

NOTICE OF GROUNDS FOR PROPOSED TARIFF

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.R – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by Online Audiovisual Services and User-Generated Content Services (2015-2026)

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:

- SODRAC Tariff 7 – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by a Service (2015, 2016, 2017, 2018, 2019);
- SODRAC Tariff 6 – Reproduction of Musical Works Embedded in Musical Audiovisual Works for Transmission by a Service (2015, 2016, 2017, 2018, 2019) [excluding online music services & online music video services];
- SOCAN-SODRAC Tariff 22.D.1.R – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by a Service (2020); and
- SOCAN Tariff 22.D.1.R – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by a Service (2021-2023, 2024-2026)

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

Although the Proposed Tariff includes SODRAC Tariff 6 (2015-2019), the Consolidated RFA is based on SODRAC Tariff 7 (2015-2019), SOCAN-SODRAC Tariff 22.D.1.R (2020), and SOCAN Tariff 22.D.1.R (2021-2026). That is because the latter group of proposed tariffs may be more applicable to the types of services that are at issue in this proceeding, as it has been structured by Board Ruling CB-CDA 2023-047.

That said, 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. It reserves the right to file a revised RFA as part of its statement of case.

2. Description of Users Covered by the Proposed Tariff

The Proposed Tariff is expected to apply to an online service (and its authorized distributors) that offers on-demand streams, limited downloads, or permanent downloads of audiovisual programs to end users by means of digital transmissions, including the Internet. It includes, for greater certainty, a user-generated content service, which is an online service that predominantly transmits user-generated content.

The Proposed Tariff does not apply to an online music video service, which is an online service that predominantly offers music videos.

3. Description of Uses Covered by the Proposed Tariff

The Proposed Tariff would entitle an online service described above, and its authorized distributors,

- a) to reproduce all or part of a musical work in SOCAN's repertoire, solely as embedded in an existing audiovisual program, solely for the purpose of transmitting that audiovisual program in a file to end users in Canada as streams, downloads, or both;
- b) to authorize a third party to reproduce the musical work, solely as embedded in that existing audiovisual program, in order to deliver that file to the service that uses it for the purpose set out in paragraph (a); and
- c) for permanent and limited downloads, to authorize end users in Canada to further reproduce the musical work, solely as embedded in the audiovisual program transmitted pursuant to paragraph (a), for their own private use,

all solely in connection with the operation of the service.

The application of the Proposed Tariff is subject to certain limitations, as set out in the Consolidated RFA, including that it does not authorize the use of any works in SOCAN's repertoire in connection with the training of artificial intelligence systems.

4. Explanation of How Royalties are Determined

The proposed royalty rates for 2015 to 2026 are as follows:

- a) for a service that offers permanent downloads, 6.11% of the amount paid by an end user for each download subject to a minimum of 81.43¢ per permanent download;

- b) for a service that offers limited downloads, which include copies made to facilitate offline viewing,
 - i. if the limited downloads are offered on a transactional basis, 6.11% of the amount paid by an end user for each limited download, subject to a minimum of 52.28¢ per limited download, and
 - ii. if the limited downloads are offered under a subscription, 6.11% of the service's gross revenue, adjusted by a factor to represent the proportion of limited downloads requiring a SOCAN licence, and subject to a minimum equal to the greater of 32.59¢ per subscriber per month and 0.097¢ for each play of a file requiring a SOCAN licence;
- c) for a service that offers on-demand streams, without limited downloads, 1.49% of the service's gross revenue, adjusted by a factor to represent the proportion of plays requiring a SOCAN licence, and subject to a minimum equal to the greater of 7.95¢ per subscriber per month and 0.054¢ for each play of a file requiring a SOCAN licence; and
- d) for free on-demand streams, the lesser of 7.95¢ per unique visitor per month and 0.054¢ per free on-demand stream requiring a SOCAN licence.

The Consolidated RFA clarifies that, if a subscription-based service also offers subscribers limited downloads or on-demand streams (with the ability to make offline viewing copies) on a transactional basis and not as part of their subscriptions—such as in the case of a rental of an audiovisual program—the service would pay royalties for each such download or stream in addition to the royalties for the subscription service.

The proposed royalty rates are derived from the rates for the communication of musical works by online audiovisual services, as explained below.

(i) Permanent Downloads

For permanent downloads, the proposed rate is 6.11% of the amount paid by an end user for each download subject to a minimum of 81.43¢ per download.

The percentage rate was derived by dividing the 9.9% rate approved by the Board for permanent downloads of audio tracks in the *CSI Online Music Services Tariff (2010-2013)* by the 3.4% rate that SOCAN had then proposed for permanent downloads of audio tracks in Tariff 22.A, and then multiplying that amount by the 2.1% rate proposed by SOCAN for the communication of musical works by online audiovisual services in Tariff 22.D.1 for 2014 to 2016.

The minimum fee was calculated as two-thirds of the royalty that would result from applying the 6.11% percentage rate to the average price paid by an end user for a permanent download of an audiovisual program.

(ii) Limited Downloads

For transaction-based limited downloads, the proposed rate is 6.11% of the amount paid by an end user for each limited download, subject to a minimum of 52.28¢ per download. The percentage rate was derived on the same basis as the rate for permanent downloads, as described above. The minimum fee was calculated as two-thirds of the royalty that would result from applying the 6.11% percentage rate to the average price paid by an end user for a limited download of an audiovisual program.

For subscription-based limited downloads, the proposed rate is 6.11% of the service's gross revenue, adjusted by a factor to represent the proportion of limited downloads requiring a SOCAN licence, and subject to a minimum equal to the greater of 32.59¢ per subscriber per month and 0.097¢ for each play of a file requiring a SOCAN licence.

The percentage rate was derived on the same basis as the percentage rates for permanent and limited downloads, as described above.

The per-subscriber minimum was calculated as two-thirds of the monthly royalty that would result from applying the 6.11% percentage rate to the average subscription price paid by subscribers. The per-play minimum fee was derived by multiplying the 0.17¢ per-play minimum fee proposed by CSI, for certain years in the tariff period, for services offering limited downloads of audio tracks by a factor of 0.57, which reflects the ratio between the approved 2010-2013 SODRAC rate for permanent downloads of music videos (5.64%) and the approved 2010-2013 CSI rate for permanent downloads of audio tracks (9.9%).

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

For a service that offers on-demand streams, without limited downloads, the proposed rate is 1.49% of the service's 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 7.95¢ per subscriber per month and 0.054¢ for each play of a file requiring a SOCAN licence.

The percentage rate is derived according to the following formula: $(5.39 / 7.6) \times 2.1$, where:

- i. 5.39% is the rate proposed by CSI for on-demand streams of audio tracks, for certain years in the tariff period;

- ii. 7.6% is the rate approved by the Board for services offering on-demand streams of audio tracks in *SOCAN Tariff 22.A (Online Music Services), 2007-2010*, which SOCAN had proposed again for 2014 to 2018; and
- iii. 2.1% is the rate proposed by SOCAN in Tariff 22.D.1 for 2014 to 2016.

The per-subscriber minimum fee was derived by multiplying the proposed 32.59¢ per-subscriber minimum fee for subscription-based limited downloads by a factor of 0.243. That factor reflects the ratio between the proposed percentage rate for on-demand streams (1.49%) and the proposed percentage rate for limited downloads (6.11%).

The per-play minimum fee was derived by multiplying the 0.094¢ per-play minimum proposed by CSI for audio on-demand streams for certain years in the tariff period, by the 0.57 factor described above in connection with the per-play minimum fee for services offering subscription-based limited downloads.

For free on-demand streams, the proposed rate is the lesser of 7.95¢ per unique visitor per month and 0.054¢ per stream requiring a SOCAN licence. The proposed fees parallel the proposed minimum fees for on-demand streams, the basis for which is described above.

5. Submissions on the Collection of Information

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

Services would be required to report certain information about files transmitted.

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

Since the Proposed Tariff is an inaugural tariff, there is no previously-approved tariff against which to compare it. Changes between the Consolidated RFA and the Proposed Tariff include the following:

1. The calculation of the royalty rate in the Consolidated RFA does not include a penny rate.
2. Several definitions have been added or amended in the Consolidated RFA for clarity and consistency. For example, 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).

3. 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.
4. As noted above, the Consolidated RFA clarifies that, if a subscription-based service also offers subscribers limited downloads or on-demand streams (with the ability to make offline viewing copies) on a transactional basis and not as part of their subscriptions—such as in the case of a rental of an audiovisual program—the service would pay royalties for each such download or stream in addition to the royalties for the subscription service.
5. 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.