
- it would be disproportionate in this proceeding for the Board to seek out such evidence itself,

I do not approve the Proposed Tariffs.

[17] The consideration of the Proposed Tariffs is concluded and the Board will mark them accordingly.

⁷ *CSI v Apple Canada*, 220 FCA 101; *Society of Composers, Authors and Music Publishers of Canada v Bell Canada*, 2010 FCA 139 [SOCAN v Bell].

⁸ SOCAN - Tariffs 22.B to 22.G (*Internet - Other Uses of Music*), 1996-2006 (reasons) (October 24, 2008); SOCAN v Bell.

⁹ *Re:Sound v. Motion Picture Theatre Associations of Canada*, 2012 SCC 38; NRCC - Tariff 7 (*Motion Picture Theatres and Drive-Ins*), 2009-2011 (reasons) (September 16, 2009).