

AMENDED NOTICE OF GROUNDS FOR PROPOSED TARIFFS

Filed with the Copyright Board by SOCAN on 2024-01-08 pursuant to Rule 15 of the *Copyright Board Rules of Practice and Procedure* and Copyright Board Order CB-CDA 2023-068.

SOCAN Tariff 22.A – Online Music Services (2014-2018) [music videos only]

SOCAN Tariff 22.D – Audiovisual Content (2014, 2015) [online music video services only]

SOCAN Tariff 22.D.1 – Internet – Other Uses of Music - Audiovisual Content (2016, 2017, 2018) [online music video services only]

SODRAC Tariff 6 – Online Music Services - Music Videos (2014)

SODRAC Tariff 6 – Reproduction of Musical Works Embedded in Musical Audiovisual Works for Transmission by a Service (2015, 2016, 2017, 2018) [online music services & online music video services only]

1. Description of Users Expected to be Covered by the Proposed Tariffs

The proposed tariffs are expected to apply to:

- An online music service that offers music videos (including concert videos); and
- An online music video service, which is an online service that predominantly transmits music videos (including concert videos) and is neither an online user-generated content service, nor an allied audiovisual service.

2. Description of Uses Expected to be Covered by the Proposed Tariffs

The proposed tariffs apply to the following uses of musical works in SOCAN's repertoire:

In connection with the operation of an online music service and its authorized distributors,

- a) Communication to the public by telecommunication (including making available for on-demand access, where applicable) of musical works embodied in music videos;
- b) Reproduction of one or more musical work(s) already embodied in a music video for the purpose of transmitting the music video in a file to end users in Canada;
- c) Authorizing third parties to reproduce the musical work(s) already embodied in a music video for the purpose of delivering that music video in a file to the service for subsequent reproduction and transmission as described in paragraph (b); and
- d) Authorizing members of the public, i.e., end users, in Canada, who receive that music video in a file, to further reproduce the file (thereby reproducing the musical work(s) embodied in the music video) for their own private use.

In connection with the operation of an online music video service and its authorized distributors,

- a) Communication to the public by telecommunication (including making available for on-demand access, where applicable) of musical works embodied in audiovisual works, including music videos;
- b) Reproduction of one or more musical work(s) already embodied in an audiovisual work, including a music video, for the purpose of transmitting the audiovisual work in a file to end users in Canada;
- c) Authorizing third parties to reproduce the musical work(s) already embodied in an audiovisual work, including a music video, for the purpose of delivering that audiovisual work in a file to the service for subsequent reproduction and transmission as described in paragraph (b); and
- d) Authorizing members of the public, i.e., end users, in Canada, who receive that audiovisual work in a file to further reproduce the file (thereby reproducing the musical work(s) embodied in the audiovisual work) for their own private use.

The application of the proposed tariffs is subject to certain limitations. Those limitations are set out in the text of the proposed tariffs.

3. 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 tariffs. However, SOCAN reserves the right to 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 to put forward expert evidence to support a detailed valuation analysis, to permit the Copyright Board to set an equitable royalty rate for the activities covered by the proposed tariffs.

A. Communication Right

Although this proceeding covers portions of proposed SOCAN Tariff 22.A, Tariff 22.D, and Tariff 22.D.1 for the applicable years, the applicable royalty rates are the rates set out in proposed Tariff 22.A. Specifically, the proposed Tariff 22.A rates apply in relation to both the offering of music videos by online music services and the offering of audiovisual works by online music video services. The royalty rates set out in proposed Tariffs 22.D (2014-2015) and 22.D.1 (2016-2018) do not apply. Indeed, proposed Tariffs 22.D and 22.D.1 state that “[i]n the case of a music video service, SOCAN Tariff 22.A shall apply.”

The proposed royalty rates in Tariff 22.A vary across 2014 to 2018. For example, the following table summarizes the proposed royalty rates for the years 2015 through 2018 for a service that offers on-demand streams and/or semi-interactive streams (which are termed “recommended streams” in the proposed tariffs) of music videos. The rates proposed for 2014 involve a slightly different structure and are not summarized in this Notice of Grounds. In the interest of

simplicity, SOCAN will propose that the tariff certified for 2014 be the same as the proposed tariffs filed for 2015 and 2016.

| | Tariff 22.A (2014, 2015, 2016) | Tariff 22.A (2017, 2018) |
|---|---|--|
| Percentage rate (adjusted by a factor to represent the proportion of plays requiring a SOCAN licence) | 4.9% of gross revenue | 5.9% of gross revenue |
| Minimum fee | lesser of 50.67¢ per subscriber and unique visitor per month and 0.13¢ per stream requiring a SOCAN licence For streams offered free of charge: 0.13¢ per stream requiring a SOCAN licence | lesser of 60.8¢ per subscriber and unique visitor per month and 0.13¢ per stream requiring a SOCAN licence For streams offered free of charge: 0.13¢ per stream requiring a SOCAN licence |

The proposed tariffs also provide for an adjustment to the rates in the case of a hybrid service, based on the total rate certified by the Board for SOCAN and CSI for on-demand streams. SOCAN does not seek any adjustment to the rates proposed for the communication right in the case of a hybrid service, given that the Board will not be certifying a CSI tariff for on-demand streams for the tariff period under consideration.

The proposed rates are generally derived from the rates proposed by SOCAN in Tariff 22.A (2014-2018) for the offering of audio content by online music services. This is similar to the approach adopted by the Copyright Board in its decisions certifying SOCAN Tariff 22.A (2007-2010) and SOCAN Tariff 22.A (2011-2013). However, as noted above, SOCAN reserves the right to adopt and advance additional or alternative valuation methodologies to support the proposed rates.

In the original text of proposed Tariff 22.A for the years 2014 through 2018, the rates set out above would have applied only to an online music service that provides only music videos, and not also audio tracks. However, as a result of Copyright Board Ruling 2023 CB 5, which excluded the offering of audio tracks from the scope of the proposed tariffs, the rates set out above apply to the offering of music videos by all online music services that also provide audio content, but only for the tariff period under consideration, in addition to applying to services that provide only music videos.

For the avoidance of doubt, SOCAN confirms that the proposed rates will apply to services that offered only music videos as well as services that offered music videos and music-only files. However, for the reasons set out above, this is without prejudice to the royalty rates and terms and conditions proposed by SOCAN for 2019 and later years.

SOCAN further confirms that it is no longer seeking royalties for the communication right for services offering only limited downloads or permanent downloads of musical works.

B. Reproduction Right

For 2014, SODRAC Tariff 6 proposes a royalty rate for only permanent downloads offered by services. The proposed rate is 6.5% of the amount paid by an end-user for the download subject to a minimum fee of 2.7¢ per musical work in a music video, including a concert video, that contains 20 or more musical works, and 9.9¢ per musical work in all other cases.

The proposed rate was based on the CSI rate for permanent downloads of music-only files, of 9.9%, approved by the Board in the CSI Online Music Video Services Tariff (2008-2010), multiplied by a factor of 0.66.

For 2015-2018, SODRAC Tariff 6 proposes royalty rates for permanent downloads, limited downloads (including by streaming services that offer limited downloads to facilitate so-called “offline listening”), on-demand streams, and services offering free on-demand streams. The proposed rates for each of those types of services are the same for each of 2015, 2016, 2017, and 2018. The proposed rates, and the basis for the proposed rates, are summarized below.

(i) Permanent Downloads

For permanent downloads, the proposed rate is 5.64% of the amount paid by end-users for the download, subject to a minimum fee of 2.6¢ per musical work in a music video, including a concert video, that contains 19 or more musical works, per download, and 8.04¢ per download in all other cases.

The proposed percentage rate of 5.64% is the same as the SODRAC rate approved by the Board for permanent download services in the Online Music Services (2010-2013) decision [CD-CDA 2017-086]. That rate had been jointly proposed by SODRAC and Apple during that proceeding.

The proposed minimum fees are also reflective of the Copyright Board’s analysis in that decision, which approved a minimum fee of 2.6¢ per musical work in a music video containing two or more musical works and acknowledged that a minimum fee of 8.09¢ would have been appropriate for a music video containing a single musical work.

However, as noted above, SOCAN reserves the right to right to adopt and advance additional or alternative valuation methodologies to support the proposed rates.

(ii) Limited Downloads

For transaction-based limited downloads, the proposed rate is 5.64% of the amount paid by end-users for the download—the same rate as for permanent downloads—subject to a minimum fee of 1.73¢ per musical work in a music video, including a concert video, that contains 19 or more musical works, per download, and 5.36¢ per download in all other cases.

The minimum fees are calculated as two-thirds of the proposed minimum fees for permanent downloads of music videos.

For subscription-based limited downloads, the proposed rate is 5.64% of gross revenue, adjusted by a factor to represent the proportion of plays requiring a SOCAN licence, subject to a minimum fee equal to the greater of 30.08¢ per subscriber per month and 0.097¢ per play of a file requiring a SODRAC licence.

The per-subscriber minimum fee is calculated as two-thirds of the monthly royalty payable by a typical limited download subscription service at the average subscription price. The per-play minimum fee is derived from the per-play minimum fee proposed by CSI for audio limited download services, of 0.17¢ per play, for certain years in the tariff period. Specifically, SODRAC's proposed per-play minimum fee is calculated by multiplying 0.17¢ by a factor of 0.57, which reflects the ratio between the SODRAC rate for permanent downloads of music videos (5.64%) and the CSI rate for permanent downloads of audio tracks (9.9%), each as approved by the Copyright Board for 2010-2013.

(iii) On-Demand Streams and Free On-Demand Streams

For on-demand streams, the proposed rate is 3.07% of gross revenue, adjusted by a factor to represent the proportion of plays requiring a SODRAC licence, subject to a minimum fee equal to the greater of 16.37¢ per-subscriber per month and 0.054¢ per play of a file requiring a SODRAC licence.

The percentage rate is derived from the percentage rate proposed by CSI for audio on-demand streams, of 5.39%, for certain years in the tariff period. Specifically, SODRAC's proposed percentage rate of 3.07% is calculated by multiplying that 5.39% rate by the factor of 0.57 described above.

The per-subscriber minimum fee is derived by multiplying the 30.08¢ proposed per-subscriber minimum fee for subscription-based limited downloads by a factor of 0.54. That factor reflects the ratio between the proposed percentage rate for on-demand streams (3.07%) and the proposed percentage rate for limited downloads (5.64%).

The per-play minimum fee is derived from the per-play minimum fee proposed by CSI for audio on-demand streams for certain years in the tariff period, of 0.094¢, multiplied by the 0.57 factor described above.

For free on-demand streams, the proposed rate is the lesser of 16.37¢ per unique visitor per month and 0.054¢ per stream requiring a SODRAC licence. The proposed fees parallel the proposed minimum fees for on-demand streams, above, and were derived from the reproduction royalties proposed for online music services in the applicable years.

4. How the Collected Information Would be Used

SOCAN would use the information that it proposes to collect from users under the proposed tariffs to identify users, calculate royalties, and distribute those royalties to rights holders.

5. Changes from any Previously Approved Tariffs

There are numerous changes between the proposed tariffs and the incumbent Online Music Services Tariff (SOCAN: 2011-2013; SODRAC: 2010-2013) (“OMS Tariff”). There are several reasons for those changes, including the following:

- a) The proposed tariffs are based on the tariffs approved by the Copyright Board in the Online Music Services (2007-2010) decision released in 2012, which were the incumbent tariffs at the time that the proposed tariffs were filed.
- b) In Board Ruling 2023 CB 5, the Copyright Board excluded certain activities from the scope of proposed Tariff 22.A, namely the offering of audio-only content.
- c) There are certain differences as between the proposed tariffs for the various years under consideration in this proceeding.

In addition, in Board Ruling CB-CDA 2023-047, the Board provided definitions for the terms “music video” and “music video service”, for the purpose of this proceeding, that differ from the definitions in the proposed tariffs.

In the interest of simplicity, below is a summary of certain changes that SOCAN considers to be the most relevant for purposes of this Notice of Grounds. For reference, a comparative document identifying the changes between the OMS Tariff and each of SOCAN Tariff 22.A (2018) and SODRAC Tariff 6 (2018), is appended to this Notice of Grounds.

A. Communication Right

- The proposed royalty rates, including the percentage-of-revenue rate and the minimum fees, for on-demand streams and recommended streams are different from the rates and fees approved in the OMS Tariff. Instead, they are based on the rates approved in the previous tariff, SOCAN Tariff 22.A (Online Music Services) 2007-2010 but are also intended to reflect changes in the market, including increased efficiencies and expanded uses of music, since the approval of that tariff.

B. Reproduction Right

- While the proposed percentage-of-revenue rate for permanent downloads is the same as the rate approved by the Board in the OMS Tariff, the proposed minimum fees are different.
- The proposed tariffs introduce royalty rates for additional types of activities that engage the reproduction right, namely limited downloads, on-demand streams, and free on-demand streams, which are not provided in the OMS Tariff.