

Copyright Board  
Canada



Commission du droit d'auteur  
Canada

**Date** 2000-09-15

**Citation** FILES: Public Performance of Musical Works 1998, 1999, 2000, 2001

**Regime** Public Performance of Musical Works  
*Copyright Act*, par. 67.1(5)

**Members** Mr. Stephen J. Callary  
Mrs. Adrian Burns  
Mr. Andrew E. Fenus

**Proposed  
Tariff(s)  
Considered** TARIFF 9 – SPORTS EVENTS IN 1998, 1999, 2000 AND 2001

**Statement of Royalties to be collected by SOCAN for the public performance or the communication to the public by telecommunication, in Canada, of musical or dramatico-musical works**

**Reasons for decision**

**I. INTRODUCTION**

Pursuant to section 67 of the *Copyright Act*, the Society of Composers, Authors and Music Publishers of Canada (SOCAN) filed with the Board a statement of proposed royalties for the public performance, or the communication to the public by telecommunication, in Canada, of musical or dramatico-musical works in 1998, 1999 and 2000.

The statement was published in the *Canada Gazette* on October 18, 1997. At the same time, the Board gave notice to users of their right to file objections to the proposed tariff within the required period of time.

A timely objection to proposed Tariff 9 (Sports Events) was filed by the Canadian Arts Presenting Association (CAPACOA).

SOCAN also filed a statement for 2001 which was published in the *Canada Gazette* on May 13, 2000 with the same notice to users. Only CAPACOA objected to proposed Tariff 9 within the required period of time. At the hearing, SOCAN and CAPACOA agreed that the Board dispose of the proposed tariff for 2001 together with its disposition of the 1998-2000 tariff.

Tariffs for music performance at sporting events have been in effect since the 1930s. From the 1940s through 1991, the rates charged by SOCAN's predecessors were based on seating capacity, generally escalating in step function with the size of the venue, with a minimum fee. In the 1970s and 1980s, the Performing Rights Organization of Canada (PROCAN) tariffs stipulated a per game fee based on three venue size ranges while the Composers, Authors and Publishers Association of Canada (CAPAC) tariffs stipulated a semi-annual or annual fee based on multiple venue size ranges, with a per game alternative fee.

Following an objection by the Canadian Alliance of Music Presenters (CAMP) to the proposed tariff filed for 1992, SOCAN and CAMP reached an agreement to restructure the tariff in the present configuration. The rates were thenceforth based on the number of tickets sold per game. The rate grid provides for different rates for major league, professional and amateur sporting events in five ticket price tiers, with the same minimum fee applicable to all three categories.

The Copyright Board approved Tariff 9 in each of the years 1992 through 1997 to reflect negotiated agreements between SOCAN and CAMP covering a number of tariffs affecting CAMP's constituents.

As a result of subsection 68.2(3) of the *Act*, Tariff 9 as it read in 1997 continues to apply on an interim basis. Royalties collected amounted to \$126,665 in 1998 and \$117,804 in 1999.

## **II. THE PARTIES' POSITION AND ARGUMENTS**

SOCAN asks that the Board double each of the rates on the 1997 tariff grid, including the minimum fee, with a 3-year phase-in. CAPACOA's position is that, unless SOCAN proves that the increases are warranted and responsible, the Board should maintain the *status quo* although it concedes that an increase more in step with the increases recently granted for similar tariffs might be in order.

### **A. SOCAN**

SOCAN relies on a number of arguments in support of its proposed tariff increase.

First, it cites the minimal opposition to its proposed tariff increase. SOCAN has almost 200 licensees under this tariff, but the active group behind the CAPACOA's objection consists of just six major league teams and/or their arenas.

Second, SOCAN argues that the use of music at sporting events has changed over the years, both as to the amount and the manner in which it is used.

Third, SOCAN argues that the licensees' ticket prices as well as their operating costs, including player salaries, have escalated to the point that SOCAN's fees represent a "tiny fraction" of their costs. The current proposal would give SOCAN a "fair piece of the pie".

Fourth, it argues that CAPACOA offers no evidence of its own in support of the *status quo* and does not dispute any of SOCAN's evidence.

## **B. CAPACOA**

CAPACOA submits that SOCAN fails to make its case for doubling the tariff.<sup>1</sup> Specifically, it contends that SOCAN has not shown in any empirical way that the market value of music has increased. SOCAN's decision to increase the rates to the proposed level was based on intuition.

CAPACOA argues that the proper way to evaluate the change in value of music is to compare the rates of increase for five other tariffs.<sup>2</sup> By CAPACOA's estimation, one tariff has not increased at all and three have increased "nominally", while the last remained the same when SOCAN withdrew a request for a very significant increase. CAPACOA further alleges that SOCAN has not "exercised due diligence" by comparing the subject tariff with the other tariffs governing music in Canada. As a result, SOCAN's position on Tariff 9 is not "an integral part of a coherent big picture view of its tariffs overall".

## **III. SOCAN'S EVIDENCE**

SOCAN's evidence consisted of two witnesses and the documentary evidence of a third witness whose attendance was waived by CAPACOA.

Professional musician and broadcaster Danny Marks gave fact and opinion evidence regarding the quantity of music played and the manner in which it was used at two hockey games he attended in Toronto and Ottawa in early January 2000. His evidence established that music is currently an important, pervasive and integral part of a hockey game. He contrasted this with a hockey game he attended in 1967 where he recollected hearing only the national anthems and brief, unidentifiable snippets of music. He had no direct information on the extent of music use at other sporting events, although he agreed with the content of several media reports submitted as SOCAN exhibits that characterized music as integral to the spectator experience.

SOCAN General Manager Michael Rock appeared as SOCAN's other witness. Mr. Rock explained that the current tariff structure first came into being in 1992 as part of a negotiated package which focussed primarily on the concert tariff. The sports venues had asked for a multi-tiered fee structure that takes into account ticket prices and the scale of the event. SOCAN had accepted their proposal.

Mr. Rock acknowledged that the idea to double the fees was not based on any empirical formula. In fact, his opinion was that the highest level of (less than) two cents does not truly reflect the contribution of music in creating the environment. However, when asked why SOCAN did not file for more than double the existing fee level, Mr. Rock responded that it is human nature to view a certain amount of increase as reasonable or tolerable. Accordingly, SOCAN filed for an increase that it deemed would not breach that tolerable level.

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<sup>1</sup> For reasons that remain unclear, CAPACOA argued that the requested increase was even higher, at 111 per cent.

<sup>2</sup> These are Tariffs 3.A (Cabarets, Cafes, etc.), 4 (Concerts), 5 (Exhibitions and Fairs), 6 (Motion Picture Theatres) and 11.A (Circuses). All but Tariffs 5 and 6 are set as a percentage of some rate base, be it revenues, production costs or entertainment expenditures.

In answer to questions from the Board, Mr. Rock recognized that SOCAN had not attempted to rationalize the rate differences among the three levels of sports by reference to their relative use of music. He also stated that SOCAN had carried out no comparisons with the amount of music used at circuses. Finally, he confirmed that SOCAN would not be averse to a percentage-based tariff if the total revenue to SOCAN were not affected.

The Board did not need to hear from Ms. Ashley Dent, an articling student at Gowlings, as CAPACOA stipulated to the evidence that had been filed on her behalf. Ms. Dent attended two Ottawa Senators' games for the purpose of recording and then timing the music played before, during and after the main event. According to her evidence, this amounted to two hours each time. The rest of the evidence pertaining to the use of music at events targeted in Tariff 9 consisted of 39 music use information reports relating to amateur sports events, one relating to professional sports other than major league and three relating to major league sports. The examination of these reports tended to show that the number of songs used at non-major league professional sports events is more similar to that at major league games than at amateur games, even though the rates for the middle group are skewed toward the amateur level.

At SOCAN's invitation and with the concurrence of CAPACOA, some Board members, including two of the members of the panel, attended an Ottawa Senators' game on January 8, 2000. Participants were informed that since the present panel had then yet to be struck, they could not infer from the presence or absence of a Board member that any given member would or would not be part of the panel. At that time, participants waived their right to object to the presence of a member on the panel for the sole reason that the member did not attend the event. Counsel for both parties were in attendance.

CAPACOA did not submit evidence in these hearings.

#### **IV. ASSESSMENT OF SOCAN'S CASE**

Under normal circumstances, the manner in which SOCAN opted to prove its case would have proved inadequate. As will become clear later, Tariff 9 grossly undervalues music when compared to other tariffs dealing with similar uses. Absent this, SOCAN's case probably would have failed. Outlining some of the difficulties raised by the evidence may help to avoid similar occurrences in the future.

For example, the Board can understand that SOCAN may opt for a tariff that is less than what it perceives as the full value of music in the hope of not raising objections with the attending costly hearing process. Having said this, the fact that licensees will not object to an increase is not a justification in itself for a tariff increase. In the same vein, a justification based on a *change* in the amount and manner of music use begs the question "compared to what?", a question that SOCAN's evidence did not answer satisfactorily.

Mr. Marks' evidence is another case in point. He offered as his only point of reference a 1967 hockey game that he attended. The aggregate fees payable to SOCAN's predecessors for such a

game in that year would have been about \$7.<sup>3</sup> Under the proposed tariff for 2000, the fee would be \$340. An increase of this magnitude might well be fully justified for by a combination of inflation and changes in the amount and manner of music use over the 33 years, but hardly on the sole basis of the anecdotal evidence of a single witness. Nor did SOCAN offer any evidence of any change in the amount or manner of use of music since 1992, the base line year against which the 100 per cent increase is sought.

SOCAN contended that expensive market studies would be necessary to establish the value of music here and that such expense could not be justified given the tariff's relatively minor contribution to SOCAN's revenues. While the Board is sympathetic to SOCAN's efforts to maintain low administrative overheads, it requires more substantial evidence in order to set fair and equitable tariffs.

All in all, to paraphrase CAPACOA's argument, SOCAN could have been more diligent in comparing the subject tariff with others, thereby helping the Board to understand how it fits within the larger picture of music tariffs in effect in Canada at this time.

CAPACOA's goal in questioning SOCAN's efforts in this respect was to highlight the discrepancy between the proposed increase for Tariff 9 and recent increases for the other tariffs. What a further and more appropriate comparison actually reveals, however, is the extreme disparity between the relative value of music under Tariff 9 and its relative value under all the percentage-based tariffs referred to by CAPACOA. The relative value under those percentage tariffs ranges between 1.6 per cent (circuses) and 3 per cent (cabarets) of the tariff base.

As Mr. Rock pointed out in his testimony, a flat fee of a penny, expressed as a percentage of a \$20 ticket is 1/2000 or 0.05 per cent. The same penny, expressed as a percentage of the average National Hockey League (NHL) ticket price of \$66, would be about 0.015 per cent, or less than 1/100 of the share of revenues a circus pays for its music.

SOCAN did not adduce any logs of music use at circuses, which, in the Board's view, would have provided a logical benchmark. It should be obvious to anyone who has recently attended an NHL game that the extent and intensity of music used at hockey games today clearly suggests that its relative value is closer to that at a circus. Yet the fees for such an event, expressed as a percentage of revenue, are two orders of magnitude lower than those payable for a circus.

## **V. ASSESSMENT OF CAPACOA'S CASE**

CAPACOA took the position that SOCAN had the burden of establishing its case. Yet, as the Board stated repeatedly in earlier decisions, the Board is not bound by the rules on the burden of proof in civil matters.<sup>4</sup>

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<sup>3</sup> The tariff of BMI Canada (PROCAN's predecessor) in the 1960s provided for a royalty of \$2 per game at venues having a capacity of 7,500 to 20,000 seats. CAPAC's tariff provided for a royalty of \$200 per year for venues having a capacity of 13,501 to 20,000 seats which, if divided among 40 games, would have averaged \$5 per game.

<sup>4</sup> See, e.g., 1993 Tariff 2.A decision, Copyright Board Reports 1990-1994, pages 357-358.

SOCAN no doubt has a heavier responsibility to justify either a new tariff or an increase in one, as opposed to a tariff maintaining the *status quo*. However, an objector in all three situations must establish its case for objection. CAPACOA's choice not to present evidence in the present case was therefore ill advised, to say the least.<sup>5</sup>

CAPACOA argued that, by using large amounts of music under the blanket licence, their licensees are "simply making efficient use of their licenses to play music from the SOCAN catalogue". While this may be true once the tariff has been set, this argument ignores the very purpose of the hearing process, which is to assess whether a change in rate is justifiable based on the current amount and manner of use of music.

CAPACOA proposed that the proper way to evaluate the change in value of music under one tariff is to compare the rates of increase in other tariffs. That proposition cannot be supported. Not only would the rate of change in the extent and quality of music use from the same base year have to be comparable between tariffs, but there would also have to be inter-tariff consistency in the relative value of music. Moreover, CAPACOA's premise is arithmetically unsound at least as it related to percentage tariffs, which need not increase to result in higher royalties.

## **VI. THE BOARD'S APPROACH**

A tariff that has been marginalised through relative neglect, may well need to be re-evaluated. Tariff 9 certainly is a case in point.

Based on the evidence and arguments submitted, the Board reaches two main conclusions: (1) that the royalty rate should be expressed as a percentage of ticket price; and (2) that the royalty rate should be increased.

### **A. A PERCENTAGE-BASED TARIFF**

The current tiered structure is regressive in many respects. First, it imposes a ceiling on fees for all tickets priced over \$40. Since average NHL ticket prices already exceed that price by \$26, all other things being equal, major league sports are being favoured and there is no indication that ticket prices have reached a plateau.

Second, the lower ticket price tiers apply largely to amateur sporting events which in turn tend to play in small venues. With an average royalty per event of \$19.57, it is clear that most of the 1,629 amateur events licensed in 1999 were subject to the minimum \$19 fee and that the price tiers are irrelevant to them. This must also have been true for many professional (non-major league) sports, for which the average royalty per event was \$22.65. (By comparison, the average royalty per major league event was \$135.10.)

By definition, every instance in which the minimum fee is triggered is one where the licensee is paying more per ticket than the posted rate. Here, the minimum fee causes amateur and

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<sup>5</sup> The fact that additional financial information relating to one of the operators represented by CAPACOA was never filed, even though it was promised at the hearing, only added to the difficulty.

professional sports licensees to pay proportionately far more than their major league counterparts, when the fees were expressed as a percentage of revenue. This became clear as a result of an exchange between the panel and participants during argument. Although the “optics” of the tier structure suggest that the amateur and professional sports receive preferential treatment, in practice the opposite holds. This anomalous result is even more unfair in light of the evidence suggesting that music is less important in the amateur category than in the other two categories.

These difficulties can be addressed through changes from time to time in a tariff as it is currently structured. This, however, requires participants to collect and provide continuously updated information if the tariff is to remain fair. By contrast, these difficulties rarely arise within a tariff based on a set percentage of a rate base. CAPACOA supports a tariff based on a percentage of revenue. SOCAN is not averse to it. The Board believes that this is a good opportunity to implement it.

A percentage of revenue-based tariff accomplishes several goals. First, it ensures that the value of music relative to the licensee’s activity remains constant, automatically adjusting for market-specific inflation. Second, it avoids internal inequities within the price tiers proposed in the flat fee grid. Third, it removes the artificial ceiling created by the uppermost tier and the resulting preferential treatment of higher priced events. Fourth, it makes most inter-tariff comparisons more transparent.

The Board recognizes that the calculation of a revenue dependent royalty requires the disclosure of financial information not needed under the existing tariff structure. However, CAPACOA registered no concern over this issue. More importantly, past experience demonstrates that any legitimate concerns can be addressed in due course through either understandings with SOCAN or a change in the relevant administrative provisions.

## **B. THE VALUE OF MUSIC AT SPORTING EVENTS**

As the above clearly demonstrates, music at sporting events is currently undervalued when compared to tariffs involving similar uses, and especially Tariff 11.A (Circuses, Ice Shows, etc.). The Board is relieved of the exercise of determining by precisely how much, since, for reasons of fairness (described in section VII.B below), it does not intend to set the amount payable by any licensee at more than double that paid in 1997.

However, a review of other percentage-based tariffs (e.g., circuses, concerts, cabarets, commercial radio and commercial television) reveals rates between 32 and 64 times higher or even more than the effective rates under the current Tariff 9, with no apparent rationale for the disparity. Accordingly, the Board deems entirely supportable the maximum 100 per cent increase resulting from the tariff certified for 2001. The fact that many other smaller events will actually attract lower royalties than under the flat fee system is a function of the removal of the minimum fee.

## **VII. OTHER ISSUES**

### **A. MINIMUM FEES**

Usually, two arguments are invoked in favour of minimum fees. The first is the need to avoid royalties being so low as to make tariff collection economically impossible or irrational. The second is a perceived inherent minimum value to the licence. Be that as it may, any minimum fee must reflect a balance between SOCAN's actual costs and fees otherwise payable in the absence of such minimum fee. Furthermore, such fees ought to be tailored to the business model of the industry concerned. Absent either of these conditions, the risk is high that the minimum fee will become the price; when that happens, the rate structure only serves to give a distorted view of what truly occurs.

Tariff 9 is a case in point. The 1997 minimum fee was, in effect, the actual rate paid for the vast majority of amateur and professional games. With every rate doubled, the minimum fee would continue to be the effective rate for the majority of games in those categories; the current inequities would merely become twice as costly.

The minimum fee of \$59.15 under Tariff 11 applies only to circuses generating gross revenues of less than \$3,700. Under Tariff 9 as proposed by SOCAN, the \$38 minimum proposed by SOCAN would apply to all games with under \$76,000 in gross revenues. It is safe to assume that few amateur and professional games generate that level of revenue.

To be in proportion with Tariff 11 minimum, the minimum fee under Tariff 9 would have to be less than \$2. The Board sees no point in imposing such a nominal minimum and does not do so for 2001.<sup>6</sup>

The Board is quite aware that, with the removal of the minimum fee, certain licensees will actually pay less under the new regime, but that result is consistent with the notion that the value of music at all levels of sports should be in the same proportion to gross revenues.

### **B. FREE EVENTS**

The Board recognizes that games with free admission must attract some royalty obligation. Notwithstanding the elimination of minimum fees, and in the absence of evidence of production costs (which are the rate base in at least one instance where revenues cannot be used), the Board has provided in the tariff that events with free admission shall attract royalties of \$5 per event.

### **C. JURISDICTION TO CERTIFY HIGHER THAN PROPOSED RATES**

In its 1994 decision concerning the concert tariff (Tariff 4.A), the Board discussed its ability to

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<sup>6</sup> It would appear that a single annual (or seasonal) licence could easily be issued to most of the Tariff 9 licensees, thus reducing the administrative costs that the minimum fees theoretically cover. A minimum fee reflective of administrative costs might then be acceptable for such annual licences, but it would be up to SOCAN to propose such a scheme in the future.



set tariffs higher than those in SOCAN's proposal.<sup>7</sup> The issue here, as it was then, is one of fairness. Potential users are entitled to receive notice of the issues to be raised during the proceedings. The proposed tariff was published in the *Canada Gazette* and the statutory notice periods have lapsed. Tariff 9 is not a single-user tariff. Effectively, only six of some 200 licensees were represented at the hearing. Those most likely to pay more than what SOCAN asked for would have to be identified and notified. This would mean reopening a matter that goes back more than two years; this is neither practical nor efficient.

Therefore, no licensee will be required to pay more than what SOCAN had asked for.

#### **D. MAXIMIZING TOTAL ROYALTIES UNDER A PERCENTAGE TARIFF**

The Board sought to accomplish two goals that proved somewhat at odds with each other. One goal was to reformulate the tariff on a percentage of revenue basis applicable to all three sports categories. The other goal was to give as realistic a value as possible to music at sporting events, within the constraint of the two-fold ceiling.

Given the impact of the minimum fee within the current tariff, it became apparent that changing the basis from a flat fee to a percentage would result in a two-fold increase in the royalties payable only at the margin. However, the Board set out to derive the percentage that would correspond most closely to SOCAN's proposed royalty rates.

First, the Board translated SOCAN's proposed per-ticket royalty rates into equivalent percentage of revenue royalty rates. The existing grid contains 15 separate rates that vary in relation to ticket price and sports category as well as a minimum fee. The Board translated SOCAN's proposed rates for 2000 into equivalent percentage rates by dividing the proposed rates by the corresponding average ticket prices.<sup>8</sup>

These royalty rate translations could have been made for each of the 15 rate categories. However, as the Board wanted to establish a single percentage royalty rate applicable to all sports categories, it imputed an "average" ticket price for each of the three sports events categories, namely \$7.50 for amateur sports, \$15 for professional sports and \$40 for major league sports. Based on SOCAN's proposed per-ticket royalty rates for events with ticket prices at these levels, the corresponding percentage of revenue royalty rates were  $(\$0.0050 \div \$7.50 =) 0.0667$  per cent,  $(\$0.0070 \div \$15 =) 0.0467$  per cent and  $(\$0.0190 \div \$40 =) 0.0450$  per cent, respectively.

Second, these three rates were weighted to derive a single percentage royalty rate applicable to all sports categories. Two alternative weighting schemes were considered, which are set out in Appendix I.

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<sup>7</sup> Copyright Board Reports 1990-1994, pages 411-412.

<sup>8</sup> i.e., equating the royalties generated under the percentage of revenue and the proposed per-ticket royalty rate mechanisms yields the following equation: % royalty rate  $\times$  (tickets sold  $\times$  average price) = proposed royalty rate  $\times$  tickets sold.

Rearranging terms yields the following relationship: % royalty rate = proposed royalty rate/average price.

The first used the actual contribution to aggregate royalties by each of the three sports categories in 1999. The weights associated with amateur, professional and major league sports were 27 per cent, 10 per cent and 63 per cent, respectively. Applying those weights yielded a weighted average percentage of revenue royalty rate of  $[(0.0667\% \times 0.27) + (0.0467\% \times 0.10) + (0.0450\% \times 0.63)]$  or 0.0510 per cent.

The second weighting scheme used an estimate of the contribution to aggregate royalties that would have been made using imputed average ticket prices and attendance rates.<sup>9</sup> The weights associated with the three sports categories were 14 per cent, 9 per cent and 77 per cent respectively. Applying these alternative weights yielded a weighted average percentage of revenue royalty rate of  $[(0.0667\% \times 0.14) + (0.0467\% \times 0.09) + (0.0450\% \times 0.77)]$  or 0.0481 per cent.

Given the similarity of the two derived rates, the Board decided to round the percentage rate to 0.05 per cent.

It was impossible to select a reasonably high percentage that would also ensure that, for example, Toronto Maple Leafs hockey games do not attract a royalty more than double that payable under the old rate grid. Accordingly, in order to ensure that no licensee will pay more than double the amount payable under the rate grid, the Board has also imposed a maximum fee, expressed in those terms.

#### **E. VALUATION OF COMPLIMENTARY TICKETS**

The Board notes from the evidence that complimentary tickets often account for a more than marginal portion of the tickets distributed for a game. Mr. L. Peter Feldman of CAPACOA confirmed that different licensees currently account for complimentary tickets in different manners. Obviously, whether such tickets are counted at all has affected the number of tickets on which royalties have been paid. Moreover, if such tickets were zero-valued, the average ticket price might have dropped to a lower tier, attracting a lower royalty rate.

Now that the price of each ticket will affect the calculation of the royalty, it is even more important that SOCAN address the treatment of complimentary tickets, both as to number and as to notional price. Nevertheless, given the nature of the changes the Board makes to the tariff structure, the issue must be addressed now, albeit somewhat tentatively.

Complimentary tickets are of at least two kinds. Many go to persons who would not otherwise be able to attend the event; others are given in the hope of deriving a commercial benefit. A reasonable argument can be made that the private box ticket given to a prominent client cannot be treated in the same way as those issued to minor league teams so that young players can enjoy the game from the rafters. To take this into account, only half of the value of all complimentary

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<sup>9</sup> These weights were based on the already noted assumed ticket prices for the three types of sports events together with assumed average tickets sales per event of 4,000 for amateur sports, 4,000 for professional sports and 12,500 for major league sports. The total number of events for each of the three groups for 1999 were based on SOCAN's estimates (i.e., its summary of Royalties Generated by Tariff 9 Sports Events held in 1998 and 1999).

tickets issued for an event will be included in the rate base.

Other considerations could also be taken into account. A problem could arise in assessing complimentary tickets where paid tickets in the same category have attracted different prices. For the time being, complimentary tickets for an event will be valued at the lowest price paid for a sold ticket within that category.

As with the other elements of the tariff, the two-fold ceiling will apply to this measure.

The Board expects SOCAN to address this issue in its tariff filing for 2002.

#### **F. EFFECTIVE YEAR FOR THE NEW ROYALTY REGIME**

The Board has decided not to impose the percentage royalty regime retroactively. Licensees have already paid their fees for 1998 and 1999 and the tariff will be certified well into the second semester of 2000. In the majority of cases, the administrative cost of recalculating fees on the new basis cannot be justified by the size of the increase or decrease that would result.

In any event, the level of royalties is so nominal, even at the new levels, that no grave injustice is done to SOCAN by delaying the conversion to a percentage basis by an additional year. Accordingly, the Board has certified only the 2001 tariff as a percentage based tariff.

#### **G. INTERRELATIONSHIP BETWEEN TARIFFS 4 AND 9**

For the reasons outlined by SOCAN in its argument, the Board modifies the wording of the tariff for 2001 so that Tariff 4, not Tariff 9, applies to performances of music at opening and closing events for which an additional admission charge is made.



Claude Majeau  
Secretary General

**APPENDIX I**

<b>Sports Events - SOCAN Tariff 9</b>				Royalty Fee = Maximum [\$38 (2 × rate) × tickets sold]		
<b>Proposed Rates: cents (¢)</b>						
Average Ticket Price	Amateur Sports	Professional Sports	Major League Sports	Number of Tickets Required to Generate Proposed Minimum Charge		
\$10 or less	0.50	0.60	1.50	7,600	6,333	2,533
\$10.01 - \$20	0.60	0.70	1.60	6,333	5,429	2,375
\$20.01 - \$30	0.70	0.80	1.70	5,429	4,750	2,235
\$30.01 - \$40	0.80	0.90	1.80	4,750	4,222	2,111
Over \$40	0.90	1.00	1.90	4,222	3,800	2,000
Minimum Royalty Fee \$38						

<b>Alternate Rate Structure:</b>		Royalty Fee = [%rate × (average price × tickets sold)] calculated quarterly or annually		
Average Ticket Price	Maximum Fee	Percentage rates ensuring that fees paid will be no more than double existing rates*		
\$10 or less	\$7.50	0.0667%	0.0800%	0.2000%
\$10.01 - \$20	\$15	0.0400%	0.0467%	0.1067%
\$20.01 - \$30	\$30	0.0233%	0.0267%	0.0567%
\$30.01 - \$40	\$40	0.0200%	0.0225%	0.0450%

Note: at plausible average ticket levels for each category, the %rate range is 0.035% to 0.057%.

\* To determine the %rate that will ensure that royalty revenues are no more than double those received under the current rate set: %rate × (tickets sold × average price) = proposed rate × tickets sold → %rate = proposed rate/average price.

<b>Potential Royalty Revenues Based on a percentage rate of 0.0500%</b>										
	Average Price	Average Tickets	Average Revenues	Events	Current Rates - 1999			Alternate %Rate		
					Average Royalty	Royalties Generated	(%share)	Average Royalty	Royalties Generated	(%share)
Amateur	\$7.50	4,000	\$30,000	1625	\$19.57	\$31,801	27%	\$15	\$24,375	14%
Pro	\$15	4,000	\$60,000	525	\$22.65	\$11,891	10%	\$30	\$15,750	9%
Major	\$40	12,500	\$500,000	550	\$135.10	\$74,305	63%	\$250	\$137,500	77%
Total						\$117,998	100%		\$177,625	100%

**Weighted %Rate Calculations:**

1) Based on a current rate structure (% royalties generated): **0.0510%**

2) Alternative %rate structure (% royalties generated): **0.0481%**