

Notice of Grounds for Objection

SOCAN Tariff 11.A – Circuses, Ice Shows, Fireworks Displays, Sound and Light Shows, Dance Shows and Similar Event (2023-2025)

February 9, 2022

Anticipated uses

CAPACOA and dance associations anticipate three types of uses among their memberships:

1. Performances of full-length dance works using recorded music;
2. Performances of short dance works and interventions using recorded music;
3. Dance schools recitals using recorded music.

Full-length dance works

The vast majority of full-length dance works by not-for-profit dance companies use commissioned soundtracks that are not published sound recordings and for which rights are cleared directly with the composer. Performances of these dance works therefore do not require a SOCAN license.

A few full-length dance works by not-for-profit dance companies use published sound recordings. Some of these fall under Grand Rights. This would be the case for most repertoire ballet performances (i.e., *The Nutcracker*). Others fall under Small Rights and would require SOCAN licensing.

Short dance works

Many dance companies also produce short works that are meant to expose new audiences to contemporary dance. These short works are often meant to be presented in non-traditional settings: outdoors, in public transit venues, in shopping malls and in other public places. These short performances are sometimes called “site-specific performances”. These events are typically not ticketed.

It should also be noted that dance performances are sometimes presented to elementary or high school audiences. In this particular setting, multiple performances can be presented in the same venue, on the same day.

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Dance schools recitals

Dance schools regularly rent performing arts facilities to present year-end recitals by their students. It is not uncommon for dance schools to hold multiple recitals over a one-day or two-day rental. These events typically use published sound recordings and do require a SOCAN license. However, they could be subject to very different fees depending on the number of performances and whether or not they are ticketed.

We would like to argue that the value of music at a school dance performance differs from that at a professional performance or at other event types covered by SOCAN 11.A. Parents, family and friends who purchase a ticket to attend a school dance performance are primarily driven by the desire to see and support one particular amateur dancer on stage. They place much higher value on seeing that one performer on stage than on listening to the music that plays during that performance.

Finally, it's important not to lose sight of the fact that dance school operators are also licensing under Tariff 19 for all the rehearsal time in advance of the performance. In a way, the year-end dance recital is the continuation of their dance instruction activities and a culminating use of music they've been licensing for months in preparation for the recital.

Concerns about the proposed fee structure

The production and presentation of contemporary dance works is not a lucrative business by any stretch of the imagination. In 2018, Canadian not-for-profit companies had a profit margin of 1.5%.¹

While the proposed fee structure may appear reasonable for commercial ice shows and fireworks, it could prove to be challenging for small contemporary dance companies. These smaller companies present boundary pushing works that cater to niche audiences. Their average attendance per performance is much smaller than national averages reported by Statistics Canada (which are skewed by large ballet performances such as the seasonal *Nutcracker*). For this reason, their gross receipts may be below the threshold for the minimum event fee. And if they present a run of performances, they may be subject to cumulative minimum per-event of which value would exceed what they would have otherwise paid if the 1.6% ratio had been applied to their total gross revenues for the entire run.

Companies that present short dance works could potentially be subject to even more acute hardship. As mentioned above, these events are usually not ticketed and those would be subject to the minimum fee per event. And these events can be very short.

¹ Statistics Canada, [Table 21-10-0182-01 Performing arts, summary statistics](#).

Let's take a hypothetical series of three 10-minute performances in a public space. Even though the total duration of music use is shorter than a single full-length performance, this series of short performances would be subject to cumulative per event fees of \$236.10.

When the Copyright Board certified the inaugural Re:Sound Tariff 5.K, the Board acknowledged the necessity to have "separate rates for events that make incidental use of recorded music (such as a play where one or two recordings are played)".² The Board therefore certified the tariff structure of Re:Sound 5.K as proposed, that is with a lower rate where "the use of sound recordings at an event for either less than ten per cent (10%) of the length of the event or for less than ten (10) minutes in total duration for the event".³

CAPACOA acknowledges that SOCAN 11.A was designed for the integral use of music. It was not designed for events where the use of sound recordings represent less than ten percent of the length of the event. It would require significant adaptations to account for this particular type of incidental use.

We would however like to entertain with SOCAN means of mitigating the risks of imposing excessive minimum per-event fees for events of small duration, as well as risks of imposing cumulative per-event fees for organizers of series of events catering to a small audience.

The introduction of a minimum annual fee for holders of multiple events – such as exists in Re:Sound 5.K – could be a good mitigation strategy.

Financial impact of licensing dance shows under SOCAN 11.A rather than SOCAN 8

Currently, SOCAN licenses dance shows under Tariff 8. CAPACOA previously raised objections about the suitability of Tariff 8 for dance shows. However, for the purpose of the present objection, we are providing the following grounds as they relate exclusively to the financial impact arising from a change from the Tariff 8 fee structure to the Tariff 11.A fee structure.

Under Tariff 8, rates are based on room capacity, and multiple short shows that take place in the same room on the same day are considered a single event and need a single license.

For events with a capacity under 300, Tariff 8 fees would be roughly equivalent or smaller than the minimum Tariff 11.A fee. For events with a capacity greater than 500, Tariff 8 fees are capped at \$222.40. For these larger events, Tariff 8 would likely be less expensive than 1.6% of gross receipts under Tariff 11.A.

² *Re:Sound Tariffs 5.A to 5.G (2013-2015) and 5.H to 5.K (2008-2015) – Use of Music to Accompany Live Events*, (September 1, 2017), Reasons for the Copyright Board Decision, at para 70.

³ *Re:Sound Tariffs 5.A to 5.G (2013-2015) and 5.H to 5.K (2008-2015) – Use of Music to Accompany Live Events*, (September 1, 2017), Copyright Board Decision.

We are barely starting to consult with the CAPACOA membership about the impact of this change, but the initial responses suggest the change could lead to a significant increase in fees for shows by dance schools. One particular venue manager ran calculations using their 2019 reports and found that “for most shows this tariff would at least double the royalty.”

A doubling of fees for dance schools rentals would be a steep increase for organizations that have been running with little to no earned revenues for the last two years.

Additional grounds for objection

Further consultations are needed to assert the impact of including dance shows to Tariff 11.A. CAPACOA may identify further grounds for objection over the course of these consultations.

Prepared by:

Frédéric Julien
Director of Research and Development
CAPACOA

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