



CB-CDA 2025-019 - *Erratum*

Order of the Board

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

March 14, 2025

I. Background

[1] Pursuant to Board Orders [CB-CDA 2024-090](#) and [CB-CDA 2024-106](#), a technical meeting was held on January 7, 2025. The meeting was designed to provide general guidance and assistance to the parties given the technical nature of some elements raised in their submissions.

[2] On January 29, 2025, the Fitness Industry Council of Canada (FIC) formally requested that the Board initiate the next steps in this proceeding.

[3] In its correspondence of January 29, 2025, FIC submits that the proposed SOCAN tariff is inconsistent with other corresponding tariffs. It refers to Entandem, a joint venture between Re:Sound and SOCAN, and suggests that there should be an explanation as to why the royalty rates for each collective society's tariff are not standardized.

[4] FIC also seeks clarification on how SOCAN's proposed royalty rate was determined.

[5] In addition, FIC would like SOCAN to provide data to measure industry-specific music usage that would include:

- The revenue generated under SOCAN 19,
- The distribution of these funds to artists,
- The extent to which tracking results inform royalty allocation.

II. Board's Preliminary Views

1. Tariffs as proxies

[6] As indicated in CB-CDA 2024-106, SOCAN will need to explain why the last approved SOCAN 19 rate is a valid proxy, whereas FIC may need to provide explanations and related supporting evidence as to why the proposed tariff should depart from the *status quo*.

[7] In its Notice of Grounds for Proposed Tariff,¹ SOCAN provides that “[t]he proposed royalty rate and minimum annual fee are the same as the previously approved tariff for the years 2015-2017, as certified by the Copyright Board in June 2017.”²

[8] The Board has raised several concerns in relation to SOCAN’s Tariff 19 in the past, in particular when considering using it as a proxy.³ The fact that the rate has been approved in the past and has existed for an extended period of time is not, in itself, a sufficient justification.

[9] In this regard, the Board notes that *Re:Sound Tariff 6.B – Use of Recorded Music to Accompany Fitness Activities (2013-2017)* and *Re:Sound Tariff 6.B – Use of Recorded Music to Accompany Fitness Activities (2018-2022)* (“Re:Sound 6.B”) were approved on the basis of a text negotiated between parties including Re:Sound, FIC, and GoodLife Fitness Centres Inc. (GoodLife).⁴ The negotiated tariff text applies to three situations: (i) music is played as background music by a fitness venue (except a skating venue); (ii) music is played as part of a dance and fitness class; and (iii) music is played by a skating venue.

[10] With the exception of skating venues, Re:Sound 6.B appears to cover the same uses as SOCAN 19 (see Table 1 – Scope). As such, Re:Sound 6.B may prove to be a useful proxy (subject to necessary adjustments, including for SOCAN's repertoire share).

¹ Filed with the Copyright Board by SOCAN on March 8, 2024, pursuant to Board Order CB-CDA 2024-010.

² The proposed royalty rate for 2018, 2019 and 2020-2022 is determined as a flat fee of \$2.50 per room where performances of musical works take place, multiplied by the average number of participants per week in the room. The tariff also sets out a minimum annual fee of \$74.72.

³ For example, in its April 26, 2006, decision approving *SOCAN Tariff 19 – Fitness Activities and Dance Instructions 1996-2006* (reasons) (April 21, 2006), the Board noted that “[it] does not have enough reliable evidence to enable it to make any kind of change to the tariff under review. The objectors did raise some interesting questions, but they have remained unanswered.” In its July 6, 2012, decision approving *Re:Sound Tariff 6.B – Use of Recorded Music to Accompany Fitness Activities 2008-2012* (reasons) (July 6, 2012), the Board rejected the use of SOCAN Tariff 19 as a proxy: see paras 134-147.

⁴ *Re:Sound Tariff 6.B - Use of Recorded Music to Accompany Fitness Activities 2013-2017*, CB-CDA 2018-004 (reasons) (January 12, 2018) at para 6; *Re:Sound Tariff 6.B – Use of Recorded Music to Accompany Fitness Activities (2018-2022)* 2020 CB 014 (September 11, 2020) at para 2.

Table 1 – Scope

Tariff	SOCAN Tariff 19	Re:Sound Tariff 6.B
Rates	Single rate for all uses	Rates depend on use
Targeted Uses	Physical exercises (dancercise, aerobics, body building and other similar activities)	All areas within a fitness venue, including during weight training, cardiovascular training, circuit training and other fitness activities, as well as in change rooms, hallways, offices, and lobby areas
	Dance instruction	Fitness classes and dance classes
	—	Skating venues

2. Agreements as Proxies

[11] It is currently unclear to the Board the extent to which the activities targeted by the proposed tariff are covered by agreements or by the SOCAN 19 tariff respectively. For example, in its July 6, 2012, decision, the Board noted that: “[...] SOCAN collects 31 per cent of its revenue “from Tariff 19” pursuant to agreements between it and users of the tariff, copies of which were filed with us at our request. The agreements make up a significant portion of the marketplace and include some of Canada’s largest fitness centres and dance class providers.”⁵ Depending on the situation in the relevant tariff period, agreements may also prove to be useful proxies.

3. Music Use

[12] Agreements (in the form of a licence or a jointly submitted text) would normally reflect repertoire use and ownership, among other considerations. Music usage data may therefore not be necessary should royalty rates be determined using representative agreements.

4. Representativeness

[13] In *Re:Sound Tariff 6.B – Use of Recorded Music to Accompany Fitness Activities (2018-2022)*, Re:Sound informed the Board on behalf of the parties that “Goodlife has over 1.5 million members and over 405 clubs across Canada. FIC represents over 5,000 facilities and over 4 million members nationwide.”⁶

⁵ Re:Sound 6.B (2008-2012), *supra* note 3, at para 146.

⁶ Letter from Re:Sound in response to Orders CB-CDA 2020-025 and CB-CDA 2020-028, June 25, 2020.

[14] The Board needs a more precise picture of FIC’s current representativeness, including what percentage of the total fitness market it represents in terms of revenues, member organizations and fitness facilities across Canada. Similarly, the Board would also like to know the extent to which dance studios and skating rinks are represented by FIC.

[15] The Board notes that FIC’s website lists a number of facilities that varies. For instance, in the section “About” under the title “Our vision,” the website reads “over 6,000 facilities with over 6 million members nationwide.”⁷ However, in the section “Home,” the website mentions “over 7,000 facilities with over 6 million members nationwide.”⁸ FIC’s State of the Industry Survey Results, dated August 2023, indicates that it represents “more than 4,000 fitness facilities across the country.”⁹

[16] Furthermore, using the North American Industry Classification System (NAICS) version 2022,¹⁰ published by Statistics Canada, and the search engine of the Canadian Industry Statistics database, published by Innovation, Science and Economic Development Canada, there may be less than 10,000¹¹ establishments in the Fitness and Recreational Sport Centres industry in 2023, nationwide.

5. Sector Royalties

[17] Past Board decisions indicated the number of licences issued by SOCAN under the approved tariff and the total royalties generated.¹² The Board would benefit from updated information to give it a better understanding of the copyright licensing of the targeted market.

III. Order

[18] Should the Parties consider some, or all of the information they will submit to be confidential, they may request a confidentiality order in accordance with the [Practice Notice on Confidential Information](#) (PN 2024-013).

[19] Parties shall file the following information by **Monday, March 31, 2025**.

[20] If the Parties require a confidentiality order, they shall request such an order as soon as is reasonably possible. The following information shall be filed **four weeks** from the date of the confidentiality order.

⁷ <https://ficdn.ca/en/about/>

⁸ <https://ficdn.ca/en/home/>

⁹ <https://ficdn.ca/en/fics-state-of-the-industry-survey-results/> (August 2023)

¹⁰ www23.statcan.gc.ca

¹¹ <https://ised-isde.canada.ca/app/ixb/cis/summary-sommaire/71394>

¹² See *SOCAN – Various Tariffs, 1998-2012* (reasons) (March 20, 2008), approving SOCAN 19 (2007-2010), Table 4 referencing 3,634 licences and total royalties \$692,848 in 2006.

[21] SOCAN shall provide the following information:

- Submissions on using Re:Sound 6.B as a proxy (including on how to deal with background music supplied by a service provider);
- Submissions, if any, on any other preferred proxy/proxies (including agreements);
- Should Re:Sound 6.B be used as a proxy, what would be the best way to adjust the rates for SOCAN's repertoire;
- The number of licences and revenues generated by SOCAN tariff 19 for each year of the 2018 to 2022 period, including the number of users paying the minimum fee.
- The number of licences pursuant to agreements, and the revenues generated by these agreements, for each year of the 2018 to 2022 period;
- Ten (10) samples of the most representative SOCAN agreements covering SOCAN 19 uses during the 2018-2022 period.

[22] FIC shall provide the following information:

- Submissions on using Re:Sound 6.B as a proxy;
- Submissions, if any, on any other preferred proxy/proxies (including agreements);
- Should Re:Sound 6.B be used as a proxy, what is the best way to adjust the rates for SOCAN's repertoire;
- Actual agreements underlying jointly submitted texts for Re:Sound 6.B or any other tariff, if applicable;
- Five (5) examples of each of the types of FIC's member organizations (small, medium, large);
- FIC shall ask each organization among this sample the proportion of their revenues which they pay for SOCAN's tariff 19;
- Where available, an estimate of FIC members' total market share of the fitness industry (in terms of the number of member organizations and fitness facilities across Canada);
- The extent to which FIC represents dance instruction venues (dance studios) and skating rinks.

Greg Gallo
A/Secretary General