

Copyright Board
Canada



Commission du droit d'auteur
Canada

October 25, 2019

In accordance with section 68.2 of the *Copyright Act*, the Copyright Board hereby publishes the following proposed tariffs:

Artisti – Multi-channel subscription satellite radio services for the reproduction of performers' performances (2021-2023);

Artisti – CBC Tariff for the reproduction of performers' performances in connection with over-the-air radio broadcasting and on the Internet (2021-2023); and

Artisti – Tariff for Pay Audio Services for the reproduction of performers' performances (2021-2023).

By that same section, the Copyright Board hereby gives notice to any person affected by these proposed tariffs.

Users or their representatives who wish to object to the above-mentioned proposed tariffs may file written objections with the Board, at the address indicated below, no later than the 30th day after the day on which the Board published the proposed tariff under paragraph 68.2(a), that is no later than **November 25, 2019**.

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PROPOSED TARIFF

Filed with the Copyright Board pursuant to subsection 67(1)

of the *Copyright Act*

2019-10-11

ARTISTI

Artisti Tariff for Pay Audio Services

For the reproduction, in Canada, of performers' performances

2021-01-01 – 2023-12-31

Proposed citation : *Artisti Pay Audio Services Tariff, 2021-2023*

STATEMENT OF PROPOSED ROYALTIES TO BE COLLECTED BY ARTISTI FOR THE REPRODUCTION, IN CANADA, OF PERFORMERS' PERFORMANCES BY PAY AUDIO SERVICES FOR THE YEARS 2021 TO 2023

Short Title

1. This tariff may be cited as the *Artisti Pay Audio Services Tariff, 2021-2023*.

Definitions

2. In this tariff,

“affiliation payments” means the total amounts payable by a distribution undertaking to a programming undertaking for all programming and services provided by the programming undertaking, without deduction; (« *paiements d'affiliation* »)

“device” means any device capable of receiving and playing a file, including a computer, digital media player, cellular phone, smartphone, or tablet; (« *appareil* »)

“distribution undertaking” means a distribution undertaking as defined in the *Broadcasting Act*, S.C. 1991, c. 11, as amended; (« *entreprise de distribution* »)

“file” means a digital file of a sound recording of a musical work or a part thereof, whether or not that sound recording has been published, is in the public domain, is eligible to receive remuneration or that the performances that are embedded within it fall within the repertoire of Artisti; (« *fichier* »)

“month” calendar month; (« *mois* »)

“pay audio signal” includes all programming and services supplied by a programming undertaking, whether or not for a fee and whether or not licenced by the CRTC as a pay audio service; (« *signal sonore payant* »)

“Performer’s performance” means a performance that has been fixed with the consent of the performer; (« *prestation* »)

“premises” has the meaning attributed to it in section 2 of the Regulations, which currently reads: “‘premises’ means (a) a dwelling, including a single-unit residence or a single unit within a multiple-unit residence, or (b) a room in a commercial or institutional building;” (« *local* »)

“programming undertaking” means a programming undertaking as defined in the *Broadcasting Act*, S.C. 1991, c. 11; (« *entreprise de programmation* »)

“Regulations” means the Definition of “Small Cable Transmission System” Regulations, SOR/94-755 (*Canada Gazette*, Part II, Vol. 128, page 4096), amended by SOR/2005-148 (*Canada Gazette*, Part II, Vol. 139, page 1195); (« *Règlement* »)

“service area” has the meaning attributed to it in section 2 of the Regulations, which currently reads: “service area” means an area in which premises served in accordance with the laws and regulations of Canada by a cable transmission system are located;” (« *zone de service* »)

“service provider” means a professional service provider from which Artisti may retain services for the purpose of conducting an audit or for the distribution of royalties to right holders; (« *prestataires de services* »)

“signal” means a television or audio signal, other than a signal within the meaning of subsection 31(1) of the *Copyright Act*, retransmitted in accordance with subsection 31(2) of the *Copyright Act*; (« *signal* »)

“simulcast” means the simultaneous communication of an over-the-air pay audio signal to which this tariff applies, via the Internet or another digital network, to a device, which is identical to the original signal and over which the recipient exercises no control over the content or the timing of the communication; (« *diffusion simultanée* »)

“Small cable transmission system” has the meaning attributed to it in sections 3 and 4 of the Regulations, which currently read: “3. (1) Subject to subsections (2) to (4) and section 4, ‘small cable transmission system’ means a cable transmission system that transmits a signal, with or without a fee, to not more than 2 000 premises in the same service area.

(2) For the purpose of subsection (1), where a cable transmission system is included in the same unit as one or more other cable transmission systems, the number of premises to which the cable transmission system transmits a signal is deemed to

be equal to the total number of premises to which all cable transmission systems included in that unit transmit a signal. (3) For the purpose of subsection (2), a cable transmission system is included in the same unit as one or more other cable transmission systems where (a) they are owned or directly or indirectly controlled by the same person or group of persons; and (b) their service areas are each less than 5 km distant, at some point, from at least one other among them, and those service areas would constitute a series of contiguous service areas, in a linear or non-linear configuration, were it not for that distance. (4) Subsection (2) does not apply to a cable transmission system that was included in a unit on December 31, 1993. 4. The definition set out in subsection 3(1) does not include a cable transmission system that is a master antenna system located within the service area of another cable transmission system that transmits a signal, with or without a fee, to more than 2 000 premises in that service area;" (« *petit système de transmission par fil* »)

“year” means a calendar year. (« *année* »)

Application

3. (1) This tariff sets the royalties to be paid for the reproduction, in Canada, of performers' performances that fall within Artisti's repertoire in connection with the transmission by a distribution undertaking of a pay audio signal or simulcast.

(2) This tariff also authorizes a person to reproduce a performer's performance for the purpose of delivering it to a distribution undertaking for use in one of the ways permitted under subsection (1).

(3) This tariff does not authorize the use of any reproduction made pursuant to subsection (1) in association with a product, service, cause or institution.

Royalties

4. (1) Except as provided in subsection (2), the royalties payable each month to Artisti are 5 per cent of the affiliation payments payable for that month by a distribution undertaking.

(2) The royalties payable to Artisti each year where the distribution undertaking is

(a) a small cable transmission system;

(b) an unscrambled Low Power Television Station or Very Low Power Television Station (as defined in Sections E and G of Part IV of the Broadcast Procedures and Rules of Industry Canada effective April 1997); or

(c) a system that performs a function comparable to that of a cable transmission system, which uses Hertzian waves to transmit the signals and which otherwise meets the definition of “small transmission system” are 2.5 per cent of the affiliation payments payable for that year by a distribution undertaking.

(3) All royalties payable under this tariff are exclusive of any federal, provincial or other governmental taxes or levies of any kind.

Dates of Payments

5. (1) Royalties payable pursuant to subsection 4(1) shall be due on the last day of the month following the month for which the royalties are being paid.

(2) Royalties payable pursuant to subsection 4(2) shall be due on January 31 of the year following the year for which the royalties are being paid.

Reporting Requirements

6. (1) A programming undertaking that makes a payment shall provide with its payment, for the relevant period and with respect to each distribution undertaking to which it supplied a pay audio signal,

(a) the name of the distribution undertaking;

(b) the list of pay audio signals and simulcasts the programming undertaking supplied to the distribution undertaking for transmission for private or domestic use; and

(c) the amount of the affiliation payments payable.

(2) A distribution undertaking that makes a payment shall provide with its payment, for the relevant period and with respect to each programming undertaking from which it purchased a signal,

(a) the name of the programming undertaking;

(b) the list of pay audio signals and simulcasts supplied to the distribution undertaking by the programming undertaking for transmission for private or domestic use; and

(c) the amount of the affiliation payments payable.

(3) The following information shall also be provided with respect to any system for which royalties are being paid pursuant to subsection 4(2):

(a) the number of premises served in the system on the last day of each month for which payment is being made;

(b) if the system is a master antenna system and is located within the service area of another cable transmission system, the name of that other system and a statement to the effect that the other system transmits a signal, with or without a fee, to not more than 2 000 premises in its service area; and

(c) if the system is included in a unit within the meaning of the Definition of "Small Cable Transmission System" Regulations,

(i) the date the system was included in the unit,

(ii) the names of all the systems included in the unit,

(iii) the names of the person or group of persons who own or who directly or indirectly control the systems included in the unit, and

(iv) the nature of the control exercised by these persons.

(4) Notwithstanding subsections (1), (2) and (3) above, no later than March 31 of each year, a programming undertaking shall provide Artisti with the name of each distribution undertaking to which it supplied a pay audio signal or simulcast for private or domestic use in the previous year. A programming undertaking shall be relieved of this obligation if it has already provided the name of each such distribution undertaking pursuant to its obligations under subsection (1). The programming undertaking shall also indicate who (the programming undertaking or the distribution undertaking) is responsible for paying royalties under this tariff for each distribution undertaking listed.

Sound Recording Use Information

7. (1) No later than the fourteenth day of each month, a programming undertaking shall provide to Artisti the full sequential lists of all published sound recordings embodying musical works or parts thereof, played on each pay audio signal during each day of the previous month. For greater clarity, sequential list reporting requires full music use reporting for each day of the month, for 365 days per year. Each entry shall include the following information:

(a) the date of the broadcast;

(b) the time of the broadcast;

(c) the title of the sound recording;

(d) the title of the album;

(e) the record label;

(f) the name of all performers or the performing group;

(g) the duration of the sound recording broadcast, in minutes and seconds;

(h) the duration of the sound recording as listed on the album, in minutes and seconds;

(i) the catalogue number of the album;

- (j) the track number on the album;
- (k) the name of the author and composer;
- (l) the Universal Product Code (UPC) of the album;
- (m) the International Standard Recording Code (ISRC) of the sound recording;
- (n) whether the track is a published sound recording; and
- (o) any alternative title used to designate the sound recording.

(2) The information set out in subsection (1) shall be provided electronically, in Excel format or in any other format agreed upon by Artisti and the programming undertaking, with a separate field for each piece of information required in paragraphs (1)(a) to (o).

Records and Audits

8. (1) A programming undertaking shall keep and preserve, for a period of six months after the end of the month to which they relate, records from which the information set out in section 7 can be readily ascertained.

(2) Both the distribution undertaking and the programming undertaking shall keep and preserve, for a period of six years after the end of the year to which they relate, records from which a distribution undertaking's affiliation payments to the programming undertaking can be readily ascertained, including the information required under section 6.

(3) Artisti may audit these records at any time during the period set out in subsection (1) or (2), on reasonable notice and during normal business hours.

(4) Artisti shall, upon receipt, supply a copy of the report of the audit to the undertaking that was the subject of the audit and to any other Canadian collective society with a tariff applicable to pay audio services.

(5) If an audit discloses that royalties due to Artisti have been understated in any month by more than 10 per cent, the undertaking that was audited shall pay the reasonable costs of the audit within 30 days of the demand for such payment. The amount of any understatement shall be paid within 30 days of the demand for such payment.

Confidentiality

9. (1) Subject to subsections (2) and (3), information received from an undertaking pursuant to this tariff shall be treated in confidence, unless the undertaking who supplied the information consents in writing to the information being treated otherwise.

(2) Information received from an undertaking pursuant to this tariff may be shared

- (a) with any other Canadian collective society that has a tariff applicable to pay audio services;
- (b) with Artisti's service providers, if they have signed a confidentiality agreement;
- (c) with the Copyright Board;
- (d) in connection with proceedings before the Copyright Board if it is protected by a confidentiality order;
- (e) to the extent required to effect the distribution of royalties, with royalty claimants; or
- (f) if required by law.

(3) Subsection (1) does not apply to information that is publicly available, to aggregated information, or to information obtained from someone other than the undertaking that supplied the information and who is not under an apparent duty of confidentiality to that undertaking with respect to the supplied information.

Adjustments

10. Adjustments in the amount of royalties owed (including excess payments), as a result of the discovery of an error or otherwise, shall be made on the date the next royalty payment is due. Excess payments by an undertaking are not subject to interest.

Interest and Fees on Late Payments and Reporting

11. (1) In the event that an undertaking does not pay the amounts owed under sections 4 and 5 or provide the reporting required under section 6 by the due date, the undertaking shall pay to Artisti interest calculated on the amount payable for the relevant period from the due date until the date both the amount and the report are received. Interest shall be calculated daily, at a rate equal to one per cent above the Bank Rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.

(2) In the event that an undertaking does not provide the music use reporting required by section 7 within seven days of the due date, upon written notice by Artisti, the undertaking shall pay to Artisti a late fee based on the number of days from the due date to the date the reporting is received, of

- (a) \$10.00 per day for the first 30 days after the due date;
- (b) \$20.00 per day for the next 30 days; and
- (c) \$50.00 per day thereafter; until the reporting is received.

Addresses for Notices, etc.

12. (1) Anything that an undertaking sends to Artisti shall be sent to 5445 De Gaspé Avenue, Suite 1005, Montréal, Québec H2T 3B2, email: radiorepro.ssp@artisti.ca, fax number: 514-288-7875, or to any other address, email or fax number of which the undertaking has been notified in writing.

(2) Anything that Artisti sends to an undertaking shall be sent to the last address, email or fax number of which Artisti has been notified in writing.

Delivery of Notices and Payments

13. (1) A notice may be delivered by hand, by postage-paid mail, by email, by fax or by file transfer protocol (FTP). A payment may be delivered by hand, by postage-paid mail or by electronic bank transfer (EBT), provided that the associated reporting is provided concurrently to Artisti by email.

- (2) The information set out in section 7 shall be sent by email.
- (3) Anything mailed in Canada shall be presumed to have been received four business days after the day it was mailed.
- (4) Anything sent by fax, by email, by FTP or by EBT shall be presumed to have been received the day it is transmitted.