

**Copyright Board**Filed by / Déposé par: SOCANDate: 2022-11-14***Notice of Grounds for Proposed Tariff*****SOCAN Tariff 22.C – Internet – Other Audio 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 an online service ordinarily accessed to listen to audio-only content other than a service covered other SOCAN Internet audio tariffs.

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

Users are online services that offer audio-only content who are not captured by Tariffs 1.A (Commercial Radio), 1.B (Non-Commercial Radio other than the Canadian Broadcasting Corporation), 1.C (CBC Radio Tariff), 22.A (Online Music Services), 22.B (Internet – Commercial Radio and Satellite Radio) or 22.E (Internet – Canadian Broadcasting Corporation). 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 based on the amount of music in SOCAN's repertoire used on the service. If SOCAN repertoire use is 20% or less, the royalty rate is 2% of the service's Canadian Internet-related revenues. If SOCAN repertoire use is between 20% and 80%, the royalty rate is 5.5% of the service's Canadian Internet-related revenues. If SOCAN repertoire use is 80% or more, the royalty rate is 7% of the service's Canadian Internet-related revenues.

If a service cannot determine its Canadian Internet-related revenues, the royalty is based on the service's global Internet-related revenues multiplied by 0.1.

The proposed tariff sets out an annual minimum royalty based on SOCAN repertoire use ranging from \$37 per year to \$132 per year.

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 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 the relevant period.

4. Submissions on the Collection of Information

The proposed tariff requires each licensee 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

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and the total number of plays of all files by such subscribers as streams. The proposed tariff also requires each licensee to report the music use information 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.

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 rightsholders.

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 minimum fee to account for inflation.
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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