

REPLY TO NOTICES OF GROUNDS FOR OBJECTION

Filed with the Copyright Board by SOCAN on 2025-01-24 pursuant to Rule 21 of the *Copyright Board Rules of Practice and Procedure*

SOCAN Tariff 19 – Physical Exercises and Dance Instruction (2026-2028)

1. This Reply is in response to the Notices of Grounds for Objection filed by the Fitness Industry Council of Canada (FIC) and Goodlife Fitness Centres Inc. (Goodlife).
2. FIC has filed numerous grounds for objection. SOCAN denies these grounds and any factual or evidentiary assertions made in the Notices of Grounds for Objection and puts FIC to the strict proof thereof.
3. FIC has challenged SOCAN's proposed inflationary adjustment to the royalty rate and minimum fee in this tariff. The Board has repeatedly held that adjustments to royalty rates to account for inflation are appropriate to preserve the purchasing power of copyright owners. Failing to make such adjustments could, over time, erode the value of the royalties collected through tariffs. To this end, the Board has established a default methodology for inflationary adjustments. SOCAN submits that CPI all-items is the most appropriate measure for inflationary adjustments to nominal values in the proposed tariff. Contrary to FIC's objection, the proposed increase to the royalty rate and minimum fee is consistent with the Board's default methodology. SOCAN's explanation of the proposed inflation adjustment is set out in its Notice of Grounds for the proposed tariff. In particular, the proposed inflation adjustment accounts for the fact that this tariff has not been adjusted for inflation since December 2013 (as approved by the Board in 2017 for the years 2015 – 2017). Any departure from the default methodology, such as that suggested by FIC, requires an explanation and supporting evidence.
4. FIC argues that the fact that "alternative music licensing" options are available demonstrates that the rates in Tariff 19 (seemingly, whether last-approved or proposed) are impractical. SOCAN denies that the availability of providers of music for businesses demonstrates that SOCAN's Tariff 19 rates are not fair and equitable. FIC has confused the practical requirement for an establishment to obtain sound recordings of musical works to ultimately publicly perform musical works with the requirement to obtain the rightsholders' permission to publicly perform those musical works. The latter is what FIC's members and other Tariff 19 users obtain by complying with the terms of Tariff 19. Put another way, the fact that a fitness facility can purchase a CD containing sound recordings of musical works for less than the royalties owing under Tariff 19 does not demonstrate that the proposed rates and structure of Tariff 19 are inequitable.
5. FIC challenges the blanket structure of Tariff 19. FIC's proposal to amend the tariff to a "consumption-based" tariff is inappropriate and contrary to the plethora of previously approved instances of Tariff 19 which, by statutory definition, were fair and equitable tariffs. As the Board has repeatedly held, the blanket licence structure is the nature of collective management of copyright. A blanket licence strikes the correct balance between efficiency and enforcement. If this tariff were consumption based (as FIC suggests), each fitness facility would have to report on each and every work performed for every day it operates in a calendar year. Absent significant technological advancement, this would likely be unworkably inefficient for both users and for SOCAN.
6. FIC states that Tariff 19 is "poorly understood and difficult to implement". SOCAN denies this assertion. Tariff 19 has existed in its current form for decades and SOCAN has properly administered the tariff during this time and ensured compliance by users. To the extent FIC relies

on a survey that suggests there is a portion of FIC members who do not comply with Tariff 19, this is an enforcement matter that is outside the Board's jurisdiction on a tariff approval proceeding. Although enforcement matters are beyond the Board's jurisdiction, SOCAN denies FIC's assertion that its enforcement practices are inequitable and that it only targets larger facilities.

7. Goodlife challenges SOCAN's proposed inflationary adjustment to the royalty rates in this tariff. The Board has repeatedly held that adjustments to royalty rates to account for inflation are appropriate to preserve the purchasing power of copyright owners. Failing to make such adjustments could, over time, erode the value of the royalties collected through tariffs. To this end, the Board has established a default methodology for inflationary adjustments. SOCAN submits that CPI all-items is the most appropriate measure for inflationary adjustments to nominal values in the proposed tariff. Accordingly, SOCAN's proposed adjustment in accordance with the Board's default methodology does not require "substantial economic evidence to support it", contrary to Goodlife's assertion. To the contrary, any departure from the default methodology, such as that suggested by Goodlife, requires an explanation and supporting evidence.
8. Although Rule 22 of the Copyright Board Rules of Practice and Procedure provides that the Board may decide the matter of a proposed tariff only on the information provided under Part 3 of the Rules, SOCAN submits that if the Board intends to depart from its default inflation methodology, it would not be appropriate in this case for the Board to decide the matter without hearing additional evidence and submissions from both SOCAN and the Objectors absent a settlement or further developments between SOCAN and the Objectors. For greater certainty, in the event of a settlement between SOCAN and the Objectors, the Board should not rely on any of the information provided under Part 3 of the Rules.