

MEMORANDUM

To: Tony Pollard
Jay Kerr-Wilson

Date: June 20, 2012

From: Jaclyn McNamara

File/Matter No.: 291588.00001

Re: Music copyright tariffs applicable to the hotel and motel industry

The *Copyright Act* provides the creators of musical works and sound recordings with a bundle of different rights. One of those rights is the right to receive payment for the public performance of a work or sound recording. In order to facilitate the collection of royalties, collectives such as SOCAN and Re:Sound administer these rights on behalf of the individual rights owners. SOCAN collects licence fees on behalf of composers and music publishers. Re:Sound collects royalties on behalf of record companies and music performers. The Copyright Board (“the Board”) establishes the rates to be paid for the different uses of the music administered by SOCAN and Re:Sound.

Tariffs do not typically get approved by the Board every year. Often, a tariff period will expire before a new tariff is certified for the following year. When this happens, the last tariff to be approved by the Board remains in force as an interim tariff. Once the tariff is certified for the following period, any changes apply retroactively and, if there is an increase in the rates, the licensee must pay the difference between what they have already paid in the old tariff and what they should have paid given the new tariff. Below are outlined the tariffs that would be most common for the hotel and motel industry.

SOCAN Tariff 3 – live music

SOCAN Tariff 3A licences live music in an eating/drinking establishment. The fee currently in place, certified to 2010, is 3% of the amount paid to performers for entertainment in the year covered by the licence, with a minimum annual fee of \$83.65. This is the total amount paid to performers, even if it is not being paid by the licensee, but does not include any equipment or ‘stage’ costs paid by the establishment. By January 31 of the year being licenced, the hotel must estimate the amount they will pay performers over the course of the year and pay SOCAN accordingly. January 31 the following year, the actual cost is submitted and any differences are resolved. The proposed fee for 2013 is the same as the existing fee.

SOCAN Tariff 15.A – background music

SOCAN Tariff 15.A provides a licence to use recorded music as background music. It allows an establishment to play any or all of the works covered by SOCAN as many times in a year as it likes. The annual fee for this, approved up to 2007, is \$1.23 per square metre, with a minimum payment of \$94.51, payable on January 31 of the year covered by the licence. As well, all

payments must be accompanied by a report showing the area of the establishment. The 2013 proposed tariff is the same as above, but includes an additional fee for telephone music played while on hold - \$94.51 for one trunk line, plus \$2.09 for each additional trunk line.

SOCAN Tariff 18 – music for dancing

SOCAN Tariff 18 licences the playing of recorded music for dancing. The fees for the most recently approved tariff from 2004, for locations accommodating no more than 100 patrons, are as follows:

Months of Operation	Days of Operation	
	1-3 days/wk	4-7 days/wk
Six months or less	\$267.33	\$534.66
More than six months	\$534.66	\$1,069.32

For every additional 20 patrons, the cost of the licence increases by 10%. The fee should be paid by January 31 of the year covered by the licence, and is based on the capacity of the establishment. The proposed tariff for 2013 is the same.

SOCAN Tariff 23 – music in hotel rooms

SOCAN Tariff 23 provides a licence for playing music (or movies and TV shows that contain music) in hotel rooms. The fees, approved to 2008, are as follows: 1.25% of the fees paid by guests to watch TV or movies other than adult films; 0.3125% of the fees paid by guests to view mature audience films containing any SOCAN-licensed work; and 5.5% of the revenues from providing music. The licensed establishment also has to make a report detailing the works that were used and the fees paid for them, all of which must be provided no later than 60 days after the end of each quarter. The 2013 Proposed Tariff does not make any changes to the above fees.

Re:Sound Tariff 3 – background music

Re:Sound Tariff 3 is for the use of recordings as background music. The rule currently in force, approved up to 2009, is as follows:¹

- (1) if the number of admissions or tickets sold for the events where background music was played is known, the tariff will equal that number multiplied by 0.0831 cents;
- (2) if that number is unavailable, but the capacity of the establishment is known, the tariff will be the capacity times the number of days of background music was played, multiplied by 0.1558 cents;

¹ This is assuming the music is not being provided by a background music supplier.

(3) if neither of those numbers are available (which is unlikely for a hotel) the tariff will equal the number of square metres of the area accessible to the public times the number of days background music was played, multiplied by 0.2597 cents.

For all other cases, including where background music is only used with telephones on hold, the fee is \$27.92. All the fees are subject to increases for inflation. Royalties must be paid no later than 60 days after the end of the year, unless they are over \$350, in which case they need to be made quarterly. Either way, the payment is accompanied by a report detailing the information used to calculate the royalties.

The proposed tariff for 2013-2016 includes several changes. First, where music is used with a telephone on hold, the royalty is \$98.84 for the first trunk line and \$27.00 for each additional line. As well, the royalties to be paid have increased. For (1), the number to be multiplied by will be 0.294 cents. For (2), where (1) does not apply, the tariff will equal the number of square metres of the area of the establishment with public access, multiplied by the number of days of operation that recorded music was played, multiplied by 0.92 cents, and where neither (1) nor (2) can be used, a flat rate of \$98.84 will be applied for the relevant year.

The proposed tariff contains the same conditions regarding inflation increases, but makes payment of the tariffs due on January 31 of the year the music is to be played using estimated royalties based either on the amount owed in the previous year or, where the establishment did not play music the previous year, based on an estimate of the number of days they will play music.

Please note that the above proposed rates are proposals only. They are subject to examination by the Board, which will take into account objections by users like the Hotel Association of Canada.

Re:Sound Tariff 6.A – music for dancing

This tariff is for the use of music for dancing. The one currently in force is certified up to 2012. For a venue accommodating 100 or fewer people, the tariff is calculated according to the following table:

Months of Operation	Days of Operation	
	1-3 days	4-7 days
Six months or less	\$151.19	\$302.38
More than six months	\$302.38	\$604.72

The above fees increase by 10% for every 20 patrons over 100. The tariff needs to be paid by January 31 of the same year, and with it the owner needs to provide the name and address of the venue, the name and contact information of the person operating the venue, the number of patrons the venue can accommodate, and the days and months of operation.

The proposed tariffs for 2013-2015 would increase the above rates as follows:

Months of Operation	Days of Operation	
	1-3 days	4-7 days
Six months or less	\$1,086	\$2,172
More than six months	\$2,172	\$4,344

There would remain a 10% increase to the above for every 20 patrons over 100. These rates would be adjusted for inflation every 12 months.

Other possible tariffs

Some tariffs that also might apply to hotels, depending on those hotels' activities, are:

- Licence to have recorded music accompanying live entertainment, SOCAN Tariff 3.B & Re:Sound Tariff 5.A
- Licence to play music at receptions, conventions, assemblies and fashion shows, SOCAN Tariff 8 & Re:Sound Tariff 5.B