

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2023-042]

NOTICE OF THE BOARD

Proceeding: SOCAN Tariff 4.A – Live Performances at Concert Hall, Theatres and Other Places of Entertainment - Popular Music Concerts (2018-2024)

August 16, 2023

[1] The Board has reached a preliminary view on the issues in SOCAN Tariffs 4.A.1 and 4.A.2 for the years 2018 to 2024. Before rendering a decision, the Board wishes to consult with the parties on three modifications in tariff language:

1. A conditional adjustment for non-musical amenities should they be included in the price of a ticket;
2. A confidentiality clause; and
3. The modification of ambulatory references to Tariffs 3.A and 22.

[2] Additionally, the Board is ready to conclude its written hearing process in the consideration of Tariffs 4.A.1 and 4.A.2.

I. CONTEXT

[3] On February 9, 2023, the Board ordered the parties to file submissions on two issues:¹ the tariffs' scope of application and the allocation of revenues in experiential festivals.

[4] Bal en Blanc filed its submissions on April 13, 2023. The Canadian Live Music Association with Republic Live ("Boots and Hearts") filed its submissions on April 14, 2023.

[5] SOCAN also filed its submissions on April 14, 2023. On April 28, 2023, SOCAN filed a response to Bal en Blanc and Boots and Hearts submissions.

¹ Order of the Board CB-CDA 2023-007, February 9, 2023, online: CB < <https://decisions.cb-cda.gc.ca/cb-cda/notices/en/item/521007/index.do> >.

[6] The Board is of the opinion that the information it has received is sufficient to render its decision.

II. CONSULTATION ON TARIFF LANGUAGE

A. THE NON-MUSICAL AMENITIES ADJUSTMENT

[7] The Board is of the preliminary view that it is appropriate to provide users with the ability to exclude from gross receipts of ticket sales any non-musical amenities that are included in admission charges for attendance at a concert. To claim the discount, users must report all costs associated with the concert.

[8] For example, a festival could choose to adjust their rate-base if camping is included in the ticket price. They would have this option because camping is unrelated to the organization and presentation of a concert and is normally subject to a separate fee. In order to benefit from the adjustment, the festival organizers would be required to provide SOCAN with a detailed report showing all costs associated with the festival, what is included in the ticket price and which costs are associated with musical components of the festival and which ones are associated with non-musical components.

[9] The festival organizers would calculate the adjustment based on the ratio of the costs attributed to camping and the total costs of the concert. In calculating total costs, the festival must exclude costs that are subject to a separate fee. For example, cost associated with parking that is billed separately must be excluded from the total costs.

[10] The language that sets out this adjustment includes a new definition of “Non-Musical Amenities”, the addition of a new royalties clause in subsection (2) and the movement of minimum fee statements to a new subsection (3):

Definitions

“Non-Musical Amenities” means attractions, activities, goods and services that are

- i. wholly unrelated to the organization or the presentation of a concert, and
- ii. normally subject to a separate fee for access, use, or supply at concerts. (« commodités non musicales »)

Royalties

2. (1) For the performance, by means of performers in person at a concert in the years 2018-2024, of any or all of the works in SOCAN’s repertoire, at concert halls, theatres and other places where entertainment is presented, including open-air events, the fee payable per concert is as follows:

- (a) For a paid concert, 3 per cent of gross receipts from ticket sales; or
- (b) For a free concert, 3 per cent of fees paid to singers, musicians, dancers, conductors

and other performers during the concert.

(2) Despite the royalties set out in paragraph (1)(a), the royalties payable for a paid concert where admission charges for attendance at the concert include Non-Musical Amenities and SOCAN is provided with a detailed report of all costs associated with the concert is:

$$A \times [1 - (B / C)]$$

where

- A. Is 3 per cent of gross receipts from ticket sales,
- B. Is costs attributed to Non-Musical Amenities at the concert, and
- C. Is total costs of the concert, excluding any costs that can be attributed to Non-Musical Amenities that are subject to a separate fee.

[In 4.A.1: (3) In all cases, the minimum fee is \$35 per concert.]

[In 4.A.2: (3) In all cases, the minimum annual fee is \$60.]

B. THE CONFIDENTIALITY CLAUSE

[11] The Board notes the concern expressed by Boots and Hearts over the privacy of its financial records.² The Board is of the preliminary view that a confidentiality clause is appropriate to address these concerns in the context of the adjustment for non-musical amenities.

[12] The following confidentiality clause is modified from the wording of the tariff approved by the Board in *Re: Sound and SOCAN – Stingray Pay Audio and Ancillary Services Tariff (2007-2016)*:³

7. (1) Subject to subsections (2) to (4), SOCAN shall treat in confidence information received pursuant to this Tariff, unless the disclosing user consents in writing to the information being treated otherwise.

(2) Information received pursuant to this Tariff may be shared

- (a) with SOCAN's agents and services providers to the extent required by the service providers for the service they are contracted to provide;
- (b) with the Copyright Board;
- (c) in connection with proceedings before the Board, if the information is protected by a confidentiality order;
- (d) to the extent required to effect the distribution of royalties; or
- (e) if required by law.

(3) Where confidential information is shared with a service provider pursuant to paragraph (2)(a), that service provider shall sign a confidentiality agreement.

² Submissions of Canadian Live Music Association and Republic Live (14 April 2023) at p 5.

³ *Re: Sound and SOCAN – Stingray Pay Audio and Ancillary Services Tariff (2007-2016)*, 2021 CB 5-T (29 May 2021), s 12, Gaz Supplement Vol. 155, No. 22, online: CB < <https://decisions.cb-cda.gc.ca/cb-cda/certified-homologues/en/item/497807/index.do> >.

(4) Subsection (1) does not apply to information that is publicly available, to aggregated information, to information obtained from someone other than the disclosing user who is not under an apparent duty of confidentiality, or to information that must be provided pursuant to section 67.2 of the *Copyright Act*.

C. CLEAR REFERENCES TO OTHER TARIFFS

[13] The *Practice Notice on Filing of Proposed Tariffs* describes the Board’s practice of avoiding references to other tariffs—in particular ambulatory and circular references.⁴ The Board notes such references in the Proposed Tariffs.

[14] In particular, the Proposed Tariffs contain a reference to “Tariff 3.A” and “Tariff 22”. In addition to these being ambulatory (since no year is specified), the reference to “Tariff 22” lacks clarity because the applicable parts or subparts of Tariff 22 are not identified.

[15] The Board is of the preliminary view that references to “Tariff 3.A” and “Tariff 22” can be replaced by limiting the scope of application in the following manner:

For greater certainty, this Tariff does not apply to

- i) the communication to the public of musical works over the internet; nor
- ii) the live performance in public of musical works in cabarets, cafes, clubs, cocktail bars, dining rooms, lounges, restaurants, roadhouses, taverns and similar establishments.

[16] In the alternative, if these clarifications are not necessary, the Board would consider removing them altogether.

III. NOTICE: CONSULTATION ON TARIFF LANGUAGE

[17] The parties may file with the Board and serve on the other parties their comments on the provided language no later than **Thursday, August 31, 2023**.

[18] The parties may file with the Board a response to any comments of the other parties no later than **Thursday, September 14, 2023**.

[19] Parties shall limit their submissions to consultation on the language only and are not permitted to address the substance of the issues raised by these changes.

⁴ *Practice Notice on the Filing of Proposed Tariffs* (1 March 2023), PN 2019-004 rev 3 at pp 3-4, online: CB < <https://cb-cda.gc.ca/sites/default/files/inline-files/PN-004%20rev3%20-%20Filing%20of%20Proposed%20Tariffs.pdf> >.

IV. NOTICE: FIXING THE DATE FOR FILING FINAL WRITTEN SUBMISSIONS

[20] The submissions permitted in Part III will constitute the Parties' final submissions in relation to the proposed tariffs under consideration in this proceeding. For the purposes of calculating the 12 month period referred to in Section 2(a) of the *Time Limits in Respect of Matters Before the Copyright Board Regulations*, September 14, 2023, is therefore set as the final date for submissions.

Lara Taylor
Secretary General