

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2024-106]

NOTICE OF THE BOARD

Proceeding: SOCAN Tariff 19 – Physical Exercises and Dance Instruction (2018-2022)

December 6, 2024

I. OVERVIEW

[1] As per Order CB-CDA 2024-090, the parties informed the Board that they requested a technical meeting on several issues.

[2] The Board has reviewed both SOCAN's and FIC's submissions, and has identified that some issues would be best addressed at a technical meeting whereas others are addressed in this notice.

II. ISSUES RAISED BY PARTIES

Questions from SOCAN

[3] SOCAN has proposed a status quo tariff. FIC is proposing changes to this status quo. In this circumstance, which party bears the onus of proof on each issue? Should the party challenging the status quo file its case first? In SOCAN's view, FIC should file its case first. Since FIC is the party seeking to depart from the status quo, SOCAN will not know the case it has to meet until FIC has filed its case.

Answer: A technical meeting is not required. SOCAN will need to explain why the last approved rate is a valid proxy whereas FIC may need to provide explanations and related supporting evidence as for why the proposed tariff should depart from the status quo. Parties can arrange their case record as they see fit.

[4] The Order references an argument advanced by GoodLife in its 2018 objection (paragraph 17), but GoodLife is no longer a participant in the proceeding. The Order repeats GoodLife's assertion that the use of music has changed within fitness venues. If any evidence exists in support of this assertion, it is in the hands of GoodLife. Will SOCAN have to address GoodLife's assertion? If so, what is the process to request that the Board engage its subpoena powers under section 66.7(1) of the Copyright Act to compel production of documents and/or witnesses from GoodLife?

Answer: A technical meeting is not required. GoodLife notified the Board and all parties of its intention to withdraw from this proceeding. However, GoodLife's arguments remains on the record (as per the *Practice Notice on Changing the status of a party* [PN 2023-010]). We cannot know what weight the panel will give to it. Currently, there is no evidence to support it.

[5] FIC is not an objector for the years 2020-2022. Accordingly, SOCAN does not have the benefit of the FIC's statement of objection or notice of grounds for objection and FIC does not have any status as a party for the years 2020-2022. Can FIC participate in the proceeding for those years? If so, in what capacity?

Answer: A technical meeting is not required. It is a consistent Board practice to allow objectors to a family of tariffs to participate in the proceeding for the entire period of application. Even if this was not the case, there is no need to be over-formalistic.

[6] The Order mentions the "formulation" in Re:Sound Tariff 6.B (paragraph 14). Is the Board considering altering SOCAN Tariff 19 to align with the "formulation" of Re:Sound Tariff 6.B? If the Board is contemplating a change to the tariff structure, it must notify the parties and provide them with an opportunity to make submissions on this point.

Answer: A technical meeting is not required. The Board has not decided anything but has identified clarity of tariff scope as a live issue.

[7] The Order mentions a technical meeting to discuss "repertoire use in tariffs of general application" (paragraph 26). SOCAN assumes that this refers to FIC's unusual request that the tariff structure depart from a blanket licence. All of SOCAN's general licensing tariffs employ a blanket licence and have done so for decades. There is no reason that Tariff 19 would be any different. In fact, SOCAN sees a high degree of compliance with Tariff 19. SOCAN can provide evidence that contradicts FIC's assertion that the burden of this tariff falls on a few compliant users. Adjusting a tariff like this one to account for repertoire use by individual users would involve immense and impractical amounts of administrative burden for both SOCAN and users such as FIC's members. Accordingly, if the Board is contemplating a departure from the blanket licence structure, it must notify the parties and provide them with an opportunity to make submissions on this point.

Answer: A technical meeting is an opportunity to discuss what repertoire, and repertoire-use mean in practice. It may also be an opportunity to clarify that the final rates reflect the use of a collective's repertoire (via a study or proxies) and is adjusted accordingly, such that any music user pays for the average use notwithstanding what they actually use.

[8] The Order mentions the Board's preliminary view that the proposed tariff may need to be adjusted for the COVID-19 pandemic (paragraphs 20 & 21). Can the Board confirm that this intended adjustment would be limited to the minimum fee only? The proposed tariff already

takes into account any reductions in attendance resulting from the COVID-19 pandemic because the royalty rate is set on a per-attendee basis.

Answer: A technical meeting is not required. Rates may not always self-adjust to non-use during the Covid pandemic, depending on how they are calculated (for ex, average participation). This may impact strictly the minimum fee or the fee structure —see [2022 CB 11, SOCAN Tariff 20 - Karaoke Bars and Similar Establishments \(2018-2022\)](#).

[9] The proposed schedule of proceedings is far too aggressive. Depending on the result of the technical meeting and the issues that remain at play in the proceeding, it may be that SOCAN will need to file substantial evidence to support its proposed status quo tariff, including possible expert evidence on the nature of music use in fitness facilities and evidence that will need to be obtained from FIC's members and third parties. As such, preparing a case record is a considerable undertaking which will require additional time.

Answer: A technical meeting is not required. SOCAN is free to propose a schedule that best suits its needs as required in Order CB-CDA 2024-090, para 30.

[10] The proposed schedule of proceedings does not provide for the exchange of interrogatories. Given FIC's factual assertions and the Board's intended reliance on submissions by GoodLife, SOCAN will require an opportunity to seek information and documents from FIC, its members, and - potentially - GoodLife.

Answer: A technical meeting is not required. SOCAN is free to propose a schedule that includes interrogatories as required in Order CB-CDA 2024-090, para 30.

Questions from FIC

[11] Calculation and Adjustment of Tariffs: We seek a better understanding of how tariffs are calculated, particularly in terms of inflation adjustments, changes in the value of music, and how SOCAN considers industry-specific financial shifts, especially following the severe impact of COVID-19 on the fitness sector. Clarifying these factors is essential to determining if the current tariff is a fair reflection of present-day conditions within our industry.

Answer: It will be incumbent on SOCAN to present its case. FIC can respond accordingly and identify issues where applicable. Regarding adjustments related to inflation, the Board has issued a guideline that explains how royalty rates are generally adjusted to variations in inflation. This question related to inflation could be addressed in a technical meeting.

[12] Relevance and Fairness of Current Tariffs: Many fitness facilities report that the tariff is increasingly detached from their usage patterns and financial realities. FIC requests transparency on the number of facilities actively paying these fees and the total revenue SOCAN receives from the fitness industry. Without such data, it is challenging to gauge whether the current tariff fairly represents the burden on compliant members or if adjustments are warranted.

Answer: This could be achieved via interrogatories, a process that can be explained during a technical meeting.

[13] Basis for Tariff Application and Enforcement: Clarification on the criteria by which tariffs are applied and enforced across the fitness industry would be valuable, particularly as compliance appears inconsistent, with different impacts on larger and smaller operators. Understanding the enforcement approach would help us evaluate if the tariff structure is truly equitable and broadly accessible.

Answer: Enforcement is outside the scope of the Copyright Board mandate. FIC may, however, wish to bring evidence that its members incur unusually high tariff administration costs (for ex., monitoring or reporting requirements are too onerous). FIC may also ask for relevant information via interrogatories.

[14] Capacity to provide relevant input for the years 2020-2022: Despite not having formally objected during that period, FIC represents the fitness industry as a whole, and given the economic disruptions wrought by COVID-19, our participation for these years is crucial to ensure a fair and representative outcome. As music licensing and usage issues are cumulative across the years, and given that the proceedings address 2018-2022 collectively, our arguments should be applied across this entire timeframe, with special emphasis on the financial strain imposed during the pandemic years.

Answer: It is a consistent Board practice to allow objectors to a family of tariffs to participate in the proceeding for the entire period of application. Even this was not the case, there is no need to be over-formalistic. This could be explained during a technical meeting.

III. TECHNICAL MEETING

[15] A technical meeting will be held as soon as possible.

[16] Staff are available at the following dates and times:

- Tuesday, December 17, 2024 at 1:00 p.m. EST
- Tuesday, January 7, 2025 at 1:00 p.m. EST
- Monday, January 13, 2025 at 2:00 p.m. EST

[17] Parties shall confirm their availability by **Friday, December 13, 2024.**

[18] Lastly, the deadlines fixed in Order CB-CDA 2024-090 are hereby suspended. New deadlines will be fixed after the technical meeting.

Greg Gallo
A/Secretary General