



## **NOTICE OF GROUNDS OF OBJECTION**

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The **Fitness Industry Council of Canada**, (“FIC”) (<https://ficdn.ca>) objects to the proposed SOCAN tariff because it is too high and also not workable in terms of implementation.

FIC is the national voice of the fitness sector in Canada, FIC members exceed 7,000 facilities, representing more than 6 million members nationwide, FIC is a not-for profit trade association comprising owners and operators of fitness venues in Canada, FIC members are extremely concerned by the rate and methodology for assessing and collecting copyright royalties from our members, as set out in the SOCAN Tariff 19 proposal for the years 2018-2019 (2020-2022).

Simply put, the proposed tariff fails to accurately assess the value of music to FIC members. We are concerned that it is not relevant to the needs of the industry. Our members will be hard pressed to fulfill their legal obligations under copyright law through the tariff system if the Board certifies again the proposed tariff, even if this is the same tariff as SOCAN Tariff 19 - 2013-2017.

We contest the proposed tariff that has already increased of nearly 17% from 2011-2017. This former increase significantly exceeds the inflation rate of 8,8% recorded by the Bank of Canada between 2011 and 2017, clearly indicating a disproportionate adjustment. For 2018-2019, the

inflation rate is adding 1,88% to this number, again supporting that collective has already been paid generously compare to the reality of business owners in Canada.

Gym memberships are discretionary spend. If anything, gyms need an adjustment downward to contend with this grim inflationary situation with empathy for those who pay.

***Our opposition is based on the following arguments:***

**Diversity of Payment Methods:**

Various alternative payment avenues exist for licensing fees, such as through intermediaries like "Soundtrack Your Brand" or "Zoom Media". These intermediaries often provide services at a lower cost than direct payments to SOCAN, showcasing an inconsistency in the tariff structure proposed. This discrepancy in cost between direct and intermediary services indicates that the current tariff may not accurately reflect the market reality and overestimates the economic burden on fitness facilities, thus calling for a reassessment to align costs more closely with these alternative payment channels.

**Partial Use of the Music Catalogue:**

Fitness facilities are required to pay for access to the entire catalog of the collective, despite only utilizing a limited selection of this catalog in fitness facilities. SOCAN's calculation is based on offering access to its entire catalogue. That is not a reasonable calculation. It is not in line with market reality. Most works in the full catalog are not at all suitable for use in fitness venues. This broad-spectrum fee structure does not account for the specific needs and usage patterns of our industry. A tailored tariff, reflecting actual usage, would be more equitable and prevent fitness centers from bearing disproportionate costs for music they do not use. Such a modification would ensure that fees are commensurate with actual music consumption, thereby fostering fairer pricing practices.

### **Widespread Indifference :**

As the Board has noted, setting a tariff entails complex economic assessments. Users of copyright must pay royalties – but they are not required to use the tariff to do so. If the tariff is not fair to users, they won't pay it and will choose other ways to fulfill their legal obligations. Many facilities are moving toward clearance of music on their own, or to rely on supply services other than SOCAN,. Additionally, we recognize that some users may simply be oblivious to the requirement to pay for use of music (inadvertently or deliberately). We advocate for transparency and request access to compliance data from SOCAN: How many fitness facilities are paying their fees since 2015 and is there a positive fluctuation in this number over time. Understanding the extent of compliance would substantiate our position that the burden of tariffs falls unjustly on a few compliant, often larger entities easier to target, while a majority remain uninformed or non-compliant. If only a limited number of fitness centers bear the majority of the licensing fees, this imbalance strongly suggests that the current tariff structure is not only inaccurate but also inappropriate.

### **Withdrawal of a Member:**

The recent withdrawal of a prominent member from our association could indicate a bespoke agreement with the collective management society. While individual agreements can be beneficial, they should not detract from the collective interests of all members for the benefit of all society of music usage tariffs. We seek assurances that any negotiated agreements extend benefits broadly across our industry, ensuring no member is disproportionately advantaged or disadvantaged by isolated negotiations. Once again, the existence of alternative payment methods for the same tariff highlights that the current tariffs are out of sync with the contemporary realities of our industry.

These enhanced points underscore our commitment to ensuring a fair, justified, and proportionate tariff structure that aligns with actual usage, market conditions, and the economic realities of the fitness industry.

Our interest is to participate fairly in music royalties. We would prefer to resolve this matter in a mutually satisfactory way, ensuring that the collective, the fitness industry, and society all benefit.

Thank you for considering our plea, and we remain available for any further discussions.

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Filed by the FITNESS INDUSTRY COUNCIL OF CANADA

***Regarding the SOCAN Tariff 19 Proposal –Fitness Activities and Dance Instruction (2018);  
Physical Exercises and Dance Instruction (2019, 2020-2022)***

***Filed with the Copyright Board on 2024-05-13 under Rule 18 of the Copyright Board's Rules  
of Practice and Procedure***