SOCAN

Society of Composers, Authors and
Music Publishers of Canada

Société canadienne des auteurs,
compositeurs et éditeurs de musique

General Council Winnipeg Community Centres
265 Osborne Street S.
Winnipeg, Manitoba
R3L 1Z7

October 6, 2003

Attention: Marlene Amell, Executive Director

Dear Marlene,

Thank you for your continued efforts to bring about a licensing arrangement between SOCAN and Winnipeg Community Centres. As requested by you during our meeting of October 3, 2003, here in writing is the proposal we have discussed.

SOCAN will agree to provide a licence for the year 2003 on the basis of the proposed Tariff No. 21 (recreational facilities operated by a municipality, school, college, university, agricultural society or similar community organizations) as published in the Copyright Board Supplement to the Canada Gazette, Part 1, May 11, 2002.

A licence under this tariff would grant City of Winnipeg Community Centres a licence to perform, at any time and as often as desired in 2003, any or all of the works in SOCAN's repertoire during recreational activities that would otherwise be subject to Tariff 5.A (exhibitions and fairs), Tariff 7 (skating rinks), Tariff 8 (receptions, conventions, assemblies and fashion shows), Tariff 9 (sports events, including amateur rodeos), Tariff 11.A (circuses, ice shows, etc.) and Tariff 19 (fitness activities and dance instruction). The annual fee is $180.00 for each facility, if the licensee's gross revenue from events at which music is used during the year does not exceed $12,500.

It is understood and agreed by SOCAN that, although some of the individual community centres' gross revenue may in fact exceed $12,500, all Winnipeg Community Centres will qualify for a licence under the tariff provided the gross revenues generated through events using music does not exceed that amount when averaged between the participants. During our conversations, you have indicated there to be some 71 centres using music, and that their total gross revenue when averaged between them does not exceed that amount.

SOCAN further agrees to grant General Council Winnipeg Community Centres license on an ongoing basis in years subsequent to 2003 under the terms of Tariff No. 21 as proposed for those subsequent years. I have attached to this letter an extract from the Copyright Board Supplement to the Canada Gazette, Part 1, April 19, 2003 outlining the proposed Tariff No. 21 for the year 2004. A review of that document will show that the terms of the 2004 proposed Tariff No. 21 are identical to the 2003 proposed Tariff No. 21, except that the annual fee will be increased to $188.69 for each facility.

In any case, if the Copyright Board ultimately approves the proposed tariffs referred to above at a lesser fee rate, or on terms otherwise more favourable to the licensee, SOCAN will honour the approved terms and lower fee rate, refunding upon written request any excess fees paid.

You will note that the above terms are based on *proposed* tariffs. SOCAN has offered these terms in an effort to resolve this long outstanding issue, and specifically to address the financial and administrative concerns raised by

Submitted by: Steve Demkose
on Oct. 7 2003
to the Standing Policy Committee on
Protection and Community Services

the General Council throughout our discussions. Of course, any centre may choose to obtain a SOCAN licence under existing *approved* tariffs if that is found to be the preferred alternative.

For your convenience, I have enclosed the Canada Gazette approved tariff extracts pertinent to this proposal, including:

- Tariff No. 5 EXHIBITIONS AND FAIRS (in 1998), Supplement, Canada Gazette, Part 1, July 31, 1999
- Tariff No. 7 SKATING RINKS (in 1998), Supplement, Canada Gazette, Part 1, July 31, 1999
- Tariff No. 8 RECEPTIONS, CONVENTIONS, ASSEMBLIES AND FASHION SHOWS (in 1997 and 1998), Supplement, Canada Gazette, Part 1, July 31, 1999
- Tariff No. 9 SPORTS EVENTS (in 2001) and (in 1998, 1999 and 2000), Supplement, Canada Gazette, Part 1, September 16, 2000
- Tariff No. 11.A CIRCUSES, ICE SHOWS, FIREWORKS DISPLAYS, SOUND AND LIGHT SHOWS AND SIMILAR EVENTS (in 1998 and 1999), Supplement, Canada Gazette, Part 1, July 31, 1999
- Tariff No. 19 FITNESS ACTIVITIES (in 1995), Supplement, Canada Gazette Part 1, March 11, 1995
- Tariff No. 21 RECREATIONAL FACILITIES OPERATED BY A MUNICIPALITY, SCHOOL, COLLEGE OR UNIVERSITY (in 1998 and 1999), Supplement Canada Gazette, Part 1, July 31, 1999

I have also enclosed the Canada Gazette proposed tariff extracts upon which this licensing offer is based:

- Tariff No. 21 RECREATIONAL FACILITITIES OPERATED BY A MUNICIPALITY, SCHOOL, COLLEGE, UNIVERSITY, AGRICULTURAL SOCIETY OR SIMILAR COMMUNITY ORGANIZATIONS (in 2003), Supplement, Canada Gazette, May 11, 2002
- Tariff No. 21 RECREATIONAL FACILITITIES OPERATED BY A MUNICIPALITY, SCHOOL, COLLEGE, UNIVERSITY, AGRICULTURAL SOCIETY OR SIMILAR COMMUNITY ORGANIZATIONS (in 2004), Supplement, Canada Gazette, April 19, 2003

A comparative analyses between the terms of this proposal and the terms of each of the current tariffs as approved by the Copyright Board will show that this is an exceptional opportunity for City of Winnipeg Community Centres to comply with Canada's copyright laws in a manner that is both financially and administratively favourable, and which I believe addresses all the concerns raised by the General Council during our discussions. I would especially bring your attention to the fact that a licence under this proposal includes Tariff 8, which encompasses the single most significant objection raised by the General Council.

SOCAN is the Canadian copyright collective for the performance of musical works. It administers the performing rights of its members (composers, lyricists, songwriters and their publishers) and those of affiliated international societies by licensing the use of their music in Canada. The fees collected are distributed as royalties to its members and to affiliated international societies.

The right of copyright owners to control the public performance of musical works is well established in Canadian law. I hesitate to here allow the impression that SOCAN is employing "'strong arm' tactics", as has been the GCWCC's voiced perception in the past, but I feel it is incumbent upon me to make clear that unauthorized public performances of musical works constitute infringement of copyright, for which legal remedies of injunction and damages are provided.

Our discussions began in 1995, continued through 1996, and the essence of this proposal was initially brought to you during our meeting of February 18, 2003, at which Laurence Godfrey, SOCAN's Regional Sales Manager, was also present. Through this proposal, SOCAN demonstrates sensitivity to the concerns of City of Winnipeg Community Centres as non-profit organizations run by volunteer boards, and in fact withheld pursuing this matter during those intervening years in order to prepare and deliver a solution that would address those concerns. We appreciate that the general public may find it difficult to understand copyright as a property right. SOCAN fees are not a "tax", as has also been the GCWCC's perception in the past, but a fee for license granting access to the world's repertoire of copyright music. It should correctly be considered an operating cost, just as are lighting costs, heating costs, or paid staff remunerations. It is a unique aspect of the performing right inherent in musical works that the owners are unable to easily control the use of their property. They cannot simply withhold delivery or turn off the power, as can other suppliers of products or services. Consequently, should the GCWCC and the City of Winnipeg decline to take advantage of this offer prior to the end of 2003, SOCAN, in order to fulfill the mandate of its membership, is fully prepared and would have no choice, albeit reluctantly, but to seek enforcement of its rights through the Federal Courts – a regrettable circumstance that would compel SOCAN to proceed in accordance with the strict terms of the *approved* applicable tariffs retroactively to 1995, resulting in costs that the citizens of Winnipeg would find astronomical in comparison to the cost of accepting this proposed solution.

As a resident of Winnipeg myself, and in hope that the GCWCC and the City of Winnipeg will seriously consider becoming a SOCAN customer the right thing to do, I would like to point out that many Winnipeg residents are SOCAN members who rely on SOCAN to administer their performing rights, which, for composers, lyricists, songwriters and their publishers, can be the most significant source of income allowing them to continue their important creative work – work that represents a valued component of Winnipeg culture to the international community, and which has time and again enhanced our city's reputation as a leader of creative endeavour; a city well recognized within Canada's entertainment industry as a source of musical brilliance. Sadly, Winnipeg remains the single largest Canadian city that continues to avoid this lawful responsibility.

I trust you will agree that this proposal offers a satisfactory response to the all concerns you've raised. As always, I am available at your convenience to provide clarification regarding this matter to any interested parties.

Sincerely,

Dan Stupich
Licensing Field Representative, SOCAN

c.c. Mr. Laurence G. Godfrey, Regional Sales Manager, SOCAN