

# Notice of Grounds for Objection

## SOCAN Tariff 11.A – Circuses, Ice Shows, Fireworks Displays, Sound and Light Shows, Dance Shows and Similar Event (2026-2028)

December 16, 2024

### Anticipated uses

CAPACOA and dance associations anticipate three types of uses among their memberships:

1. Performances of full-length dance works using recorded music or live music;
2. Performances of short dance works and interventions using recorded music;
3. Dance schools recitals using recorded music.

#### Full-length dance works

The vast majority of full-length dance works by not-for-profit dance companies use commissioned soundtracks that are not published sound recordings and for which rights are cleared directly with the composer. Performances of these dance works therefore do not require a SOCAN license.

A few full-length dance works by not-for-profit dance companies use published sound recordings. Some of these fall under Grand Rights. This would be the case for most repertoire ballet performances (i.e., *The Nutcracker*). Others fall under Small Rights and would require SOCAN licensing.

#### Short dance works

Many dance companies also produce short works that are meant to expose new audiences to contemporary dance. These short works are often meant to be presented in non-traditional settings: outdoors, in public transit venues, in shopping malls and in other public places. These short performances are sometimes called “site-specific performances”. These events are typically not ticketed.

It should also be noted that dance performances are sometimes presented to elementary or high school audiences. In this particular setting, multiple performances can be presented in the same venue, on the same day.

## Dance schools recitals

Dance schools regularly rent performing arts facilities to present year-end recitals by their students. It is not uncommon for dance schools to hold multiple recitals over a one-day or two-day rental. These events typically use published sound recordings and do require a SOCAN license. However, they could be subject to very different fees depending on the number of performances and whether or not they are ticketed.

We would like to argue that the value of music at a school dance performance differs from that at a professional performance or at other event types covered by SOCAN 11.A. Parents, family and friends who purchase a ticket to attend a school dance performance are primarily driven by the desire to see and support one particular amateur dancer on stage. They place much higher value on seeing that one performer on stage than on listening to the music that plays during that performance.

## Excessive minimum fee

The proposed minimum fee of \$95.63 per event is excessive, relative to the current certified tariff, relative to other minimum fees and relative to potential gross revenues in the dance sector.

The minimum fee for the proposed tariff is 21.5% higher than the minimum fee for 11.A 2023-2025 (\$78.70). While the consumer price index did increase since the last renewal, it did not increase this much. And dance companies' box office revenues certainly did not increase as fast as the costs of producing dance performances: the closing of the Fleck Dance Theatre is a sad illustration of this harsh reality.<sup>1</sup>

SOCAN Tariff 4.A.1, which has a tariff structure similar to 11.A, has a minimum fee per concert of \$35. The minimum per event fee for the proposed 11.A is 2.76 times higher.

SOCAN 4.A.2 also gives music promoters the option to pay a minimum annual fee of \$60 rather than cumulative per-event fees. If SOCAN can cover its processing costs for an entire season of concerts with an annual fee of \$60, why would it need a dance company or a dance presenter to pay \$95.63 for a single event?

In relation to the gross revenues fee structure (1.6%), the minimum per event fee is equivalent to an event with gross revenues of \$5,977. While most fireworks and ice shows likely have gross revenues exceeding this threshold, this revenue level shouldn't be expected for the vast majority of contemporary dance companies.

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<sup>1</sup> Josh Kane, "Toronto's Harbourfront Centre to end lease for four-decade-old Fleck Dance Theatre", *The Globe and Mail*, November 7, 2024.

## Concerns about the proposed fee structure

The proposed tariff lacks an application for short dance works, as well as an annual fee structure.

Companies that present short dance works could potentially be subject to acute hardship. As mentioned above, these events are usually not ticketed and those would be subject to the minimum fee per event. And these events can be very short.

Let's take a hypothetical series of three 10-minute performances in a public space. Even though the total duration of music use is shorter than a single full-length performance, this series of short performances would be subject to cumulative per event fees of \$286.89.

When the Copyright Board certified the inaugural Re:Sound Tariff 5.K, the Board acknowledged the necessity to have "separate rates for events that make incidental use of recorded music (such as a play where one or two recordings are played)".<sup>2</sup> The Board therefore certified the tariff structure of Re:Sound 5.K as proposed, that is with a lower rate where "the use of sound recordings at an event for either less than ten per cent (10%) of the length of the event or for less than ten (10) minutes in total duration for the event".<sup>3</sup>

Re:Sound 5.K also proposes a minimum annual fee for holders of multiple events – like SOCAN 4.A.2. Regrettably, SOCAN 11.A cruelly lacks a minimum annual fee structure.

## Additional grounds for objection

Further consultations are needed to assert the impact of including dance shows to Tariff 11.A. CAPACOA may identify further grounds for objection over the course of these consultations.

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<sup>2</sup> *Re:Sound Tariffs 5.A to 5.G (2013-2015) and 5.H to 5.K (2008-2015) – Use of Music to Accompany Live Events*, (September 1, 2017), Reasons for the Copyright Board Decision, at para 70.

<sup>3</sup> *Re:Sound Tariffs 5.A to 5.G (2013-2015) and 5.H to 5.K (2008-2015) – Use of Music to Accompany Live Events*, (September 1, 2017), Copyright Board Decision.