

NOTICE OF GROUNDS FOR PROPOSED TARIFFS

Filed with the Copyright Board by SOCAN on 2024-02-22 pursuant to Rule 15 of the *Copyright Board Rules of Practice and Procedure* and Copyright Board Order CB-CDA 2024-007.

SOCAN Tariff 22.D.1 – Online Audiovisual Services (2014-2026)

1. Consolidated Request for Approval

As directed by the Board, SOCAN is filing together with this Notice of Grounds a consolidated request for approval (the “**Consolidated RFA**”) in relation to the following proposed tariffs:

- SOCAN Tariff 22.D – Audiovisual Content (2014, 2015) [excluding online music video services, online allied services, and user-generated content services];
- SOCAN Tariff 22.D.1 – Internet -Other Uses of Music - Audiovisual Content (2016, 2017, 2018 [excluding online music video services and online allied services], 2019, 2020, 2021-2023 [excluding online music video services and online allied services]
- SOCAN Tariff 22.D.1 – Online Audiovisual Services (2024-2026) [excluding online music video services]

(collectively, the “**Proposed Tariff**”).

Further to the case management conference held December 18, 2023, SOCAN has prepared the Consolidated RFA on a best-efforts basis to attempt to reduce complexity in the proceeding. However, as discussed during the case management conference, SOCAN reserves the right to file a revised RFA as part of its statement of case.

2. Description of Users Expected to be Covered by the Proposed Tariff

The Proposed Tariff is expected to apply to an online audiovisual service (and its authorized distributors), which is a service that offers streams containing audiovisual programs to end users.

The Proposed Tariff does not apply to an online music video service, which is an online service that predominantly offers music videos, or to a user-generated content service, which is an online service that transmits predominantly user-generated content.

3. Description of Uses Covered by the Proposed Tariff

This Proposed Tariff applies to the communication to the public by telecommunication of works in SOCAN's repertoire in connection with the operation of an online audiovisual service and its authorized distributors. More specifically, the Proposed Tariff sets out the royalties payable for the communication of audiovisual programs containing one or more musical works that require a SOCAN licence. That includes making those programs, and the musical works they contain, available to the public in ways that allow members of the public to access the programs from places and at times individually chosen by them.

The application of the Proposed Tariff is subject to certain limitations, as set out in the Consolidated RFA.

4. How the Proposed Rates Were Determined

This section of this Notice of Grounds addresses the general basis for the royalty rates and royalty structure in the Proposed Tariff. However, SOCAN may advance additional or alternative valuation methodologies and adjustments for inflation and other externalities in the course of the proceeding. Without limitation, SOCAN reserves the right to seek information and documents from other parties to the proceeding, and to put forward expert evidence to support a detailed valuation analysis, to permit the Copyright Board to set fair and equitable royalties for the activities covered by the Proposed Tariff.

The Consolidated RFA sets out the royalty rates initially proposed by SOCAN for each year in the tariff period. Those rates are summarized below.

A. 2014-2016

For 2014 to 2016, the proposed royalty rates are as follows, each as applicable:

(a) 2.1% of the per-program fees charged to end users, subject to a minimum of 1.3¢ per program;

(b) 2.1% of the amounts paid by subscribers, subject to a minimum of 7.5¢ per subscriber per month (other than 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, for which no royalties would be payable); and

(c) 2.1% of the service's Internet-related revenues, multiplied by (i) the ratio of audiovisual page impressions containing advertising to all page impressions containing

advertising (or 1.0 if this information is not available), and (ii) 1.0 for Canadian services, or for non-Canadian services, 1.0 minus the ratio of non-Canadian page impressions containing advertising to all page impressions containing advertising (or by 1.0 minus 0.9 [i.e., 0.1] if this information is not available).

If a service has revenues from multiple categories, royalties would be paid in accordance with each one, with any fees charged to end users and related page impressions under categories (a) and (b) excluded from the calculation of Internet-related revenues under category (c).

The proposed percentage rate is lower than the rate that SOCAN had proposed for 2011 to 2013, as described in the Copyright Board decision dated July 18, 2014 certifying SOCAN Tariff 22.D.1 (2007-2013) (the “**Settlement Tariff**”).¹ It is slightly higher, however, than the percentage rate approved by the Board for 2011 to 2013 in the Settlement Tariff,² which represented a compromise by SOCAN. In fact, it is SOCAN’s view that even the proposed 2.1% rate does not fully reflect the value of the use of its repertoire by online audiovisual services in 2014 to 2016. That value is more properly reflected in the 3.0% rate proposed for 2017 to 2026, as discussed more fully below.

The proposed minimum fees for 2014 to 2016 are the same as those approved by the Board in the Settlement Tariff. However, as discussed below, it is SOCAN’s view that the per-subscriber minimum of 7.5¢ is inadequate when compared to the application of the percentage rate to the monthly subscription fees now charged by online audiovisual services in Canada.

B. 2017

For 2017, the proposed royalty rates are as follows, each as applicable:

- (a) 3.0% of the program fees charged to end users, subject to a minimum of 1.3¢ per program;
- (b) 3.0% of the amounts paid by subscribers, subject to a minimum of 7.5¢ per subscriber per month (other than a single, initial free trial of up to 31 days in any 12-month period

¹ Decision of the Board, [SOCAN - Tariffs 22.D.1 – Internet - Online Audiovisual Services & 22.D.2 – Internet User-Generated Content, 2007-2013, July 18, 2014](#) (the “**2014 Settlement Tariff Decision**”) (modified by [Erratum](#) dated November 29, 2014, and [redetermined by reasons](#) dated January 27, 2017).

² [Tariffs 22.D.1 – Internet - Online Audiovisual Services & 22.D.2 – Internet User-Generated Content, 2007-2013 \(Erratum\)](#), Published in the Supplement to the Canada Gazette on November 29, 2014 (“**Settlement Tariff**”). See also: [Tariff No. 22.D.1, Internet – Online Audiovisual Services \(2007-2013\) \[Redetermination\]](#), dated January 28, 2017.

offered to induce a prospective subscriber to enter into a paid subscription, for which no royalties would be payable); and

(c) 3.0% of the service's Internet-related revenues, multiplied by (i) the ratio of audiovisual page impressions containing advertising to all page impressions containing advertising (or 1.0 if this information is not available), and (ii) 1.0 for Canadian services, or for non-Canadian services, 1.0 minus the ratio of non-Canadian page impressions containing advertising to all page impressions containing advertising (or by 1.0 minus 0.9 [i.e., 0.1] if this information is not available).

If a service has revenues from multiple categories, royalties would be paid in accordance with each one, with any fees charged to end users and related page impressions under categories (a) and (b) excluded from the calculation of Internet-related revenues under category (c).

While higher than the compromise rate approved by the Board in the Settlement Tariff, the proposed percentage rate is nevertheless lower than the rate that SOCAN first proposed for 2011 to 2013.³ It is SOCAN's view that the higher rate now proposed better reflects the value of the use of music in SOCAN's repertoire in connection with the operation of an online audiovisual service. The rate takes into account, among other things, the development of the market for online audiovisual services in Canada and the way those services use and benefit from music in their programming and operations.

The proposed minimum fees for 2017 are the same as those approved by the Board in the Settlement Tariff, and therefore subject to the same concerns expressed above.

C. 2018-2023

For 2018 to 2023, the proposed royalty rates are as follows, each as applicable:

(a) 3.0% of the program fees charged to end users, subject to a minimum of 1.3¢ per program;

(b) 3.0% of the amounts paid by subscribers, subject to a minimum of 19.5¢ per subscriber per month (other than 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, for which no royalties would be payable); and

³ As described in the 2014 Settlement Tariff Decision, at para. 13.

(c) 3.0% of the service's Internet-related revenues, multiplied by (i) the ratio of audiovisual page impressions containing advertising to all page impressions containing advertising (or 1.0 if this information is not available), and (ii) 1.0 for Canadian services, or for non-Canadian services, 1.0 minus the ratio of non-Canadian page impressions containing advertising to all page impressions containing advertising (or by 1.0 minus 0.9 [i.e., 0.1] if this information is not available).

If a service has revenues from multiple categories, royalties would be paid in accordance with each one, with any fees charged to end users and related page impressions under categories (a) and (b) excluded from the calculation of Internet-related revenues under category (c).

The proposed percentage rate is the same as for 2017, which is explained above.

The proposed per-subscriber minimum is 19.5¢ per month, other than for qualifying free trials, for which no royalties would be payable. The proposed minimum represents only 31% to 43% of the royalties that would be generated by applying the proposed percentage rate to the \$14.99 to \$20.99 monthly subscription fees that were typically charged by online audiovisual services in Canada between 2018 to 2023. In SOCAN's view, that represents a more fair and equitable floor.

D. 2024-2026

For the years 2024 to 2026, the proposed royalty rates are as follows, each as applicable:

(a) 3.0% of the program fees charged to end users, subject to a minimum of 1.3¢ per program;

(b) 3.0% of the amounts paid by subscribers, subject to a minimum of 19.5¢ per subscriber per month (other than 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, for which no royalties would be payable); and

(c) 3.0% of the service's Canadian Internet-related revenues. 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.

If a service has revenues from multiple categories, royalties would be payable in accordance with each one, with any fees charged to end users under categories (a) and (b) excluded from the calculation of Internet-related revenues under category (c).

The percentage rates and minimum fees are the same as proposed for 2018 to 2023, which are explained above.

The Proposed Tariff for 2024 to 2026 involves a slightly revised rate base for advertising-funded and advertising supported services, as well as services that generate revenues other than from transaction fees or on a subscription basis. The formula is based on a service's "Canadian Internet-related revenues", rather than on page impressions. This change would simplify the administration of the Proposed Tariff, both for SOCAN and for users.

E. Non-Commercial Services with No Revenue

Under the Proposed Tariff, for all years, a non-commercial service with no revenue would pay an annual fee of \$25.00.

5. How the Collected Information Would be Used

The Consolidated RFA sets out the information that an online audiovisual service would be required to report to SOCAN.

Consistent with 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, online audiovisual services would be required, upon request, to report certain information about all files made available for on-demand streaming and further information about files actually streamed.

The Consolidated RFA also provides that each month services must report information about the number of subscribers that are provided with a free subscription or end users that are provided with an initial free trial, as well as the total number of plays of all files by those end users. This allows SOCAN to properly track the number of users subject to the free trial royalty exception under paragraph 3(2)(b).

The information that would be collected under the Consolidated RFA is needed to identify users, calculate royalties, and distribute those royalties to rights holders.

6. Changes from Previously-Approved Tariff

1. The Proposed Tariff, as reflected in the Consolidated RFA, proposes different royalty rates from the Settlement Tariff.
2. Several definitions have been added or amended in the Consolidated RFA for clarity and consistency. In particular,

- a. the definition of “online music video service” and “music video” have been amended to reflect Board Ruling CB-CDA 2023-047, which established separate proceedings for Online Audiovisual Services (2014-2026) and Online Music Video Services (2014-2018).
 - b. several definitions, including for “audiovisual page impression”, “audiovisual program”, “page impression”, “site”, “user-generated content” and “user-generated content service” have been added or amended to ensure consistency with proposed SOCAN Tariff 22.D.2 - User Generated Content (2014-2026).
3. The Proposed Tariff, as reflected in the Consolidated RFA, adjusts the annual fee for a non-commercial service with no revenues from \$15 to \$25.
4. The proposed royalty rate for 2024 to 2026 removes the adjustment that is based on the concept of page impressions and instead uses a formula that is based on “Canadian Internet-related revenues”. The Board has recognized that page impressions have become less appropriate for measuring music use.
5. New reporting requirements have been added, as set out above, including in connection with the calculation of Canadian Internet-related revenues for the years 2024 to 2026.
6. The confidentiality provisions have been adjusted to allow sharing of reporting information with SOCAN’s agents and service providers. SOCAN relies on external service providers to facilitate efficient processing of reporting data, among other things.
7. As a necessary clarification in light of recent technological developments, the Consolidated RFA clarifies that the Proposed Tariff does not authorize the use of any works in SOCAN’s repertoire in connection with the training of artificial intelligence systems.