

Copyright Board
Canada



Commission du droit d'auteur
Canada

[TRANSLATION]

Date 2023-07-07
Citation *SOCAN Tariff 9 (2024-2026)*, 2023 CB 4
Member René Côté
**Proposed
Tariff
Considered** SOCAN Tariff 9 – Sports Events (2024-2026)

Approval of Proposed Tariff
As
SOCAN Tariff 9 – Sports Events (2024-2026)

REASONS FOR DECISION

I. OVERVIEW

[1] The Society of Composers, Authors and Music Publishers of Canada (SOCAN) is a collective society that manages the public performance rights of musical works on behalf of Canadian and foreign authors, composers and music publishers. SOCAN filed a proposed tariff with the Copyright Board for the performance of musical works, in public, at sports events in Canada, of musical or dramatico-musical works forming part of its repertoire, for the years 2024-2026.

[2] For the following reasons, the Board finds that SOCAN Tariff 9 (2024-2026) is fair and equitable, and we approve it.

II. BACKGROUND

[3] SOCAN Tariff 9 allows users to perform, in public, musical works in its repertoire at any time and as often as desired, by means of performers in person or by means of recorded music, in connection with baseball, football, hockey, and basketball games, as well as skating competitions, races, track meets and other sports events.

[4] The Board last approved *SOCAN Tariff 9 (2018-2023)* on October 1, 2021.¹ The last-approved tariff contained a royalty rate of 0.1 per cent of gross receipts from ticket sales and a minimum fee of \$5 per event.

[5] The proposed tariff, for the years 2024-2026, was published on the Copyright Board's website² together with the Notice of Grounds for Proposed Tariff,³ on November 18, 2022. The Board did not receive any objections to the proposed tariff. On April 4, 2023, the Board issued a notice that the information provided by SOCAN was sufficient to render a decision.⁴

[6] The proposed tariff, contains a royalty of 0.1 per cent of gross receipts from ticket sales for sports events, exclusive of sales and amusement taxes. This rate has remained unchanged since 2012.⁵

[7] However, the proposed tariff provides for an increase in the minimum fee from \$5 to \$8, for paid as well as free events, an increase of 60 per cent. SOCAN justifies this increase based on inflation without further clarification.

[8] The question of minimum fees was discussed in two Board decisions: *Tariff 9 (1998-2001)* and *Tariff 9 (2018-2023)*. In the first,⁶ the Board approved a minimum fee of \$5 per sports event for free admissions. As a result, events that charged admission but generated less than \$5,000 in revenue paid lower royalties than free sports events.

[9] In its last decision related to Tariff 9,⁷ the Board agreed to require payment of a minimum fee for low-revenue events at the same rate (i.e. \$5) as free sports events.

III. ISSUES

[10] We identified two issues related to the proposed tariff that the Board must consider in the context of this proceeding. The issues are as follows:

1. Is the last-approved tariff by the Board an appropriate proxy of what is fair and equitable for the approval of the proposed tariff presented by SOCAN?
2. Is the increase of the minimum fee from \$5 to \$8 appropriate?

¹ *SOCAN Tariff 9 – Sports Events (2018-2023)* (1 October 2021), 2021 CB-CDA 9 (Reasons). [SOCAN Tariff 9 (2018-2023)].

² SOCAN Tariff 9 – Sports Events, 2024-2026 (Proposed Tariff) on-line: CB< <https://cb-cda.gc.ca/sites/default/files/inline-files/PROTAR-SOCAN-9-2024-26-EN.pdf> >.

³ SOCAN Tariff 9 – Sports Events, 2024-2026 (Notice of Grounds for Proposed Tariff), on-line: CB< https://cb-cda.gc.ca/sites/default/files/inline-files/NOGPTAM-SOCAN-9-2024-2026-BIL_0.pdf >.

⁴ Notice CB-CDA 2023-017, April 4, 2023.

⁵ *SOCAN Various Tariffs, 2006-2013* (29 June 2012) Copyright Board Decision, on-line: CB< <https://decisions.cb-cda.gc.ca/cb-cda/decisions/en/item/366727/index.do> >.

⁶ SOCAN Tariff 9 – Sports Events (1998-2001), (15 September 2000) Copyright Board Decision, on-line: CB< <https://decisions.cb-cda.gc.ca/cb-cda/decisions/en/item/366564/index.do> >. [SOCAN Tariff 9 (1998-2001)].

⁷ SOCAN Tariff 9 (2018-2023), *supra* note 1.

IV. ANALYSIS

A. ISSUE 1: THE LAST APPROVED TARIFF AS PROXY

[11] Section 66.501 of the *Copyright Act*⁸ stipulates that the Board shall fix royalty and levy rates and any related terms and conditions that are fair and equitable. This provision establishes a non-exhaustive list of considerations for this task. In our opinion, the rates and related terms and conditions set in the proposed tariff represent the basis for a fair and equitable tariff for the years 2024 to 2026.

[12] When a proposed tariff does not differ substantially from a previously approved tariff, the Board may rely on the last approved tariff as an indication that the proposed tariff is fair and equitable, particularly if there has been no change in the target market. We are not aware of changes in the sports events market, in part because no objections were filed. Thus, we conclude that the proposed tariff sets a royalty rate and related terms and conditions that are fair and equitable.

B. ISSUE 2: INCREASING THE MINIMUM FEE

[13] SOCAN proposes an increase to the minimum fee from \$5 to \$8 per event, a substantial increase of 60 per cent. This increase would apply to both free and low-revenue sports events.

[14] Free sports events have been subject to a minimum fee of \$5 since January 2001. Inflation calculated from the Consumer Price Index (CPI) is 58.98 per cent from that date to December 31, 2022, which is a few cents from the increase requested by SOCAN. Rounding the fee to \$8 per event, rather than \$7.95 if the CPI increase were applied more strictly, will undoubtedly make it easier for sports event organizers to meet their reporting obligations. We therefore grant this increase and raise the minimum fee to \$8 for free sports events.

[15] The question now is whether this logic also applies to low-revenue sports events. Indeed, since these events were first subject to the \$5 minimum fee on January 1, 2021, this increase must be compared with the 10.78 per cent rise in CPI over the same period. Under these conditions, an increase of nearly 60 per cent might seem excessive.

[16] We must return, however, to the reasons that prompted the Board to establish a minimum fee of \$5 for low-revenue sports events. SOCAN had argued that the tariff was unfair for low-revenue sports events:

SOCAN also submits that the current structure is unfair because it causes licensees holding free events to pay proportionally more than licensees that charge a nominal price. For example,

⁸ RSC 1985, c C-42 [hereafter the *Act*].

an event that generates \$3,000 in ticket sales was required to pay \$3 to SOCAN based on the approved rate, whereas free events paid the \$5 minimum fee.⁹

[17] The Board accepted this argument and concluded that low-revenue sports events should pay the same minimum fee as free sports events.¹⁰ It seems difficult to argue that it is fair to impose a higher minimum fee for free sports events than for those that charge admission fees but whose revenues are low.

[18] There is another reason for raising the minimum fee for all sports events, regardless of whether they generate little or no revenue. This is the fact that minimum fees imposed for sports events are relatively low compared to other types of public events. Here are two examples: SOCAN 11.A – Circuses, Ice Shows, Fireworks Displays, Sound and Light Shows and Similar Events (2018-2022)¹¹ requires the payment of a minimum fee of \$66.37, while SOCAN 11.B – Comedy Shows and Magic Shows (2023-2025) requires a flat fee of \$45.94.¹²

[19] The Board believes that these two examples give us benchmarks to set the minimum fee for sports events. First, we note that SOCAN Tariffs 11.A and 9 are based on a percentage of revenues generated by these events. Then, as their structure is similar, administration fees should be similar. Finally, the Board used the precedent of SOCAN Tariff 11.A for the years 1998-1999 as benchmarks to justify a percentage of revenues collected for SOCAN Tariff 9 in 1998-2001.¹³

V. DECISION

[20] For the above-mentioned reasons, we approve the proposed tariff as *SOCAN Tariff 9 – Sports Events (2024-2026)*. The royalty rate remains unchanged compared to that of *SOCAN Tariff 9 (2018-2023)*, except for the minimum fee that will increase from \$5 to \$8 per event.

⁹ Tariff 9 (2018-2023), *supra* note 1, para 19.

¹⁰ *Ibid.* para 33.

¹¹ *SOCAN 11.A – Circuses, Ice Shows, Fireworks Displays, Sound and Light Shows and Similar Events (2018-2022)*, 2020 CB-CDA 010-T (8 August 2020), online: CB < <https://decisions.cb-cda.gc.ca/cb-cda/certified-homologues/en/item/483783/index.do> >.

¹² *SOCAN 11.B – Comedy Shows and Magic Shows (2023-2025)*, 2022 CDA 10-T (27 August 2022), online: CB < <https://decisions.cb-cda.gc.ca/cb-cda/certified-homologues/en/item/520951/index.do> >.

¹³ *SOCAN Tariff 9 – Sports Events (1998-2001)*, *supra* note 6, p 8.