

PROPOSED TARIFF

Filed with the Copyright Board by SOCAN on 2022-10-15 pursuant to subsection 67(1) of the *Copyright Act*

Proposed Tariff Title: *SOCAN Tariff 25, Satellite Radio Services (2024-2026)*

For the communication to the public by telecommunication of musical or dramatico-musical works

Effective Period: 2024-01-01 – 2026-12-31

SOCAN TARIFF 25, SATELLITE RADIO SERVICES (2024-2026)

Proposed statement of royalties to be collected by the Society of Composers, Authors and Music Publishers of Canada (SOCAN) in compensation for the communication to the public by telecommunication, in Canada, of musical or dramatico-musical works forming part of its repertoire.

Definitions

1. In this tariff,

“month” means a calendar month; (« *mois* »)

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

“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 revenues” means the amounts paid by subscribers for a service, advertising revenues, product placement, promotion and sponsorship, net revenues from the sale of goods or services and commissions on third-party transactions. This includes activation and termination fees, as well as membership, subscription and all other access fees. It excludes advertising agency fees, 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 and revenue generated from the sale of hardware and accessories used in the reception of the service; (« *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

2. (1) This tariff sets the royalties to be paid each month by a service to communicate to the public by telecommunication, in Canada, musical or dramatico-musical works in SOCAN's repertoire 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 work, sound recording or a performer's performance by a service in connection with its delivery to a commercial subscriber; or

(b) any use by a subscriber of a work or sound recording or a performer's performance transmitted by a service other than a use described in subsection (1).

(3) This tariff does not apply to uses covered by other tariffs, including SOCAN Tariff 16, 18 or 22, or the *Re: Sound and SOCAN Stingray Pay Audio and Ancillary Services Tariff*. For greater certainty, this tariff does not apply to the communication to the public by telecommunication of sound recordings or musical works to end-users via the Internet, a cellular, mobile or wireless network or any similar network, but does permit the use of wireless functionalities (such as a Wi-Fi or Bluetooth functionality) integrated with a satellite radio receiving device that allows the relay of a satellite radio signal to local speakers for subscribers' private use.

Royalties

3. (1) A service shall pay to SOCAN, for each month of the tariff term, 5 per cent of its service revenues for the reference month, subject to a minimum fee of 50¢ per subscriber.

Reporting Requirements

4. (1) No later than on the first day of each month of the tariff term, a service shall pay the royalties

for that month as set out in section 3 and shall provide for the reference month

- (a) the total number of subscribers to the service; and
- (b) its service revenues, broken down into amounts paid by subscribers for the service, advertising revenues, sponsorship revenues and other revenues.

Music Use Information

5. (1) Each month, a service shall provide to SOCAN the following information in respect of each musical work, or part thereof, broadcast by the service:

- (a) the date, time and duration of the broadcast of the musical work;
- (b) the title of the work and the name of its author and composer; and
- (c) the name of the main performer or performing group and, if applicable, the album name and the record label.

However, the service shall not be deemed to be in contravention of this subsection (1) for failure to report the complete information listed above for any given musical work or part thereof unless there were commercially reasonable means available to the service to obtain such information, and the unreported information exists with respect to the musical work.

(2) In addition to the reporting required under subsection (1), where such information is available on a commercially reasonable basis to the service, the service shall also provide to both SOCAN the following information in respect of each musical work, or part thereof, transmitted by the service:

- (a) the catalogue number of the album;
- (b) the International Standard Musical Work Code (ISWC) of the work;
- (c) the Universal Product Code (UPC) of the album;
- (d) the International Standard Recording Code (ISRC) of the sound recording;
- (e) the names of all of the other performers (if applicable);
- (f) the duration of the musical work as listed on the album, the track number on the album, and the year of the album and track;
- (g) the type of usage (feature, theme, background, etc.); and

(h) whether the track is a published sound recording.

(3) The information set out in subsections (1) and (2) shall be provided electronically, in a format agreed upon by SOCAN and the service, no later than 10 business days after the service receives the monthly music information report from its music information report supplier for a given month (in the case of SiriusXM Canada Inc., such supplier is SiriusXM Radio Inc.), and in any case no later than 45 days plus 10 business days after the end of a given month.

Records and Audits

6. (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 5 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 4 can be readily ascertained.

(3) SOCAN 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) SOCAN shall, upon receipt, supply a copy of the report of the audit to the service that was audited and to any other collective society that is subject to this tariff.

(5) If an audit discloses that royalties due to any collective society have been understated in any month by more than 10 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, provided that the understatement has been shown by an audit report supplied to the service under subsection (4) and the audit costs are evidenced by an invoice issued by the auditor.

Confidentiality

7. (1) Subject to subsections (2) and (3), SOCAN and the service shall treat in confidence information received pursuant to this tariff, unless the disclosing party consents in writing to the information being treated otherwise.

(2) Information referred to in subsection (1) may be shared

(a) with another collective society that is subject to this tariff;

(b) with the Copyright Board;

- (c) in connection with proceedings before the Copyright Board, once the disclosing party has had a reasonable opportunity to request a confidentiality order;
- (d) with any person who knows or is presumed to know the information;
- (e) to the extent required to effect the distribution of royalties;
- (f) with SOCAN's agents and service providers to the extent required by the service providers for the service they are contracted to provide; and
- (g) if required by law.

(3) Subsection (1) does not apply to information that must be provided pursuant to the *Copyright Act*, to information that is publicly available, to aggregated information, or to information obtained from someone other than the service and who is not under an apparent duty of confidentiality with respect to the supplied information.

Adjustments

8. 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.

Terms and Conditions

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

Addresses for Notices, etc.

10. (1) Anything addressed to SOCAN shall be sent to 41 Valleybrook Drive, Toronto, Ontario M3B 2S6, email: licence@socan.com, fax number: 416-445-7108, or to any other address, email address or fax number of which the service has been notified in writing.

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

Delivery of Notices and Payments

11. (1) A notice may be delivered by hand, by postage-paid mail, by fax, by email or by file transfer protocol (FTP). A payment may be delivered by hand, by postage-paid mail or by electronic bank transfer.

(2) The information set out in section 5 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 electronic bank transfer shall be presumed to have been received on the day it was transmitted.