

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2017-06-02

Citation CB-CDA 2017-063

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

Members The Honourable Robert A. Blair
Mr. Claude Majeau
Mr. J. Nelson Landry

Proposed Tariffs Considered SOCAN Tariff 19 – Physical Exercises and Dance Instruction (2013-2017)

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

Reasons for decision

[1] The present reasons deal with proposed tariffs filed by the Society of Composers, Authors and Music Publishers of Canada (SOCAN). On March 30, 2012, April 2, 2013, and March 31, 2014, SOCAN filed pursuant to section 67.1 of the *Copyright Act*,¹ statements of proposed royalties to be collected for the public performance or the communication to the public by telecommunication of musical works in conjunction with physical exercises and dance instruction for the years 2013 to 2017. The proposed tariffs were 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.

[2] On August 24, 2012, GoodLife Fitness Centres Inc. (GoodLife) requested for the year 2013, leave to intervene with full participatory rights essentially on the basis that it wanted to preserve the status quo. The Board granted the application on October 19, 2012. GoodLife then objected to the tariff for both 2014 and 2015-2017. In its objection to the tariff for the years 2015-2017,

¹ *Copyright Act*, R.S.C., 1985, c. C-42.

GoodLife requested an opportunity to comment on tariff wording that may change in the course of any proceeding. There were no other objectors to the tariff.

[3] On April 7, 2017, the Board informed the parties that it wished to proceed with the certification of the tariff and asked GoodLife to provide its detailed reasons for objecting to the tariff.

[4] In a letter of May 4, 2017, GoodLife indicated that it was withdrawing its objections for all periods under consideration and consented to the certification of the tariff.

[5] The last rates certified by the Board, for the years 2011-2012, were \$2.14, multiplied by the average number of participants per week in the room. A minimum annual fee of \$64 applied. For the years 2013 and 2014, SOCAN proposed that the rates remain the same as that certified by the Board for 2011–2012. For the years 2015-2017, SOCAN proposed no changes to the wording of the tariff, but proposed to increase the rates by 16.8 per cent to account for inflation between 1997, i.e. the last year for which this tariff was adjusted for inflation, and 2014. The new rates proposed were \$2.50 and \$74.72, respectively.

[6] As explained in a recent decision of the Board pertaining to multiple tariffs,² SOCAN did not use the inflation-adjustment rule as most recently used by the Board, but rather a formula that the Board has established in its 2004 decision on multiple SOCAN tariffs.³ This resulted in rates lower than what SOCAN could have obtained had it used the most recent formula. The Board nevertheless certifies the rates as proposed by SOCAN for the years 2013-2017.



Gilles McDougall
Secretary General

² *SOCAN – Multiple Tariffs, 2007-2017* (May 5, 2017) Copyright Board Decision at paras 4-8.

³ *SOCAN – Multiple Tariffs, 1998-2007* (June 18, 2004) Copyright Board Decision at 45.