

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) the *Copyright Act*

2019-10-11

Artisti

Multi-channel subscription satellite radio services

For the reproduction of performers' performances

2021-01-01 – 2023-12-31

Proposed citation: *ARTISTI Satellite Radio Tariff 2021-2023*

STATEMENT OF ROYALTIES TO BE COLLECTED FROM MULTI-CHANNEL SUBSCRIPTION SATELLITE RADIO SERVICES BY ARTISTI FOR THE REPRODUCTION, IN CANADA, OF PERFORMERS' PERFORMANCES FOR THE YEARS 2021 TO 2023

Short Title

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

Definitions

2. In this tariff,

“number of subscribers” means the average number of subscribers during the reference month; (« *nombre d'abonnés* »)

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

“reference month” means the second month before the month for which royalties are being paid; (« *mois de référence* »)

“service” means a multi-channel subscription satellite radio service licensed by the Canadian Radio-television and Telecommunications Commission as well as any similar service distributed in Canada; (« *service* »)

“service provider” means a professional service provider which may be retained by Artisti to assist in the conduct of an audit or in the distribution of royalties to rights holders; (« *prestataire de services* »)

“service revenues” means the amounts paid by subscribers for a service, advertising revenues, revenues for the product placement, promotion and sponsorship, net revenues from the sale of goods or services including the hardware and accessories used in the reception of the service and commissions on third-party transactions. This includes activation and termination fees as well as membership, subscription and other access and administrative fees. It excludes advertising agency fees and revenue accruing from any business that is not a necessary adjunct to the distribution of the service or the use of the service’s broadcasting facilities; (« *recettes du service* »)

“subscriber” means a person who is authorized to receive in Canada one or more signals offered by a service, whether for free or for valuable consideration, excluding a commercial subscriber; (« *abonné* »)

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

Application

3. (1) This tariff sets the royalties to be paid each month by a service to reproduce in Canada performers’ performances in the repertoire of Artisti and to authorize the reproduction of such performances in Canada, including the reproduction of performers’ performances by subscribers for their personal use, the whole, in connection with the operation of the service, for direct reception by subscribers for their private use.

(2) This tariff does not authorize

(a) any use of a performer’s performance by a service in connection with its delivery to a commercial subscriber;

(b) any use by a subscriber of a performer’s performance transmitted by a service, other than the use set out in paragraph (1); or

(c) the use of a reproduction made pursuant to paragraph (1) in association with a product, service, cause or institution.

Royalties

4. A service shall pay to Artisti the following percentages of its service revenues for the reference month:

(a) for reproductions made in connection with the programming operations of the service, 0,006 per cent, subject to a minimum fee of 0,06 ¢ per subscriber and to a discount of 95 per cent if no published sound recording incorporating a performers’ performance is transmitted to subscribers using copies on a server located in Canada;

(b) for reproductions onto receivers enabled for extended buffer or replay $\frac{0,113 \times A}{B}$ per cent where

(A) is the number of subscribers owning a receiver enabled for extended buffer or replay but not a receiver enabled to store individual songs or blocks of programming for playback at a time chosen by the subscriber, and

(B) is the total number of subscribers,

subject to a minimum fee of 1,146 ¢ per subscriber referred to in variable (A); and

(c) for reproductions onto receivers enabled to store individual songs or blocks of programming for playback at a time chosen by the subscriber $\frac{0,175 \times C}{B}$ per cent where

(B) is the total number of subscribers, and

(C) is the number of subscribers owning a receiver enabled to store individual songs or blocks of programming for playback at a time chosen by the subscriber,

subject to a minimum fee of 1,751 ¢ per subscriber referred to in variable (C).

Reporting Requirements

5. No later than on the first day of the month, a service shall pay the royalties for that month and shall provide for the reference month,

(a) the number of subscribers referred to in variables (A), (B) and (C) of subparagraphs 4(1)(b) and 4(1)(c); and

(b) its service revenues, broken down into amounts paid by subscribers for the service, advertising revenues, sponsorship revenues and other revenues.

Performers' performances Use Information

6. (1) No later than the 14th day of each month, a station shall provide to Artisti full sequential lists of all published sound recordings embodying musical works or parts thereof and embodying performers' performances, broadcast during each day of the previous month. 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 catalogue number of the album;

(f) the track number on the album;

(g) the record label;

(h) the name of the author and composer;

(i) the name of all performers and the performing group;

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

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

(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) the year of the album and the track.

(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 station, with a separate field for each piece of information required in paragraphs (1)(a) to (o).

Records and Audits

7. (1) A service 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 6 can be readily ascertained.

(2) A service shall keep and preserve, for a period of six years after the end of the year to which they relate, records from which the information set out in section 5 can be readily ascertained.

(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 service that was the object of the audit.

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

Confidentiality

8. (1) Subject to subsections (2) and (3), Artisti shall treat in confidence information received pursuant to this tariff, unless the service that supplied the information consents in writing to the information being treated otherwise.

(2) Artisti may share information referred to in subsection (1)

(a) with any other collective society that obtained a tariff that applies to multi-channel subscription satellite radio services;

(b) to the service providers retained by Artisti;

(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 any other collective society or with any royalty claimant; 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 a service and who is not under an apparent duty of confidentiality to that service.

Adjustments

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

Interest and Late fees

10. (1) Any amount not received by the due date shall bear interest from that date until the date the amount is 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 a service does not provide the music use reporting required by subsection 6(1) within seven days of the

due date, upon written notice by Artisti, the service shall pay to Artisti a late fee based on the number of days from the due date to the date the reporting is received by Artisti 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.

11. (1) Anything addressed to Artisti shall be sent to 5445 De Gaspé Avenue, Suite 1005, Montréal, Québec, H2T 3B2, email: radiorepros@artisti.ca, fax number: 514-288-7875, or to any other address, email address or fax number of which the service has been notified.

(2) Anything addressed to a service shall be sent to the last address or fax number of which the society has been notified.

Delivery of Notices and Payments

12. (1) Subject to subsection (2), a notice may be delivered by hand, by postage-paid mail, by fax, by email or by file transfer protocol (FTP). A payment shall be delivered by hand, by postage-paid mail or by electronic bank transfer, provided that the associated reporting is provided concurrently to Artisti by email.

(2) Information provided pursuant to sections 5 and 6 shall be delivered 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 electronic bank transfer shall be presumed to have been received on the day it is transmitted.