

Copyright Board
Canada



Commission du droit d'auteur
Canada

November 5, 2019

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

- SOCAN, Sports Events (2021-2023)
- SOCAN Tariff 22.A (Online Music Services), (2021-2023)
- SOCAN Tariff No. 22.A.R, Reproduction of Musical Works Embedded in Music Videos for Transmission by a Service (2021-2023)
- SOCAN, Internet – Commercial Radio, Satellite Radio and Pay Audio (2021-2023)
- SOCAN, Internet – Other Audio Websites (2021-2023)
- SOCAN, Internet – Audiovisual Content (2021-2023)
- SOCAN Tariff No. 22.D.1.R, Reproduction of Musical Work Embedded in Audiovisual Works for Transmission by a Service (2021-2023)
- SOCAN, Internet – User-Generated Content (2021-2023)
- SOCAN, Allied Audiovisual Services (2021-2023)
- SOCAN, Internet – Canadian Broadcasting Corporation (2021-2023)
- SOCAN, Internet – Game Sites (2021-2023)
- SOCAN, Satellite Radio Services (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 **December 5, 2019**.

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PROPOSED TARIFF

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

2019-10-15

SOCAN

Tariff 22.D.1

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

2021-01-01 –2023-12-31

Proposed citation:

SOCAN, Internet – Audiovisual Content (2021-2023)

PROPOSED STATEMENT OF ROYALTIES TO BE COLLECTED BY THE SOCIETY OF COMPOSERS, AUTHORS AND MUSIC PUBLISHERS OF CANADA (SOCAN)

in compensation for the right to communicate to the public by telecommunication, in Canada, musical or dramatico-musical works forming part of its repertoire including the right to make such works available to the public by telecommunication in a way that allows a member of the public to have access to them from a place and at a time individually chosen by that member of the public.

GENERAL PROVISIONS

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

As used in this tariff, the term “licence” means a licence to communicate to the public by telecommunication or to authorize the communication to the public by telecommunication, including the right to make works available to the public by telecommunication in a way that allows a member of the public to have access to them from a place and at a time individually chosen by that member of the public.

Each licence shall subsist according to the terms set out therein. SOCAN shall have the right at any time to terminate a licence for breach of terms or conditions upon 30 days’ notice in writing.

INTERNET — AUDIOVISUAL CONTENT

Application

1. (1) This tariff sets the royalties to be paid for the communication to the public by telecommunication of works in SOCAN’s repertoire, including making works available to the public by telecommunication in a way that allows a member of the public to have access to them from a place and at a time individually chosen by that member of the public, by means of certain Internet transmissions or similar transmission facilities in connection with audiovisual content in the years 2021-2023.

(2) This tariff does not apply to uses covered by other applicable tariffs, including Tariffs 16 (Background Music Suppliers), 22.A (Internet — Online Music Services), 22.B (Internet — Commercial Radio, Satellite Radio and Pay Audio), 22.C (Internet — Other Audio Websites), 22.D.2 (Internet — User Generated Content), 22.D.3 (Allied Audiovisual Services Tariff), 22.E (Internet — Canadian Broadcasting Corporation), 22.G (Internet — Game Sites), 24 (Ringtones) and 26 (Pay Audio Services).

Definitions

2. In this tariff,

“additional information” means, in respect of each musical work contained in a file, the following information:

- (a) the musical work’s identifier;
- (b) the title of the musical work;
- (c) the name of each author of the musical work;
- (d) the name of each performer or group to whom the sound recording is credited;
- (e) the name of the person who released any sound recording contained in the audiovisual file;
- (f) the International Standard Recording Code (ISRC) assigned to the sound recording;
- (g) if the sound recording is or has been released in physical format as part of an album, the name, identifier, product catalogue number and the Universal Product Code (UPC) assigned to the album, together with the associated disc and track numbers;
- (h) the name of the music publisher associated with the musical work;

(i) the International Standard Musical Work Code (ISWC) assigned to the musical work;

(j) the Global Release Identifier (GRid) assigned to the musical work and, if applicable, the GRid of the album in which the musical work was released;

(k) the running time of the musical work, in minutes and seconds; and

(l) any alternative title used to designate the musical work or sound recording; (« *renseignements additionnels* »)

“audiovisual page impression” means a page impression that allows a person to hear and see an audiovisual work; (« *consultation de page audiovisuelle* »)

“download” means a file intended to be copied onto an end-user’s local storage device; (« *téléchargement* »)

“file” means a digital file of an audio or audiovisual work; (« *fichier* »)

“identifier” means the unique identifier an online service assigns to a file; (« *identificateur* »)

“Internet-related revenues” means all revenues generated by Internet-related activities, including membership, subscription and other access fees, advertising, product placement, promotion, sponsorship, net revenues from the sale of goods or services and commissions on third-party transactions, but excluding

(a) revenues that are already included in calculating royalties pursuant to another SOCAN tariff;

(b) revenues generated by an Internet-based activity that is subject to another SOCAN tariff;

(c) agency commissions;

(d) the fair market value of any advertising production services provided by the user; and

(e) network usage and other connectivity access fees; (« *recettes d’Internet* »)

“limited download” means a download that uses technology that causes the file to become unusable when a subscription or other authorized usage period ends; (« *téléchargement limité* »)

“music video” means an audiovisual representation of a musical work, including a concert; (« *vidéo musicale* »)

“music video service” means a website that focuses primarily on music videos; (« *service de vidéo musicale* »)

“on-demand stream” means a stream selected by its recipient; (« *transmission sur demande* »)

“online audiovisual service” means a service that delivers streams or downloads of audiovisual works to end-users, other than a service that offers only streams in which the file is selected by the service and can only be listened to at a time chosen by the service and for which no advance playlist is published; (« *service audiovisuel en ligne* »)

“page impression” means a request to load a single page from a site; (« *consultation de page* »)

“permanent download” means a download other than a limited download; (« *téléchargement permanent* »)

“play” means the single performance of an on-demand stream; (« *écoute* »)

“quarter” means from January to March, from April to June, from July to September and from October to December; (« *trimestre* »)

“site” means a collection of pages accessible via a common root URL; (« *site* »)

“stream” means a file that is intended to be copied onto a local storage medium or device only to the extent required to allow listening to the file at substantially the same time as when the file is transmitted; (« *transmission* »)

“subscriber” means an end-user with whom an online service or its authorized distributor has entered into a contract for service, other than on a transactional per-download or per-stream basis, whether for a fee, for other consideration or free of charge, including pursuant to a free subscription; (« *abonné* »)

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

Royalties

3. This tariff sets the royalties to be paid for the communication to the public by telecommunication of works in SOCAN's repertoire in connection with audiovisual content for the year 2021-2023.

(2) This tariff does not apply to uses covered by other applicable tariffs, including

(a) SOCAN tariffs for Online Music Services (Tariff 22.A as certified by the Board for the years 1996 to 2006, 2007 to 2010 and 2011 to 2013 and proposed by SOCAN for the years 2014 to 2023);

(b) Game Sites (Tariff 22.G as certified by the Board for the years 1996 to 2006 and proposed by SOCAN for the years 2007-2008 [Proposed Tariff 22.6], 2009-2012 [Proposed Tariff 22.F], 2013 [Proposed Tariff 22.H]) and 2014-2023 [Proposed Tariff 22.G];

(c) User-Generated Content (Tariff 22.D.2 as certified by the Board for the years 2007-2013 and proposed by SOCAN for the years 2014-2023); and

(d) Audiovisual Services Allied with Broadcast and BDU Services (Tariff 22.D.3 as previously proposed by SOCAN for 2019-2023).

(3) The royalties payable for the communication of an audiovisual program containing one or more musical works requiring a SOCAN licence shall be as follows:

(a) for a service that charges per-program fees to end-users: 3.0 per cent of the amounts paid by end-users, subject to a minimum of 1.3¢ per program;

(b) for a service that offers subscriptions to end-users: 3.0 per cent of the amounts paid by subscribers, subject to a minimum monthly fee of 19.5¢ per subscriber. In the case of a single, initial free trial of up to 31 days in any 12-month period offered to induce a prospective subscriber to enter into a paid subscription, there shall be no royalty fee payable;

(c) for a service that receives Internet-related revenues in connection with its communication of audiovisual programs, the royalty calculation shall be as follows:

$$3.0\% \times A \times B \times (1 - C)$$

where

(A) is the service's Internet-related revenues,

(B) is the ratio of audiovisual page impressions containing advertising to all page impressions containing advertising, if available, and if not, 1.0,

(C) is

(i) 0 for a Canadian service,

(ii) for any other service, the ratio of non-Canadian page impressions containing advertising to all page impressions containing advertising, if that ratio is available, and if not, 0.9;

(d) a service with revenues from more than one of the categories in above-mentioned paragraphs (a), (b) and (c) shall pay royalties in accordance with each applicable paragraph, but the calculation in paragraph (c) shall exclude any fees charged to end-users pursuant to paragraphs (a) and (b), and the related page impressions; and

(e) to the extent a service displays content and measures user “impressions” of such content in units other than single Internet pages, it shall be acceptable to treat impressions of such units as “page impressions” as long as the same unit measure is used in the numerator and denominator of part “B” of the royalty formula in paragraph (c).

(4) A non-commercial service with no revenue shall pay an annual fee of \$25.00.

(5) In the case of a music video service, SOCAN Tariff 22.A shall apply.

Reporting Requirements: Service Identification

4. (1) No later than the earlier of 20 days after the end of the first month during which a service communicates a file requiring a SOCAN licence and the day before the service first makes such a file available to the public, the service shall provide to SOCAN the following information:

(a) the name of the person who operates the service, including

(i) the name of a corporation and a mention of its jurisdiction of incorporation,

(ii) the name of the proprietor of an individual proprietorship, or

(iii) the names of the principal officers of any other service,

together with any other trade name under which the service carries on business;

(b) the address of its principal place of business;

(c) the name, address and email of the persons to be contacted for the purposes of notice, for the exchange of data and for the purposes of invoicing, and payments;

(d) the name and address of any authorized distributor; and

(e) the Uniform Resource Locator (URL) of each Internet site at or through which the service is or will be offered.

Sales Reports

On-Demand Streams

(2) No later than 20 days after the end of each month, any service that provides on-demand streams shall provide to SOCAN a report setting out, for that month, in relation to each file that was delivered as an on-demand stream, the following information:

(a) the title of the program and/or series, episode name, number and season and any other information that would assist SOCAN in identifying the file;

(b) the number of plays of each file;

(c) the number of plays of all files;

(d) the International Standard Audiovisual Number (ISAN) assigned to the file;

(e) in the case of a translated program, the title in the language of its original production; and

(f) the additional information as defined in section 2.

(3) If the service offers subscriptions in connection with its provision of on-demand streams, the service shall provide the following information:

(a) the number of subscribers to the service at the end of the month and the total amounts paid by them during that month; and

(b) the number of subscribers provided with free trial subscriptions and the total number of plays of all files by such subscribers as on-demand streams.

(4) If the service claims that a SOCAN licence is not required for a file, the service shall provide information that establishes why the licence is not required.

Limited Downloads

(5) No later than 20 days after the end of each month, any service that provides limited downloads of files shall provide to SOCAN a report setting out, for that month,

(a) the number of limited downloads of each file and the amounts paid by end-users for the file, including, if the file is offered as a limited download at different prices from time to time, the number of limited downloads at each different price;

(b) the total number of limited downloads supplied; and

(c) the total amount paid by end-users for limited downloads.

(6) No later than 20 days after the end of each month, any service that provides limited downloads shall provide to SOCAN a report setting out, for that month, in relation to each file that was delivered as a limited download, the following information:

(a) the title of the program and/or series, episode name and number, season and any other information that would assist SOCAN in identifying the file;

(b) the number of plays of each file;

(c) the number of plays of all files;

(d) the International Standard Audiovisual Number (ISAN) assigned to the file;

(e) in the case of a translated program, the title in the language of its original production; and

(f) the additional information as defined in section 2.

(7) If the service offers subscriptions in connection with its provision of limited downloads, the service shall provide the following information:

(a) the number of subscribers to the service at the end of the month and the total amounts paid by them during that month; and

(b) the number of subscribers provided with free trial subscriptions and the total number of plays of all files by such subscribers as limited downloads.

(8) If the service claims that a SOCAN licence is not required for a file, the service shall provide information that establishes why the licence is not required.

Permanent Downloads

(9) No later than 20 days after the end of each month, any service that provides permanent downloads of files shall provide to SOCAN a report setting out, for that month,

(a) the number of permanent downloads of each file and the amounts paid by end-users for each file, including, if the file is offered as a permanent download at different prices from time to time, the number of permanent downloads at each different price;

(b) the total number of permanent downloads supplied; and

(c) the total amount paid by end-users for permanent downloads.

(10) No later than 20 days after the end of each month, any service that provides permanent downloads shall provide to SOCAN a report setting out, for that month, in relation to each file that was delivered as a permanent download, the following information:

(a) the title of the program and/or series, episode name and number, season and any other information that would assist SOCAN in identifying the file;

(b) the International Standard Audiovisual Number (ISAN) assigned to the file;

(c) in the case of a translated program, the title in the language of its original production; and

(d) the additional information as defined in section 2.

(11) If the service offers subscriptions in connection with its provision of permanent downloads, the service shall provide the following information:

(a) the number of subscribers to the service at the end of the month and the total amounts paid by them during that month; and

(b) the number of subscribers provided with free trial subscriptions and the total number of downloads of all files by such subscribers.

(12) If the service claims that a SOCAN licence is not required for a file, the service shall provide information that establishes why the licence is not required.

Page Impressions for Services with Internet-Related Revenues

(13) No later than 20 days after the end of each month, any service that is required to pay royalties pursuant to paragraph 3(3)(e) shall provide to SOCAN the following information:

(a) the service's Internet-related revenues;

(b) the ratio of audio or audiovisual page impressions containing advertising to all page impressions containing advertising, if available;

(c) in the case of a non-Canadian service, the ratio of non-Canadian page impressions to all page impressions, if that ratio is available;

(d) whether the service is a music video service or any other service; and

(e) the information described in subsections 4(2) to 4(12), if applicable and on the same basis as described in those subsections (i.e. if available where so indicated).

(14) A service that is required to pay royalties pursuant to more than one subsection of section 3 shall file a separate report pursuant to each subsection of this section.

Calculation and Payment of Royalties

5. Royalties shall be due no later than 20 days after the end of each month. 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.

Adjustments

6. Adjustments to any information provided pursuant to sections 3 and 4 shall be provided with the next report dealing with such information.

7. (1) Subject to subsection (2), 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.

(2) Any excess payment resulting from an online audiovisual service providing incorrect or incomplete information about a file shall be deducted from future amounts owed for the use of works owned by the same person as the work in that file.

Records and Audits

8. (1) A service shall keep and preserve, for a period of six years after the end of the month to which they relate, records from which the information set out in sections 3 and 4 can be readily ascertained.

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

(3) Subject to subsection (4), if an audit discloses that royalties due have been understated in any quarter by more than 10 per cent, the online music service shall pay the reasonable costs of the audit within 30 days of the demand for such payment.

(4) For the purposes of subsection (3), any amount owing as a result of an error or omission on the part of SOCAN shall not be taken into account.

Confidentiality

9. (1) Subject to subsection (2), SOCAN, the service and its authorized distributors 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) between the service and its authorized distributors in Canada;

(b) with the Copyright Board;

(c) in connection with proceedings before the Board, once the service 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, with royalty claimants; and

(f) if required by law.