

NOTICE OF GROUNDS FOR OBJECTION

Filed by **PACE Rights Management LLP**

In relation to proposed tariff *SOCAN Tariff 4.A – Live Performances at Concert Halls, Theatres, and Other Places of Entertainment - Popular Music Concerts (2025-2027)*

Filed with the Copyright Board on 2023-12-13 pursuant to Rule 18 of *Copyright Board Rules of Practice and Procedure*.

1. Overview of PACE:

- PACE Rights Management was established in 2016.
- We are the global experts and leaders in assisting Rightsholders (both music writers and publishers) to Direct License their Live Public Performance Rights to Users of those rights (concert promoters, music venues, music festivals).
- We have so far successfully assisted Rightsholders to Direct License their live rights in 52 territories, on 6 continents:
Armenia / Australia / Austria / Belarus / Belgium / Brazil / Bulgaria / Canada / Chile / China / Croatia / Czech Republic / Denmark / Finland / France / Georgia / Germany / Greece / Hungary / Indonesia / Ireland / Israel / Italy / Japan / Latvia / Lithuania / Luxembourg / Malaysia / Malta / Mexico / Moldova / New Zealand / Norway / Philippines / Poland / Portugal / Romania / Russia / Singapore / Slovakia / South Africa / South Korea / Spain / Sweden / Switzerland / Taiwan / Thailand / The Netherlands / Turkey / Ukraine / UK / USA
- We have assisted these publishers to Direct License their rights:
Sony Music Publishing, Universal Music Publishing, Warner Chappell Music, BMG Rights Management, Kobalt Music, Concord Music, Downtown Music Publishing, Domino Publishing Company, Round Hill Music, Reservoir Media Management, Wixen Music.
- We have assisted Rightsholders signed to these Performing Rights Organisations (PROs):
AMRA, APRA, ASCAP, BMI, IMRO, PRS and SESAC.
- We have the most granular and transparent accounting on live rights in the world.

We think its reasonable to say that PACE has greater practical experience and expertise engaging with PRO Tariff Rates and Tariff Structures for live rights than any other entity in the world.

2. Direct Licensing:

Rightsholders directly licensing their Live Public Performance Rights to Users of those rights, enables those Rightsholders to receive more money for their rights, receive it quicker and receive more transparently than if they had licensed their rights via the PRO Network.

3. Tariff Structure:

Our objection is not about the Tariff Rate (3%) - which we will not comment on - our objection concerns the Tariff Structure i.e. the way the royalty amounts are calculated.

4.A.1 Popular music Concerts — Per Event Royalty states:

"a) 3 per cent of gross receipts from ticket sales of paid concerts, exclusive of any applicable taxes, with a minimum fee per concert of \$60.14;"

4.A.2 Popular music Concerts — Annual Royalty states:

"a) 3 per cent of gross receipts from ticket sales of paid concerts, exclusive of any applicable taxes, with a minimum annual fee of \$103.09;"

Such a Structure does not take into account the fact that rights being used by the User might:

(a) not be being licensed by SOCAN (they could for instance be being Direct Licensed by the Rightsholder), and/or;

(b) be public domain works (i.e. works that are no longer under the Term of Copyright; please see Article 6 of the Copyright Act) where no license is required and consequently no license fee is due.

The current Structure could result in SOCAN licensing less than 100% of the rights being used, but still charging 100% of their Tariff Rate on 100% of the receipts from ticket sales, because the wording of the Tariff would allow them to do so. This seems patently unreasonable and should be corrected. SOCAN should only be able to charge a license fee for their rights that is directly proportional to the economic value of those rights based on the total economic value of all the rights used. For example, SOCAN should only be able to charge 10% of their Tariff Rate if they are only licensing 10% of the economic value of the rights being used.

4. Weighting:

In any proportional calculation of rights used, a decision needs to be taken as to the methodology utilised to weight the different rights.

a) It would seem logical to utilise SOCAN's Distribution Rules for the proportional calculation, so as to ensure consistency with what SOCAN distributes. Therefore SOCAN's Distribution Rules would become a material part of SOCAN's Tariff.

SOCAN's "Simplified Distribution Rules" for 2023 state:

"Concert royalties are distributed based on the license fees received and the duration of the works performed. These royalties are then paid out to the writer(s) and publisher(s), based on the works performed.

Concerts licensed under 3A (Club show) will receive a total distribution of \$75 maximum.

Concerts licensed under 4A, 4B, 5B and online concerts will receive a minimum distribution of \$75 on the performance, with the amount increasing based on the license fee collected.

For a concert where the license fee received is \$500 or more and there are two or more musical acts, royalties shall be allocated and distributed in the following manner:

- *One Headline Act and One Support Act: 80% Headline 20% Support*
- *One Headline Act and Two or Three Support Acts: 70% Headline 30% Support*
- *Two or More Headline Acts has 3 possible scenarios:*
 - a) *Two Headline Acts, One Support Act: 80% Headline 20% Support*
 - b) *Three Headline Acts, One Support Act: 80% Headline 20% Support*
 - c) *Four Headline Acts, No Support: Allocated equally based on duration of works*
- *More than Four Musical Acts: Allocated equally based on duration of works"*

b) It is not clear from SOCAN's Distribution Rules how SOCAN is calculating the "*duration of the works performed*", or for that matter why the duration of a work is an accurate, appropriate, fair, reasonable, objective, transparent, efficient or legally compliant methodology for calculating the economic value of a work performed live.

c) To operate such a system, it would require that the exact duration (to the second) of the performance of each work is known. However, to the best of our knowledge, SOCAN does not collect this information as it's not cost-effective to do so. This does rather raise the question as to why attempt to operate a system that's been determined as not cost-effective to operate?

SOCAN would need to hire a person for each concert to time the exact duration of each work.

That person would need to have knowledge of the music being performed and SOCAN's rules.

d) SOCAN would need to create rules for various situations, for example:

- (i) If sound is being performed at the beginning or end of the song (e.g. the guitarist creates feedback/leaves an open channel), is that included in the length of the work?
- (ii) If there is sound during the song that is not part of the registered work (e.g. drum solo), is that included in the length of the work? If so, what is the justification of that (considering the PRO doesn't have the rights to that music)? If not, then the work's length would need to be calculated with the relevant sound's time removed from the calculation of the length of the work.
- (iii) What if the vocals and lyrics are being performed separate from the music; how does that get logged (as in some territories those are registered separately to the music)?
- (iv) What if the performing artiste is not performing the music, but the audience is (e.g. singing the lyrics), before, within or after the artiste's performance?

Regrettably, SOCAN has not published any information to answer or resolve the issues above.

e) As SOCAN does not measure the actual duration of the live performance of each work, or have any published rules or guidelines for doing so, they in effect just make it up. From what we understand (and SOCAN can correct us if we have misunderstood this), they take the duration of the recording of the work as the duration of its live performance. Obviously the duration of the live performance of a work might bear no resemblance to the duration of the recording of that work or its economic value (singles tend to be shorter recordings than album tracks, but it can be argued that singles would have greater economic value than album tracks do). If SOCAN doesn't have a duration for the length of recording on their database, they just make up an arbitrary duration.

f) Creating a system that relies on increased amounts of data entry and searching databases for times of recordings would logically lead to increased administration, which in turn would lead to delays in processing and increased costs (any extra money earned by the applicable Rightsholder(s) for recording that are longer might be lost due to the extra expenses in operating such a system. Equally, those Rightsholders for recordings that are shorter will be penalised by having to pay for the extra administration so that those Rightsholders of recordings that are longer can be paid more). None of which is in the best interests of Rightsholders or for that matter Promoters. Additionally, due to the lack of detail in SOCAN's royalty statements, it increases the opacity for Rightsholders as to how the valuation of their rights has been calculated. Again, something that is not in the best interests of Rightsholders.

g) Our suggested correction to SOCAN Distribution policy, and therefore the proportional calculation of SOCAN's License fee, is to simplify the policy so that all works should have an equal weighting/value, irrespective of the duration of their respective performances. In other words, one work equals one. We believe this correction would also be in the best interests of Rightsholders.

5. Music Festivals:

a) The information SOCAN uses to calculate their license fee is:

- (i) Ticket income;
- (ii) Number of works performed across the festival (where every work will have an equal weighting);
- (iii) They then apply the duration of the performance of the work (see above);

b) The above methodology undervalues rights performed by larger artistes. For example:

- (i) If every work has an equal weighting, then a work performed by the headliner on the main stage has an equal economic value to a work performed by the opening band on the smallest stage. Such an outcome bears no resemblance to the actual economic value of both works.
- (ii) If the calculation is then adjusted to include the duration of the performance of the work, it can result in a work performed by the headliner on the main stage having less economic value than a work performed by the opening band on the smallest stage, merely because the duration of a recording of work by the headliner is shorter than a recording of the work by opening band on the smallest stage. Obviously such an outcome is nonsensical.

c) SOCAN's Tariff must envision a scenario in which SOCAN is not licensing all the rights performed and used at the festival. We have not experienced any tariff structure anywhere in the world that is based upon ticket income that effectively, efficiently or appropriately calculates the proportional license fee of the PRO's rights, or effectively, efficiently or appropriately calculates the distribution amounts of the license fees to Rightsholders.

d) We suggest that SOCAN's Tariff is corrected so that for music festivals is uses the Artiste Fee Model. This methodology weights the license fee by the fee paid to the Artiste who performed the rights. Therefore if the festival deems that the Artiste (and the rights they perform) have a certain analogous value in ticket sales to the festival, that will be reflected in the fee paid to that Artiste. The more popular the Artiste, the higher the fee, the greater the value of rights. Just as it would be if the Artiste were playing a headline show.

e) In terms of its practical application, a Tariff rate is applied over the Artiste fee, and then all works by the Artiste are weighted equally, and then each work's license fee is split by the shares agreed by the rightsholders of that work.

For example:

Artiste Fee: \$100,000

Tariff rate: 5%

License fee for the works performed by that Artiste: \$5,000 ($\$100,000 \times 5\%$)

Number of works performed by that Artiste: 10

Per work license fee for works performed by that Artiste: \$500 ($\$5,000 \div 10$ works)

Split between Rightsholders: e.g. Writer1 25%: \$125 / Writer2 25%: \$125 / Publisher 50%: \$250

f) The Artiste Fee Model is a very easy, quick, efficient and transparent methodology to use to calculate the licenses (both for the PRO and for any Direct Licensing Rightsholders, and for the proportional calculation between the two), and also to communicate. Additionally, it gives certainty to the festival about the license fee total, and the administration on much of it can be done many months ahead of the festival, when the artiste fees have been finalised.

g) The Artiste Fee Model also removes the - often divisive - debate about the proportion and value of music content at festivals and the value of other non-music elements and facilities that are included in the calculation of the ticket price. The license fee for the live music, is based upon the budget for the live music.