

NOTICE OF GROUNDS FOR PROPOSED TARIFF

Filed with the Copyright Board by SOCAN on 2024-10-15 pursuant to Rule 15 of *Copyright Board Rules of Practice and Procedure*

SOCAN Tariff 21 – Recreational Facilities Operated by a Municipality, School, College, University, Agricultural Society or Similar Community Organizations (2026-2028)

1. Description of Uses Covered by the Proposed Tariff

This tariff applies to public performances of any or all of the musical works in SOCAN's repertoire in a recreational facility operated by a municipality, school, college, university, agricultural society or similar community organizations, during recreational activities that would otherwise be subject to Tariff 5.A (Exhibitions and Fairs), Tariff 7 (Skating Rinks), Tariff 8 (Receptions, Conventions, Assemblies and Fashion Shows), Tariff 9 (Sports Events, including minor hockey, figure skating, roller skating, ice skating, youth figure skating, carnivals and amateur rodeos), Tariff 11.A (Circuses, Ice Shows, etc.) or Tariff 19 (Fitness Activities and Dance Instruction).

2. Description of Users / Groups of Users Covered by the Proposed Tariff

Users are the owners and operators of community facilities, which are usually municipalities or community organizations. In order to fall under Tariff 21, the facility's annual revenue must not exceed the set threshold. Importantly, it is the nature of the *use*, and not the nature of the user, that determines whether the tariff applies.

3. Explanation of How Royalties are Determined

The proposed royalty rate for 2026-2028 is an annual fee of \$286.13 if the facility's gross revenue from events does not exceed \$25,215.43.

The proposed royalties are based on the previously approved tariff which was approved in 2023 for the years 2023 to 2025 (2023 CB 11-T) The proposed annual royalty and maximum revenue threshold have been increased for inflation according to the Board's established CPI-adjustment formula and the Board's default methodology as published by the Board in its *Inflation Adjustment to Royalty Rates – Default Methodology*. The inflation calculation commences in January 2023. Further, in accordance with the Board's 2023 decision (2023 CB 11 at para 27), the proposed inflationary adjustment starts at a January 2023 rate that includes an addition of \$11.49 to the unadjusted royalty rate and \$1,012.51 to the unadjusted maximum revenue threshold prior to applying the inflation rate according to the Board's established CPI-adjustment formula to account for the difference between the inflation adjustment the Board used to arrive at the last approved rate and the actual inflation during the January 2014 to December 2022 period. SOCAN has estimated the appropriate inflationary increase based on projected CPI for years that full CPI data is not available. According to the Board's adjustment formula, this figure will likely change once actual CPI data is available. Notwithstanding the proposed royalty rate and maximum revenue threshold, SOCAN requests that the Board certify the maximum inflationary increase that SOCAN is entitled to under the Board's adjustment formula at the time of approval of the tariff and

that such inflation calculation commence as of the last inflationary increase to the annual fee and maximum revenue threshold.

4. Submissions on the Collection of Information

The proposed tariff requires that on or before January 31 of the year following the year covered by the tariff, the user submit a report confirming that their gross revenue from events covered by this tariff does not exceed the threshold.

This information is used to verify the application of this tariff.

5. Explanation of Changes from Previously Approved Tariff

1) The explanation for the proposed annual fee and maximum revenue threshold for 2026-2028 is found above.

Special Note – Reference to Other Tariffs:

This tariff has existed in this form since 2008, when it was approved for the years 2005 to 2010. Since that time, the references to other tariffs in Tariff 21 have not been problematic in terms of application. Indeed, references to other tariffs are required by the structure of Tariff 21. Reference to a specific time period for each referenced tariff is not appropriate because these tariffs are proposed and approved at different times. Therefore, it is impossible for SOCAN to know – at the time it is proposing Tariff 21 – what the years of approval for the referenced other tariffs will be. As it is drafted (and as it has been approved for nearly 20 years), Tariff 21 specifies that, in circumstances where a set of SOCAN tariffs would normally apply, if the user that engages in the activity covered by the tariff falls under one of the enumerated categories, Tariff 21 applies instead. Importantly, these tariff references must be dynamic. Tariff 21 users must be able to identify the activities covered by the relevant reference tariffs *in the form that those tariffs take at the relevant time*. If Tariff 21 were drafted using static references to closed time periods, it is possible that the currently-applicable reference tariff will differ in scope from the static reference.

Ultimately, Tariff 21 is an example of a tariff where referencing other SOCAN tariffs by number is appropriate and helpful to users.

As a matter of procedural fairness, if the Board intends to adjust the language of this proposed tariff prior to approval, SOCAN requests the opportunity to make oral submissions to the Board on this issue.