



Copyright Board

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Notice of Grounds for Proposed Tariff

SOCAN Tariff 22.E – Internet – Canadian Broadcasting Corporation (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 by the Canadian Broadcasting Corporation (CBC) in connection with the transmission of audio and audiovisual content.

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

The single user is the CBC.

3. Explanation of How Royalties are Determined

The proposed tariff sets out three different royalty calculations, depending on the type of use:

For Online Audiovisual Services operated by the CBC:

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 "Internet-related revenues from the CBC Online Audiovisual Service

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

For Online Music Services operated by the CBC

For services that deliver on-demand and semi-interactive streams (including hybrid services), 10.3% of Internet-related revenues, subject to a minimum fee of the lesser of 0.13¢ per stream of a file requiring a SOCAN licence and 60.8¢ per subscriber.

For services that only offer non-interactive streams,

2% of Internet-related revenues if the service's SOCAN repertoire use is 20% or less (subject to a minimum fee of \$37 per year)

5.5% of Internet-related revenues if the service's SOCAN repertoire use is between 20% and 80% (subject to a minimum fee of \$104 per year)

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7% of Internet-related revenues if the service's SOCAN repertoire use is 80% or more (subject to a minimum fee of \$132 per year).

For other online programming offered by the CBC

10% of the total amount payable by the CBC pursuant to Tariffs 1.C (Radio – Canadian Broadcasting Corporation) and 2.D (Television – Canadian Broadcasting Corporation), multiplied by the ratio of audio page impressions to all page impressions relating to online programming, if that ratio is available and 0.15 if not.

4. Submissions on the Collection of Information

The proposed tariff requires the CBC to report, on a monthly basis, the Internet-related 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 number of free streams delivered. The proposed tariff also requires the CBC 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) for each CBC Online Audiovisual Service, a list of files made available by the service (and, if available, any cue sheet data available for those files, and, if not available, basic identification data), no more than twice per year; and (b) for each CBC Online Music Service, a list of files made available by the service, no more than twice per year.

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

5. Explanation of Changes from Previously Approved Tariff

1. The structure of the proposed tariff has been modified to reflect the terms of the settlement agreement between SOCAN and the CBC. This new structure more closely tracks the tariffs for online uses by services other than the CBC. In particular, the royalty rates for CBC's online music services and online audiovisual services are now proposed to match those proposed for other online music services and online audiovisual services. In addition, pursuant to the settlement, all of CBC's online offerings are covered by the proposed tariff, including CBC Music and espace.mu.
2. Several of the definitions in the proposed tariff have been amended for clarity.
3. The proposed tariff introduces new reporting requirements, described above.
4. 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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