



Copyright Board

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Notice of Grounds for Proposed Tariff

SOCAN Tariff 22.D.1 – Online Audiovisual Services (2024-2026)

November 14, 2022

1. Description of Uses Covered by the Proposed Tariff

This tariff applies to the communication to the public by telecommunication (including, where applicable, the making available) of works in SOCAN's repertoire in connection with the operation of an online audiovisual service and its authorized distributors.

2. Description of Users / Groups of Users Covered by the Proposed Tariff

Users are operators and providers of services (and their authorized distributors) that deliver streams containing audiovisual works to end users. Importantly, it is the nature of the *use*, and not the nature of the *user*, that determines whether the tariff applies.

3. Explanation of How Royalties are Determined

The proposed royalty rate for 2024-2026 is 3% of revenue from one or more of the following categories, depending on the business model of the service:

- (a) program fees charged to end-users
- (b) amounts paid by subscribers, and
- (c) the service's Canadian Internet-related revenues

with a minimum fee of 1.3¢ per program in the case of (a), and 19.5¢ per subscriber in the case of (b).

If a service that receives Internet-related revenues in connection with its communication of audiovisual programs cannot determine its Canadian Internet-related revenues, the royalty is based on the service's global Internet-related revenues multiplied by 0.1.

Non-commercial services with no revenue pay an annual fee of \$25.

The proposed rate is intended to reflect changes in the market, including increased efficiencies and expanded uses of music. It is anticipated that as part of the 2024-2026 tariff proceeding, objectors will produce information and documents that will assist in establishing the value and monetization of online audiovisual services during the relevant period. The anticipated information and documents are highly confidential and not otherwise available to SOCAN. As in prior tariff proceedings, it is expected that this relevant information and expert analysis will enable SOCAN to provide a detailed valuation analysis to permit the Copyright Board to set an equitable royalty rate for online audiovisual services during the relevant period.

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4. Submissions on the Collection of Information

The proposed tariff requires each licensee to report, on a monthly basis, the relevant revenue of the service, the number of plays of each file, the total number of plays of all files, the number of subscribers, the amount paid by subscribers, the number of subscribers provided with free subscriptions and the total number of plays of all files by such subscribers as streams. The proposed tariff also requires each licensee to report basic identification data for each file streamed.

Following the decision of the Supreme Court of Canada in *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30, which clarified the meaning of the making available provision (section 2.4(1.1)) of the *Copyright Act*, the proposed tariff introduces a new reporting requirement, namely a provision that allows SOCAN to request, no more than twice per year, a list of files made available by the service for on-demand streaming (and, if available, any cue sheet data available for those files and, if not available, basic identification data).

The proposed tariff also requires each licensee to report basic service-identification information.

The information collected under the proposed tariff is needed to identify users, calculate royalties and distribute those royalties to rights holders.

5. Explanation of Changes from Previously Approved Tariff

1. The proposed tariff introduces a new royalty rate and calculation formula.
2. The proposed tariff adjusts the annual fee for non-commercial services from \$15 to \$25.
3. The proposed tariff removes the adjustment for page impression ratios. The Board has recognized that page impressions have become less appropriate for measuring music use.
4. Several of the definitions in the proposed tariff have been amended for clarity.
5. The proposed tariff introduces new reporting requirements, described above.
6. The proposed tariff introduced changes to the confidentiality provisions to allow sharing of reporting information with SOCAN's agents and service providers. SOCAN relies on service providers to facilitate efficient processing of reporting data, among other things.

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