

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Regime Collective Administration of Performing Rights and of Communication Rights
Copyright Act, subsection 68(3)

Members Mr. Stephen J. Callary
Mrs. Francine Bertrand-Venne
Mrs. Sylvie Charron

Proposed Tariffs Considered 9 – Sports Events (2002-2009)

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

[1] Pursuant to subsection 67.1(1) of the *Copyright Act* (the “*Act*”), the Society of Composers, Authors and Music Publishers of Canada (SOCAN) filed with the Board statements of proposed royalties to be collected for the public performance or the communication to the public by telecommunication, in Canada, of musical or dramatico-musical works for the years 2002 to 2009. The proposed statements were published in the *Canada Gazette* and prospective users and their representatives were advised of their right to object to the proposals. Those who exercised this right are mentioned later on in these reasons.

[2] The Board’s latest decision concerning SOCAN’s tariff for sports events dates back to September 2000, and dealt with the years 1998 to 2001.¹ Until then, the fee was based on the number of tickets sold, multiplied by an amount that varied according to the average price and the nature of the event (amateur, professional or major leagues). For 1998 to 2000, the decision

¹ *SOCAN - Tariff 9 (Sports Events) for the Years 1998 to 2001*, [Board decision of September 15, 2000](#) (hereafter, *SOCAN 9,2000*).

certified the same tariff as for 1997. For 2001, the decision set aside the previous formula to establish the royalty at 0.05 per cent of gross receipts from ticket sales, while capping the amount payable at twice what would have been paid under Tariff 9 for the year 2000. The decision was based on three main conclusions.

[3] First, the previous formula penalized smaller events. The average major league admission price was continually increasing. A royalty expressed as a percentage of the admission price would mean that the value of music would remain constant in relation to the activity in question and remove the artificial ceiling created by the uppermost tier.

[4] Second, the royalty rate had to be increased. Comparisons with other SOCAN tariffs revealed rates between 32 and 64 times higher, or even more, than the Tariff 9 rate. Consequently, the Board deemed “entirely supportable the maximum 100 per cent increase resulting from the tariff certified for 2001”.²

[5] Third, the Board removed the minimum fee. Having noticed that “[t]he 1997 minimum fee was, in effect, the actual rate paid for the vast majority of amateur and professional games”,³ the Board concluded that the tariff structure itself was the reason, and the only way of alleviating this problem was to remove the minimum fee. The Board certified, however, a \$5 flat fee per event when no admission fee is charged.

I. PROPOSED RATES

[6] Relying heavily on the Board’s comments in *SOCAN 9, 2000*, SOCAN applied for 1.6 per cent of gross receipts from ticket sales for 2002, 2003 and 2004, subject to a minimum fee of \$64 for a per event licence and \$107.90 for an annual licence.

[7] The following associations and organizations objected to the proposed tariffs:

- The Canadian Association of Fairs and Exhibitions (CAFE)
- The Canadian Football League (CFL)
- The Federation of Canadian Municipalities
- Lacrosse Inc.
- Manitoba’s Amateur Sport Community, Sport Manitoba
- Montreal Expos
- NBA Properties, Inc.
- National Hockey League (NHL) and Canadian Clubs
- Rogers Blue Jays Baseball Partnership
- Sport Canada

² *SOCAN 9, 2000*, page 13.

³ *Id.*

- Synchro Canada
- Winnipeg Goldeyes Baseball Club
- Toronto Phantoms Football

The Board also received several letters of comments.

[8] All the objectors considered the proposed increase to be exorbitant. The NHL pointed out, for example, that a club with annual ticket revenues of \$30 million would see its fees increase from \$15,000 to \$480,000.

[9] On April 26, 2002, SOCAN offered to set the royalties at the same rate as in 2001 for January to June 2002, at 0.055 per cent for July to December 2002, at 0.06 per cent for 2003 and at 0.065 per cent for 2004, still subject to a minimum fee of \$64 per event or \$107.90 per year.

[10] On May 3, 2002, the Blue Jays and the Expos accepted SOCAN's offer and informed the Board that they were negotiating an agreement that would reflect these rates. On July 25, 2002, Sport Canada stated that it still objected to the tariff as amended, because a minimum fee would impose an undue burden on amateur sports clubs.

[11] On May 10, 2002, CAFE informed SOCAN that it would consider the April 26 proposal at its next board meeting scheduled for early June 2002. CAFE has never communicated its views on SOCAN's offer. Other objectors did not respond.

[12] On June 21, 2004, SOCAN confirmed with the Board it had concluded identical agreements with the NHL (for January 1, 2002 to June 30, 2012) and the CFL (for January 1, 2002 to December 31, 2011). The agreements provide for the rates set out in the [attached Table](#) and contain no minimum fee. They stipulate that, every year, SOCAN must propose tariffs based on the agreements. SOCAN later confirmed, on January 31, 2007, that it had concluded similar agreements with the Blue Jays and NBA Properties.

[13] The statements SOCAN then filed for 2005, 2006 and 2007 increased the royalty rates to 0.07, 0.075 and 0.08 per cent of gross receipts from ticket sales, in accordance with the agreements. SOCAN again requested a minimum fee of \$64 per event, but did not include the option of an annual licence. No one objected to the proposed tariff for 2005. Canadian Satellite Radio objected to the proposed tariff for 2006, and Sirius Canada Inc. to the proposed tariffs for 2006 and 2007; however, both objections were later withdrawn.

[14] On January 31, 2007, SOCAN asked the Board to certify the tariff for 2002 to 2007 according to the rates set out in the attached Table. SOCAN also withdrew its request for a minimum fee, proposing to postpone a review of this issue until 2012. However, it asked that the \$5 fee per event be maintained when admission is free.

[15] On February 9, 2007, the Board forwarded SOCAN's new proposal to all objectors and asked each of them to confirm whether they maintained or withdrew their objection. CAFE confirmed its withdrawal. Two objectors who failed to respond to the Board's request were therefore deemed to have withdrawn their objections. Four objectors maintained their objections: two of them were against the retroactive application of the tariff and the other two objected to the rate increase and the imposition of a \$5 fee per event when admission is free. On March 28, 2008, the Board sent these objectors questions on the financial implications of SOCAN's latest proposal. One withdrew its objection, another failed to reply, and two simply maintained their objections without providing the additional information requested by the Board.

[16] For 2008 and 2009, SOCAN filed statements based on the agreements concluded with the parties. There were no objections.

II. ANALYSIS

[17] What SOCAN is asking the Board to certify would lead to the doubling of fees between now and 2011. This is a substantial increase. The September 2000 decision clearly expresses the Board's viewpoint on the extent to which the tariff undervalues music when compared with other SOCAN tariffs dealing with similar uses. We are of the same opinion. Indeed, even when doubled, the rate remains relatively low.

[18] The agreement SOCAN concluded with some of the parties was initially negotiated with major league sports who are large users. Certain smaller users continue to object to the rate increase. That said, these objectors did not advance anything that might lead us to believe that the increase would be unfair to them, particularly since the lack of a minimum fee in the tariff is clearly to their advantage. In the circumstances, we certify Tariff 9 for 2002 to 2007 as requested by SOCAN. We also certify the tariffs as proposed by SOCAN for 2008 and 2009, as they are in line with the agreements and have not been challenged.

[19] SOCAN's position regarding the minimum fee contradicts that of the Board, namely that the lack of a minimum fee is generally unfair to copyright owners. That said, we do not have enough information to be able to set a minimum fee that is compatible with the tariff structure while taking into account the characteristics of the industry targeted by the tariff. We therefore accept SOCAN's proposal to postpone the examination of that issue and certify Tariff 9 without the inclusion of a minimum fee for the time being.

[20] SOCAN proposes that the flat \$5 fee continue to apply to free events. Sport Canada asks instead that no tariff apply to such events. The copyright owner is entitled to be paid even for free events. It is up to the owner to waive this payment if it deems fit to do so; indeed, SOCAN does so when all suppliers do likewise. That said, and despite having requested it, we have no information on the financial impact of this flat fee. As it was already certified in 2001, we will preserve the status quo and certify it again for 2002 to 2009.

[21] Some object to the retroactive application of the tariff. It is the *Act* and not a decision by the Board that allows SOCAN to collect fees retroactively as soon as a tariff becomes effective. SOCAN has filed statements for each year since 2002. The Board is therefore obliged to certify the tariff retroactively as of 2002. We note, however, that in a letter to the Board dated September 29, 2008, SOCAN waived collecting any retroactive increases of the tariff from users, except those with whom it had already reached agreements that included rate increases.

[22] Tariff 9 generated royalties amounting to \$176,440 for 2001. The number of licences issued was 250. In 2006, the latest year for which SOCAN has provided the Board with data, the tariff generated \$313,348, an increase of over 75 per cent from 2001, for a slightly lower number of licences, i.e., 221. The tariff having remained the same as in 2001, given that it has not yet been certified, this substantial fee increase is essentially a result of the implementation of SOCAN's agreements with the major league sports. In fact, as of July 2002, these leagues started paying SOCAN fees under their agreement that provided for gradual annual rate increases until 2011. They paid \$280,986 to SOCAN in 2006, which is most of the total royalties for Tariff 9 in that year. The rate increase that we certify is therefore already in effect for users that generate most of the total royalties.

[23] For their part, users that are not subject to an agreement paid total royalties of about \$32,000 in 2006. It is that amount that will increase as a result of the certification of this tariff. The rate that we certify for 2006 is 50 per cent higher than for 2001. The additional amounts that this rate will generate will consequently be no more than \$16,000 in 2006. This is about \$80 per licence per year. Given the lack of a minimum fee, which is to the advantage of lower users, we do not believe that this increase will be a source of major financial difficulty for users.



Claude Majeau
Secretary General

III. TABLE / TABLEAU

SOCAN'S PROPOSED RATES / TAUX PROPOSÉS PAR LA SOCAN

Period/Période	Rate/Taux				
January to June 2002 Janvier à juin 2002	The lesser of / Le moindre de : (A) Twice the amount that would have been payable based on the following ticket rates: Le double de ce qui serait versé en fonction des taux par billet suivants :				
	<table border="1"><tr><td>Average Ticket</td><td>Amateur</td><td>Professional Sports</td><td>Major League</td></tr></table>	Average Ticket	Amateur	Professional Sports	Major League
Average Ticket	Amateur	Professional Sports	Major League		

	Price/ Prix d'entrée moyen	Sports/Sports amateurs	(other than Major League)/Sports professionnels (autres que des ligues majeures)	Sports/Sports des ligues majeures
	\$10 and under/et moins	0.25¢	0.30¢	0.75¢
	\$10.01 – \$20	0.30¢	0.35¢	0.80¢
	\$20.01 – \$30	0.35¢	0.40¢	0.85¢
	\$30.01 – \$40	0.40¢	0.45¢	0.90¢
	Over/Plus de \$40	0.45¢	0.50¢	0.95¢
	(B) 0.05% of gross receipts / des recettes brutes			
July to December 2002 Juillet à décembre 2002	0.055% of gross receipts / des recettes brutes			
2003	0.06% of gross receipts / des recettes brutes			
2004	0.065% of gross receipts / des recettes brutes			
2005	0.07% of gross receipts / des recettes brutes			
2006	0.075% of gross receipts / des recettes brutes			
2007	0.08% of gross receipts / des recettes brutes			
2008	0.085% of gross receipts / des recettes brutes			
2009	0.09% of gross receipts / des recettes brutes			
2010	0.095% of gross receipts / des recettes brutes			
2011	0.10% of gross receipts / des recettes brutes			