

Copyright Board
Canada



Commission du droit d'auteur
Canada

File / Dossier : SOCAN Tariff 22 – Other Sites (2007-2013) /
Tarif 22 de la SOCAN - Autres sites (2007-2013)

August 2, 2018

[CB-CDA 2018-177]

NOTICE OF THE BOARD

In Notice 2018-165 (see attached), the Board informed SOCAN that it was of the preliminary view that the following SOCAN proposed tariffs have been certified by virtue of the certification on July 19, 2014, of SOCAN Tariff 22.D.2 – Internet –User Generated Content (2007-2013):

- Tariff 22.7 – Other Sites (2007, 2008);
- Tariff 22.G – Other Sites (2009, 2010);
- Tariff 22.H – Other Sites (2011, 2012); and
- Tariff 22.I – Other Sites (2013).

(the “Other Sites Tariffs”)

On July 30, 2018, SOCAN responded, stating that it did not agree with the Board. However, it concluded that

[...] with the certification of 22.A, 22.D.1, 22.D.2, the pending certification of 22.D.3, and the various tariffs being considered in the OAV proceeding, and excluding Game Sites, SOCAN is not aware of any online audio or audiovisual uses that are not captured by the other Internet tariffs. In the circumstances, SOCAN is content to withdraw proposed “Other Sites” tariffs [...]

SOCAN’s full response is attached to this Notice.

It also appears to the Board that there is no audio or audiovisual use that is not already captured by another previously proposed or certified SOCAN tariff. Given this, the scope of application of the proposed Other Sites Tariffs (which state that they apply to activities not covered by other SOCAN 22-series tariffs) cannot be readily ascertained.

As such, the Board intends not to certify the proposed Other Sites Tariffs on the ground that without any meaningful way of positively (as opposed to by exclusion) identifying their scope, it is not possible to certify a fair and equitable tariff. Without being able to identify the scope of a proposed tariff, it would not be possible to identify the necessary probative evidence, which is necessary for the Board to ground

any decision to value and to certify such tariffs. The Board would otherwise find itself in a situation akin to the one discussed by Létourneau J.A. in *SOCAN v. Bell Canada*, 2010 FCA 139 at paragraphs 26-29. The same principled approach seems appropriate in the present case.

Unless any party ([listed in the Annex attached](#)) objects thereto by no later than **Friday, August 17, 2018**, the Board will issue a decision accordingly. In such an eventuality, it will not be necessary to address SOCAN's motion to withdraw the proposed Other Sites Tariffs.