

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Regime Collective Administration of Performing and of Communication Rights
Copyright Act, par. 68(3)

Members The Honourable William J. Vancise
Mr. Claude Majeau
Mr. J. Nelson Landry

**Proposed
Tariff(s)
Considered** Tariff 4 (Concerts) 2009-2014

Statement of Royalties to be collected by SOCAN for the public performance or the communication to the public by telecommunication, in Canada, of musical or dramatico-musical works

Reasons for decision

I. INTRODUCTION

[1] These reasons deal with the five licence classes under Tariff 4 (Concerts) of the Society of Composers, Authors and Music Publishers of Canada (SOCAN), namely, the per-event licence for popular music concerts (4.A.1), the annual licence for popular music concerts (4.A.2), the per-concert licence for classical music concerts (4.B.1) and the annual licence for organizations presenting classical music concerts (4.B.3) for the years 2009 to 2014, as well as the annual licence for orchestras (4.B.2) for the years 2013 and 2014.

[2] In March 2008, 2009, 2010, 2011 and 2012, and in April 2013, SOCAN filed, pursuant to section 67.1 of the *Copyright Act*,¹ statements of proposed royalties to be collected for the performance of musical works at concerts for the years 2009 to 2014. The proposed tariffs were

¹ R.S.C. 1985, c. C-42.

published in the *Canada Gazette*. On each occasion, prospective users and their representatives were given notice of their right to file objections to the proposed tariffs.

A. TARIFFS 4.A.1, 4.A.2, 4.B.1 AND 4.B.3 FOR THE YEARS 2009 TO 2014

[3] The National Campus and Community Radio Association (NCCRA) and the Ottawa International Jazz Festival (OJF) objected to SOCAN Tariff 4 and Tariff 4.A, respectively, for 2009. The Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games (VANOC) objected to Tariff 4 for 2010.

[4] The *Aréna des Canadiens de Montréal Inc.* objected to Tariff 4.A.1 for the year 2012, while the Sony Centre and the Corporation of Massey Hall and Roy Thomson Hall (Sony Centre) objected to Tariffs 4.A.1, 4.A.2, 4.B.1 and 4.B.3 for the same year. Live Nation Canada Inc., Live Nation Touring (Canada) Inc. and Live Nation Ontario Centre L.P. (Live Nation), and Maple Leaf Sports and Entertainment Ltd. (MLSE) also objected to Tariffs 4.A.1 and 4.B.1 for the year 2012. Because its objection to Tariffs 4.A.1 and 4.B.1 was filed late, Hamilton Entertainment and Convention Facilities Inc. (HECFI) could not be given standing in these proceedings.

[5] No objections were filed in respect of the proposed tariffs 4.A.1, 4.A.2, 4.B.1 and 4.B.3 for 2011 and 2013.

[6] By July 15, 2011, the NCCRA, the OJF and VANOC had all withdrawn their objections to the tariffs applicable to concerts for 2009 and 2010, leaving no objections to these tariffs. That left Tariffs 4.A.1, 4.A.2, 4.B.1 and 4.B.3 for 2009 to 2011 to be considered by the Board.

[7] However, on August 17, 2011, following a SOCAN audit of concerts organized by Live Nation in 2009 and 2010, Live Nation sought leave to intervene in respect of Tariff 4 for the years 2009 to 2011. Live Nation disputed the audit's findings to the effect that it had improperly deducted amounts from gross receipts from ticket sales, and it asked the Board to define the term "gross receipts from ticket sales of paid concerts, exclusive of sales and amusement taxes" ("gross receipts") as of 2009 to clarify what constitutes an adequate rate base for the tariff. SOCAN objected to that request.

[8] On September 30, 2011, the Board decided to grant Live Nation's request to intervene so that it could settle the parties' disagreement over the meaning of "gross receipts."

[9] Given the different nature of the proposed changes to the tariff for the year 2012, which will be discussed below, the Board concluded that it would be better to deal with the two tariff proceedings separately, limit the consideration of the tariff for the years 2009 to 2011 to the definition of "gross receipts" and proceed by written submissions.

[10] In October 2011, MLSE, the *Aréna des Canadiens* and Sony Centre sought leave to intervene in respect of SOCAN's proposed Tariff 4 for the years 2009 to 2011. They were granted intervener status with full rights to take part in the issue of how to define "gross receipts."

[11] Between January 26, 2012, and June 20, 2012, Live Nation Touring (Canada) Inc., Live Nation Ontario Concert L.P., Sony Centre and *L'Aréna des Canadiens de Montréal Inc.* withdrew their objections to the 2012 tariff or withdrew as interveners with regard to the years 2009 to 2011, as the case may be. The sole remaining interveners were Live Nation Canada Inc. and MLSE.

[12] On January 10, 2012, at SOCAN's request, the Board set up a separate process for the 2012 tariff, leading to a hearing scheduled for March 12, 2013. The issues raised by the parties in respect of the tariff for that year were more numerous and of a different nature than those raised in respect of the tariff for 2009 to 2011, hence the need for a separate process.

[13] However, on April 11, 2012, after considering the documents filed by the parties for the 2009-2011 matter, the Board concluded that it would have to join that case with the one for 2012. The issues related to the rate base were too complex to be limited to the definition of "gross receipts." It was decided that it would be more efficient to deal with all the issues regarding the tariffs applicable to concerts for the years 2009 to 2012 in a single proceeding.

[14] On February 15, 2013, the parties notified the Board that they had reached an agreement in principle and that they were therefore requesting that the hearing scheduled for March 12, 2013, be adjourned *sine die*. The Board granted that request.

[15] On June 5, 2013, SOCAN notified the Board that Live Nation and MLSE had reached an agreement. Under that agreement, the parties requested that proposed tariffs 4.A.1, 4.A.2, 4.B.1 and 4.B.3 for the years 2009 to 2011 be certified as filed by SOCAN. They also proposed a wording for these same tariffs for 2012 and 2013.

[16] On August 26, 2013, the Toronto 2015 Pan Am/Parapan Am Games Organizing Committee objected to SOCAN Tariff 4 for the year 2014 on the basis that the royalties to be paid were excessive and unreasonable. However, the Committee withdrew its objection in February 2014, leaving the proposed tariff for 2014 unopposed.

B. TARIFF 4.B.2 FOR THE YEARS 2013 AND 2014

[17] Tariff 4.B.2 for the years 2008 to 2012 was certified on March 20, 2008.² No objections were filed in respect of this tariff for 2013 and 2014. On September 14, 2012, SOCAN filed an agreement with Orchestras Canada regarding the years 2013 and 2014. SOCAN and Orchestras Canada requested, at the same time, that the Board certify Tariff 4.B.2 in accordance with their agreement.

II. TARIFFS 4.A, 4.B.1 AND 4.B.3 (2009-2014)

A. THE PARTIES AND THEIR POSITIONS

i. SOCAN

[18] For the years 2009 to 2011, SOCAN proposed maintaining the same terms as those set out in the certified tariff applicable to concerts for 2008³:

- Tariffs 4.A.1 and 4.A.2: 3 per cent of “gross receipts,” or fees paid to singers, musicians, dancers, conductors and other performing artists where no admission is charged, for per-event and annual licences for popular music concerts;
- Tariff 4.B.1: 1.56 per cent of “gross receipts,” or fees paid to singers, musicians, dancers, conductors and other performing artists where no admission is charged, for per-event licences for classical music concerts;
- Tariff 4.B.3: 0.96 per cent of “gross receipts,” subscription and membership revenues for all concerts, exclusive of sales and amusement taxes, for annual licences for presenting organizations of classical music concerts.

[19] The minimum fees of \$35 and \$60 are also identical to those in the previous certified tariff, which included a gradual increase in minimum fees for 2003 to 2008.⁴

[20] The rates and tariff rate bases remain unchanged in the proposed tariffs for 2012 and 2013. However, SOCAN proposed three types of changes. First, it proposed changing certain administrative provisions to facilitate the distribution of royalties to members. Under these provisions, a per-event or per-concert licensee shall, no later than 15 days after the concert, (a) pay the royalties due, (b) report the “gross receipts” or the total fees paid to the performers of free concerts, (c) provide the legal names, addresses and telephone numbers of the concert promoters or the owners of the venue where the concert took place, (d) provide the name(s) of

² *Various SOCAN Tariffs 1998-2012* (March 20, 2008), [decision](#) of the Copyright Board at para. 42.

³ *Supra* note 2 at paras. 7-35.

⁴ The minimum fees for per-event licences for popular music concerts (4.A.1), per-concert licences for classical music concerts (4.B.1) and annual licences for classical music concerts (4.B.3) were certified at \$20 in 2003-2005, \$25 in 2006, \$30 in 2007 and \$35 in 2008. The minimum fees for annual licences for popular music concerts (4.A.2) rose from \$20 in 2003-2005, to \$40 in 2006, \$50 in 2007 and \$60 in 2008.

the act(s) at the concert, and (e) provide a list of the musical works performed during the concert. Under current practices, royalties are paid and gross receipts are reported within 30 days. In addition, the request for the information described in (c), (d) and (e) is new.

[21] Second, SOCAN proposed a number of changes to the wording of the tariff to make it clearer:

- Specify that the tariff also applies to the performance of musical works by lip synching or miming;
- State that the tariff also applies to performances by performers in person in “theatres”;
- Replace, in the English version, the expression “live performances by musicians, singers or both, and other entertainers” with “by means of performers in person at a concert”;
- Replace the expression “other performing artists” with “other performers”;
- Replace the term “sales and amusement taxes” with “any applicable taxes.”

[22] Third, for 2012 and 2013, SOCAN proposed expanding the scope of the tariff by specifying that it applies to the communication to the public by telecommunication of a concert or an audio-visual recording of a concert, and by applying the same rate and minimum fee as for performances in person at a concert, that is, 3 per cent of “gross receipts”, with a minimum fee of \$35. In its statement of case dated October 12, 2012, SOCAN withdrew this proposal because this sort of transmission is apparently very rare and is mainly done at classical music events.

[23] SOCAN’s proposed tariffs 4.A.1, 4.A.2, 4.B.1 and 4.B.3 for 2014 are identical to the tariffs proposed by the parties in the agreement dated June 5, 2013.

ii. Interveners/objectors with respect to the proposed tariffs for 2009 to 2012: Live Nation and MLSE

[24] Live Nation is one of Canada’s leading concert promoters. Together, Live Nation and Live Nation Ontario promote and produce approximately 85 per cent of concerts held at major concert venues in Canada. Live Nation also owns and operates the Molson Canadian Amphitheatre in Toronto, leases and operates the Commodore Ballroom in Vancouver and has entered into an agreement with Rogers Arena, also in Vancouver, under which it may produce and promote concerts there.

[25] MLSE owns and operates the Air Canada Centre (ACC) in Toronto, one of the leading concert venues in the world, and rents it out to third parties for sports and entertainment events, including to concert promoters for public performances of musical works. MLSE also produces concerts at the ACC. It may therefore be a concert venue owner in some cases and a concert promoter in others.

[26] Live Nation and MLSE filed separate evidentiary records regarding the 2009 to 2011 tariff and a common evidentiary record for the 2012 tariff.

[27] Regarding the 2009-2011 tariff, Live Nation first argued that this case would clarify whether the rate base for the tariff should consist of the gross receipts of the concert promoter, those of the ticketing company, those of the owner/operator of the concert venue or those of the performers. It then proposed using the fee paid to performers from ticket sales as the rate base, since in its view, this is a more accurate measure of the value of the performance of musical works at a concert.

[28] Should the rate base remain unchanged, Live Nation asked that the term “gross receipts” be defined in the certified tariff and that concert promoters be allowed to deduct from the gross receipts any facility fees, ticketing company fees, fan club fees, charitable fees, fees for downloading sound recordings, parking fees, fees for loaded tickets,⁵ fees for VIP and premium tickets, and sponsorship revenue from advertisers.

[29] MLSE supported Live Nation’s submissions.

[30] Regarding the 2012 tariff, Live Nation and MLSE objected to the inclusion of recorded music in a lip-synched or mimed performance.

[31] As for the administrative provisions proposed by SOCAN, Live Nation and MLSE submit that the Board should not certify a tariff that imposes conditions that cannot be met. They asked that the current practice of reporting and paying royalties within 30 days of the concert remain in place. They also submitted that the duty to provide a list of the musical works performed at a concert should not be included in the administrative provisions of the tariff. The list of musical works is not the subject of the negotiations between the concert promoter and the performer and/or his representative. It is also not part of the rent agreement between promoters and concert venues. On occasion, a list of musical works is provided to promoters or to concert venues, but nothing prevents the performers to change the performed musical works before or during the concert to better respond to the mood of the crowd. Concert promoters and concert venues do not have the necessary ability and expertise to identify musical works performed during a concert.

B. EVIDENCE

i. Live Nation

[32] Paul Corcoran, Executive Vice-President, Venues, Live Nation Canada Inc. and Live Nation Ontario Concerts L.P., described the main players and current practices in the concert industry, including the various fees that may be included in the price of tickets: facility fees, fan club fees, charitable fees, fees for downloading sound recordings, parking fees, fees for loaded tickets and

⁵ A “loaded ticket” is a ticket that may include the price of food, beverages and merchandise such as baseball caps or promotional t-shirts.

fees for VIP or premium tickets. In his opinion, these fees are not related to the performance of musical works at a concert.⁶

[33] Tom Worrall, then Chief Operating Officer and Senior Vice-President, Ticketmaster Canada LP (Ticketmaster), described Ticketmaster's business practices and the fees that may be included in the price of the tickets it sells: order processing fees, facility charges, convenience charges, delivery charges, auction fees, etc.⁷ He also explained that these fees are not unusual in the ticketing service industry.⁸

[34] Live Nation also submitted that using the fees paid to performers from ticket sales would lead to greater internal consistency in Tariff 4.A.1 and horizontal harmonization in SOCAN tariffs 3.A (Cabarets, cafés, clubs, etc. – Live Music) and 4 (Concerts).

[35] Robert Karl Adams, Chief Operating Officer, North America Concerts, Regions North, Live Nation Worldwide Inc., explained the licencing fees for concerts in the United States.⁹

ii. MLSE

[36] Patti-Anne Tarlton, then Vice-President, Live Entertainment Group, MLSE, described the roles of concert promoters, Ticketmaster and MLSE when renting the ACC as a concert venue, as well as the process for paying royalties resulting from the public performance of musical works at such venues. In her view, it is common practice in the concert industry to include facility fees in ticket prices, and such fees are related to the concert venue rather than to the musical works. She also noted that the royalties for the performance of music at a concert are much higher in Canada than in the United States, which means that U.S. venues near the Canada-U.S. border may be selected in preference over Canadian venues for concerts.¹⁰

iii. Live Nation and MLSE (jointly)

a. Definition of the term "gross receipts"

[37] In their joint reply to SOCAN, Live Nation and MLSE disagreed with SOCAN's argument that a distinction had to be made between mandatory fees and optional fees included in ticket

⁶ Exhibit Live Nation-2.

⁷ Ticketmaster acts as ticket sales agent for concert venues, promoters, performers and sports teams that want to sell tickets for concerts, sporting events, theatrical productions and other entertainment events to the public. It is also the sole and exclusive ticketing service used by MLSE for tickets sales since 1998.

⁸ Exhibit Live Nation-3.

⁹ Exhibit Live Nation-4.

¹⁰ Exhibit MLSE-2.

prices. They instead submitted that the role of the rate base is to ensure that royalties reflect as closely as possible the value of the public performance of musical works at a concert.

[38] Live Nation and MLSE filed additional evidence after the two proceedings were joined. The additional evidence gives a description of places, under Tariff 3.A or Tariff 4.A, where live music is presented. Paul Corcoran describes 21 venues in total in his second written testimony. Martin Brandsma, an articling student at Osler, Hoskin & Harcourt LLP, described his experience as a concertgoer in three Ottawa drinking establishments (i.e. bars and nightclubs).¹¹

[39] In response to SOCAN's argument that there are differences between using music in a concert and using it in musical performance subject to Tariff 3.A, Paul Corcoran shared the results of his review of venues where Live Nation produced concerts in 2012¹² and concluded that it was impossible to differentiate events subject to SOCAN Tariff 3.A from those subject to SOCAN Tariff 4.

[40] Like Mr. Corcoran, Ms. Tarlton questioned SOCAN's claim that there are differences between SOCAN tariffs 3.A and 4.

b. Performance by lip synching or miming and administrative provisions

[41] Live Nation and MLSE submitted that SOCAN's proposal to include lip-synched or mimed music performance should be amended because it increases inconsistency between SOCAN tariffs. The rate for SOCAN Tariff 3.B (Recorded Music Accompanying Live Entertainment) is 2 per cent of annual compensation paid for entertainment under the licence. Live Nation and MLSE submit that the use of recorded music at a concert is very similar to the use of recorded music subject to Tariff 3.B and that the difference between the two rates is unjustified. Live Nation and MLSE further argued that SOCAN had not produced any evidence justifying a rate of 3 per cent of gross receipts from ticket sales for the use of recorded music at a concert.

[42] Mr. Corcoran explained that financial transactions between the promoter and the performers are generally done at the end of the concert, whereas transactions between the promoter and the concert venue are often done 7 to 10 working days after the concert. In his view, this timeframe makes it very difficult to pay SOCAN royalties within 15 days, especially for smaller concert promoters, who do not have access to the same resources as bigger promoters. He also stated that it is not always possible for Live Nation, as promoter or venue operator, to obtain a list of the musical works.¹³

¹¹ Exhibit Live Nation/MLSE-3.

¹² A portion of the research was done by Martin Brandsma and is described in Exhibit Live Nation/MLSE-12.

¹³ Exhibit Live Nation/MLSE-6.

[43] Ms. Tarlton, too, explained that the lists of musical works performed at a concert are not given to MLSE and that MLSE does not have the required expertise to identify every work performed at concerts put on at the ACC.¹⁴

iv. SOCAN

a. Definition of “gross receipts”

[44] Diane Petrucci, Manager, Operational Audit Department, SOCAN, explained the circumstances and findings of SOCAN’s audit of Live Nation. She submitted that there were inconsistencies in the concerts audited and that Live Nation’s various divisions did not all make the same deductions from the gross receipts.¹⁵

[45] In response to the statements of case of Live Nation and MLSE, SOCAN argued that the best measure of the value of concert music is the amount that concert-goers are prepared to pay to attend a concert. If it is defined in the certified tariff, “gross receipts” should include all sums that concert goers are required to pay for a ticket.

[46] Regarding the horizontal harmonization between Tariff 3.A and Tariff 4, SOCAN explained that it was entirely appropriate to use different rate bases for these tariffs because the nature of the events subject to each tariff is different. For example, the type of establishment where the music is performed (bar, clubs and restaurants vs. concert halls), the scale of the event, the role of the music, the kind of performer and admission prices are very different for each of these tariffs.

[47] SOCAN’s evidence is based in part on a summary of the rates, rate bases and administrative provisions established in concert tariffs in other countries and on a general description of the music licence industry and current practices in industrialized countries (*Guide to the Collective Administration of Authors’ Rights*, by Paula Schepens).¹⁶ According to SOCAN, it is incorrect to only consider U.S. tariff practices regarding live music performance.

[48] Mark Faassen, an articling student at Gowlings, conducted Internet searches regarding international tours by Prince, Lady Gaga and Bon Jovi and regarding ticket prices for various concerts held at the ACC.¹⁷

¹⁴ Exhibit Live Nation/MLSE-7.

¹⁵ Exhibit SOCAN-21.

¹⁶ Exhibits SOCAN-5 and SOCAN-14.

¹⁷ Exhibit SOCAN-4.

b. Performance by lip synching or miming and administrative provisions

[49] Jamie Leacock, Manager, Concerts, Licensing Department, SOCAN, explained the current industry practice of asking per-event licensees to report “gross receipts” and pay royalties within 30 days after a concert. SOCAN also has agreements with certain major promoters, such as Live Nation, under which they may make their payment and submit their report each quarter.¹⁸ He also submitted that providing the list of musical works at the same time the royalties are paid would make it easier for SOCAN to identify the musical works and distribute the royalties accordingly.

[50] SOCAN also provided a table comparing the various obligations that copyright collectives in a number of other countries have in terms of royalty payments and lists of musical works performed.¹⁹

C. CAN THIS CASE PROCEED ON THE BASIS OF AN AGREEMENT?

[51] The agreement signed by Live Nation, MLSE and SOCAN contains two proposals: certify Tariff 4 for the years 2009 to 2011 as filed by SOCAN and certify the parties’ proposal, dated June 2013, for Tariff 4 for 2012 and 2013. The parties have abandoned the issue of clarifying the definition of “gross receipts” in the tariff for 2009 to 2011.

[52] The tariff proposed by the parties for 2012 and 2013 repeats all the changes set out in paragraph 21 regarding the text of the tariff. It also repeats a less restrictive version of the administrative provisions. According to the wording proposed under the agreement, a per-event licensee is required to pay the royalties, report the gross receipts and provide the legal names, addresses and telephone numbers of the concert promoters or the owners of the venue where the concert took place within 30 days instead of within 15 days as SOCAN included in its tariff proposals for 2012 and 2013. The names of the acts at the concert and the list of the musical works performed during the concert are provided only if they are available.

[53] An annual licensee also has 30 days after the concert to provide the legal names, addresses and telephone numbers of the concert promoters and the venue owners. The names of the acts and the list of musical works performed at the concert are also only filed if available. The royalty payment terms for an annual licence remain the same as those in the last tariff, certified in 2008. Royalties must be paid no later than January 31 of the licensed year and are estimated on the basis of the gross receipts or fees from the previous year.

¹⁸ Exhibit SOCAN-10, para. 6.

¹⁹ Exhibit SOCAN-9.

[54] As mentioned in the Board's decision dated May 25, 2012, regarding Re:Sound Tariff 5,²⁰ before certifying a tariff based on agreements, it is generally advisable to consider (a) the extent to which the parties to the agreements can represent the interests of all prospective users, and (b) whether relevant comments or arguments made by former parties have been taken into account. Prospective users who did not file a timely objection are not official objectors. However, tariffs are prospective and of general application, in that the Board imposes obligations on absent users. Some account must therefore be taken of the interests of those who are not before us and who will be affected by our decision.

i. Do the parties represent the interests of all users?

[55] As previously noted at paragraphs 24 and 25, Live Nation and MLSE are major players in the concert industry in Canada and do not necessarily represent the point of view of smaller users. However, the fairness of what they are proposing is a key factor in this decision. The evidence filed allows us to find that the agreement's provisions are fair and equitable, represent the interests of all users and do not affect current industry practices.

[56] First, the agreement signed by SOCAN, Live Nation and MLSE only affects how the tariff is applied. The proposed rates and rate bases remain the same as those certified for the year 2008. Therefore, none of the agreement's provisions will affect the amount of the royalties to be paid to SOCAN by concert promoters or concert venues.

[57] Second, SOCAN's informal practice regarding per-event licences provides that royalties are to be paid within 30 days after a concert. This matches the period proposed in the agreement and is twice as long as the agreed period in the proposed tariffs for 2012 and 2013.

[58] Third, as Paul Corcoran explained, the financial transaction between the promoter and the venue operator may take 7 to 10 business days after the concert, which makes it very difficult to comply with the 15-day time limit for paying royalties and submitting the report of gross receipts.²¹ Nothing in the parties' evidence appears to indicate that a 30-day time limit would be problematic.

[59] Fourth, both Mr. Corcoran and Ms. Tarlton mentioned that it is not always possible for Live Nation and MLSE to provide a list of the musical works performed at a concert.²² The administrative provision requiring that the performers' names and the titles of the works performed be provided only if they are available offers a solution to this problem.

²⁰ Re:Sound Tariff 5, Parts A-G (Use of Music to Accompany Live Events) 2008-2012 (May 25, 2012), [decision](#) of the Copyright Board, at 3.

²¹ Exhibit Live Nation/MLSE-6.

²² Exhibits Live Nation/MLSE-6 and Live Nation/MLSE-7.

[60] Fifth, the proposed terms and conditions are less restrictive than those in the proposed SOCAN tariffs for 2012 and 2013. Since the payment obligations proposed in the agreement are in line with current industry practice and it is no longer mandatory to provide a list of musical works, we do not find that the proposed provisions are unfavourable to other users who did not object to the tariffs.

ii. Were the parties' claims taken into account in the agreement?

[61] A review of the record in these proceedings permits us to find that all the relevant claims of former parties and third-party users were addressed. Three parties other than Live Nation and MLSE objected to the proposed SOCAN tariff for 2012: The *Aréna des Canadiens de Montréal Inc.*, Sony Centre and HECFI. The *Aréna des Canadiens de Montréal Inc.* and Sony Centre withdrew their objection while HECFI was denied standing as an objector because its application was filed late. They all opposed the administrative provisions for being too burdensome and restrictive.

[62] The objections to the administrative provisions were addressed in the June 2013 agreement. The time limit for paying royalties and submitting a report was increased from 15 to 30 days, and the lists of the names of the performers and the works performed at concerts do not have to be submitted to SOCAN unless they are available.

[63] The *Aréna des Canadiens de Montréal Inc.* and Sony Centre also objected to the expanded scope of the tariff. SOCAN withdrew its proposal to include the public performance of an audiovisual recording of a concert in the list of events subject to Tariff 4. Furthermore, the use of lip-synched or mimed music by performers is common in the popular music concert industry. In our opinion, the use of lip-synched or mimed music by performers has always been implicitly included in Tariff 4.

[64] Sony Centre also argued that the tariff rates were too high. The Toronto 2015 Pan Am/Parapan Am Games Organizing Committee objected to the proposed tariffs for the year 2014 for the same reason. We find that the fact that the tariff rates have remained unchanged since 2002 undermines the comments of Sony Centre and the Toronto Organizing Committee regarding excessive rates.

III. TARIFF 4.B.2 (2013 AND 2014)

[65] Orchestras Canada represents the interests of more than 193 professional, community, youth and training orchestras across Canada. We have no information regarding the Canadian orchestra industry as a whole. Nevertheless, we think that Orchestras Canada represents the interests of a wide variety of orchestras, big and small, from all the regions of Canada. We therefore find that this organization is fairly representative of the symphony music concert community because it

defends the interests of small and large orchestras. Moreover, when this tariff was last certified, in 2008, the proposed tariff was also the subject of an agreement with Orchestras Canada.

[66] The tariff that the parties are asking the Board to certify for 2013 and 2014 is identical to the tariff that the Board certified for the years 2008 to 2012, except for the per-concert royalty rates. As the table below shows, the Tariff 4.B.2 rates in the agreement between SOCAN and Orchestras Canada for 2013 and 2014 are slightly higher than those for 2012 and continue to rise slightly from year to year, but now at a slower pace than for the years 2008 to 2012.

**ANNUAL FEE, PER CONCERT, UNDER TARIFF 4.B.2 /
TAUX DE REDEVANCE ANNUELLE, PAR CONCERT, DU TARIF 4.B.2**

Orchestra's Annual Budget / annuel de l'orchestre	Certified / Homologués					Proposed in Agreement / Proposés dans l'entente	
	2008	2009	2010	2011	2012	2013	2014
\$0 - \$100,000	\$62	\$64	\$66	\$68	\$70	\$71	\$72
\$100,001 - \$500,000	\$102	\$105	\$108	\$111	\$114	\$115	\$116
\$500,001 - \$1,000,000	\$165	\$170	\$175	\$180	\$185	\$187	\$189
\$1,000,001 - \$2,000,000	\$206	\$212	\$218	\$225	\$232	\$234	\$236
\$2,000,001 - \$5,000,000	\$343	\$353	\$364	\$375	\$386	\$390	\$394
\$5,000,001 - \$10,000,000	\$377	\$388	\$400	\$412	\$424	\$428	\$432
+ \$10,000,000	\$411	\$423	\$436	\$449	\$462	\$467	\$472

IV. CERTIFIED TARIFFS

[67] In light of the preceding, we find that this case may proceed on the basis of the agreements between the parties. We therefore certify Tariffs 4.A.1, 4.A.2, 4.B.1 and 4.B.3 for the years 2009 to 2013 pursuant to the agreement signed by SOCAN, Live Nation and MLSE. We certify these same tariffs for 2014 as filed by SOCAN since they are essentially identical to those that were the subject of an agreement for 2009 to 2013 and the sole party objecting to them withdrew.

[68] We also certify Tariff 4.B.2 for the years 2013 and 2014 pursuant to the agreement between SOCAN and Orchestras Canada.



Gilles McDougall
Secretary General