

Copyright Board
Canada



Commission du droit d'auteur
Canada

[PN 2019-004]

August 2019

PRACTICE NOTICE ON FILING OF PROPOSED TARIFFS

General Statement

To improve the comprehensibility and accessibility of proposed tariffs by prospective users and the public, and to facilitate the Board's consideration thereof, proposed tariffs should be filed as distinct, self-contained documents.

Electronic Filing

Proposed tariffs shall be filed by email to registry-greffe@cb-cda.gc.ca and in accordance with the *Practice Notice on Electronic Files Submitted to the Copyright Board* [PN 2019-001].

Separate Document for Each Proposed Tariff

A collective society shall file each proposed tariff in a separate, stand-alone document that contains all the terms and conditions applicable to that proposed tariff.

Where multiple collectives propose a single tariff jointly, they may do so by jointly filing a single document.

When preparing their proposed tariffs, collective societies must be ready for the Board to consider all activities covered in a given filed document in a single proceeding. As a general rule, each lowest sub-unit of a proposed tariff should be filed separately.

Covering Page

Each proposed tariff is to be accompanied by a covering page, in the form set out in Annex A to this Practice Notice. Annex B provides such an example.

References to Other Proposed or Approved Tariffs

To facilitate comprehension and meaningful consideration of a proposed tariff, the scope, terms, and conditions of a tariff should be clearly defined and readily ascertainable from the proposed tariff itself. References to other documents—and in particular, ambulatory and circular references—are therefore discouraged.

Ambulatory references (*i.e.*, a reference whose contents can change) may cause the meaning of a proposed tariff to change from time-to-time, making its scope, terms, and conditions difficult or impossible to define. Moreover, once the Board approves a tariff it is *functus officio* in relation thereto. Including an ambulatory reference in an approved tariff, which may permit later decisions of the Board to alter the scope, terms, or conditions of the previously approved tariff may be considered as a circumvention of this principle.

Circular references that cannot be clearly resolved (*e.g.*, *Proposed Tariff A (2020–2023)* excluding from its application any acts covered in *Proposed Tariff B (2020–2023)*, and *Proposed Tariff B (2020–2023)* excluding from its application any acts covered by *Proposed Tariff A (2020–2023)*) may make the scope, terms, or conditions of a proposed tariff undeterminable. Collective societies are advised that in instances where the ambiguities cannot be resolved, the Board may, for example, remove such references in the approved tariff, or decline to approve the proposed tariff altogether.¹

In this regard, the Board has previously held that

[w]ithout any meaningful way of positively identifying or clearly defining the scope of application of the subject tariff, it would not be possible to determine the necessary probative evidence for the Board to certify a fair and reasonable tariff [...]

Instead of using references to other documents, collective societies are strongly encouraged to directly include in a proposed tariff any wording referred-to.

References to Other Collectives

To avoid confusion, a proposed tariff should not propose royalties nor related terms and conditions vis-à-vis a collective society that is not filing the proposed tariff.

Changes from Previously Approved Tariff

To assist the Board’s consideration of a proposed tariff where the activities covered thereby have previously been the subject of an approved or proposed tariff, the proposed tariff is to be accompanied by a comparative document (*i.e.*, blackline) that

- i) compares the proposed tariff to the last-approved tariff covering the same, or substantially same, activities as the proposed tariff; or

¹ See *SOCAN Tariff 22 – Internet – Other uses of Music – Other Sites (2007-2013)* (6 November 2018) CB-CDA 2018-214 at para. 10 (“In the present case, the main concern lies with the undefined scope of application of the tariff for the Other Sites. [...] Without any meaningful way of positively identifying or clearly defining the scope of application of the subject tariff, it would not be possible to determine the necessary probative evidence for the Board to certify a fair and reasonable tariff [...]).

- ii) where no such previously-approved tariff exists, compares the proposed tariff to the last-proposed tariff covering the same, or substantially same, activities as the proposed tariff.

A comparative document does not have to be provided where the differences between the documents are so significant as to make the comparison incomprehensible.



Gilles McDougall
Secretary General

ANNEX A – Proposed Tariff Covering Page Template

PROPOSED TARIFF

Filed with the Copyright Board pursuant to subsection [67(1) | 67(2) | 83(1)] of the *Copyright Act*

YYYY-MM-DD

Collective Society Name(s)

Proposed Tariff Title

For the [list of rights (*e.g.*, reproduction) | activities for which a tariff may be set under ss. 29.7(2), 29.7(3), or 31(2)(d) (*e.g.*, retransmission of a distant signal) | manufacture or importation] of [subject-matter | blank audio recording media]

Start Effective Date (YYYY-MM-DD) – End Effective Date (YYYY-MM-DD)

Proposed citation: *Proposed Alternative/Short Title*

ANNEX B – Proposed Tariff Covering Page Example

PROPOSED TARIFF

Filed with the Copyright Board pursuant to subsection 67(1) of the *Copyright Act*

2019-10-14

SOCAN

Tariff 1.A

For the performance to the public of works

2021-01-01 – 2023-12-31

Proposed citation: *SOCAN, Commercial Radio (2021–2023)*