



FACT SHEET

SOCAN Tariff 22 – Internet Uses of Music, 1996-2006 October 24, 2008

1. What is the Copyright Board?

The Copyright Board is an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of works protected by copyright, when the administration of these rights is entrusted to a collective society. The Board also supervises agreements signed between users and collective societies and can issue licences when the copyright owners cannot be located.

2. What is SOCAN Tariff 22?

Tariff 22 sets the rates to be paid to the Society of Composers, Authors and Music Publishers of Canada (SOCAN) for the communication to the public by telecommunication, in Canada, of musical works over the Internet.

The first part of this tariff, Tariff 22.A, was published on October 18, 2007 and dealt exclusively with online music services. The decision issued today deals with all other uses of music on the Internet, namely Internet radio and television, other audio sites and game sites.

3. What are the uses made by users on the Internet?

From their website, the communication of music by the users can be of the following types:

- an audio or audiovisual simulcast
- an audio or audiovisual webcast
- a podcast
- games

An audio or audiovisual **simulcast** refers to streaming a radio or television signal simultaneously to its transmission over the air, on cable or by satellite. Listening live to The Current on the Canadian Broadcasting Corporation (CBC) Radio One on the Internet is an example of an audio simulcast. There are few examples of audiovisual simulcasts.

An audio or audiovisual **webcast** also involves the streaming of content. That content may be pre-existing, as when a broadcaster allows users to hear or view part of its programming after it has been broadcast. It may also be original, as when a person operates a so-called “Web radio” signal. Listening on the Internet to the delayed-broadcast of the Hourly News bulletin from CBC Radio is an example of such webcast of pre-existing content.

A **Podcast** is a download. Podcasting is a term used to describe a collection of technologies for automatically distributing audio and video programs over the Internet using a publisher/subscriber model. Downloading of the file containing the last CBC Newsworld Report for subsequent listening on an iPod is a podcast.

4. What are the rates established in today’s decision?

There are six different items in the tariff certified today. The attached table summarizes the rates and the rate bases certified for each different group of users.

For commercial and non-commercial radio stations that already pay royalties to SOCAN for their conventional activities, the same rates are certified for their Internet activities. These rates are, for commercial radio, 1.5% of Internet-related revenues for a low music use station and 4.2% for the others. Non-commercial radio pays a rate of 1.9% of its gross operating costs. The rate bases are further reduced by at least 50% to account for the fact that not all of a radio station’s web pages contain sounds.

For commercial, pay and specialty television, pay audio services and satellite radio services, the rates established are also the same as what these users already pay or will be paying to SOCAN. These rates are 1.9% for television and 12.35% for pay audio services (the rate for satellite radio has yet to be set). The rate base is also further reduced in the same way as radio.

The Canadian Broadcasting Corporation (CBC), TVOntario and Télé-Québec will pay a proportion of 10% of the amounts they already pay to SOCAN, with an additional reduction of at least 85%. For the year 2006, this corresponds to amounts of approximately \$125,000 for CBC, \$4,500 for TVOntario and \$2,700 for Télé-Québec.

Websites that play music, but do not have a conventional counterpart, such as the Iceberg radio site, will pay a rate that depends on the amount of music they use: 1.5% with music use of 20% or less, 4.2% if music use is more than 20% and less than 80%, and 5.3% if music use is 80% or more. Again, the rate base will be discounted by at least 50%.

Finally, the starting rate for game sites that use music will be 0.8%.

5. What was the process of examination used by the Board to establish these rates with regard to music use on the Internet?

Starting in March of 1995, SOCAN filed proposed tariffs for the communication of musical works over the Internet for each of the years 1996 to 2006. In 1996, the Board decided to deal with legal and jurisdictional issues separately from the determination of the tariff. Hearings into the so-called Phase I were held in 1998. In 1999, the Board rendered its decision, which was the subject of judicial review by the Federal Court of Appeal, which rendered a decision in 2002.

The decision was subsequently appealed to the Supreme Court of Canada, which rendered its decision in 2004.

It was only in April-May of 2007 that the Board was able to conduct its hearing on the determination of the tariff.

6. Is the decision retroactive to 1996, and why?

Today's decision is retroactive to January 1996, as was last year's decision for online music services. SOCAN's ability to collect retroactively stems from the law, not from a decision of the Board. SOCAN is entitled to collect royalties set in a final tariff from the date on which the tariff takes effect. That date is determined by the time at which the proposed tariff is filed, not by when the final tariff is certified. Only SOCAN can decide not to collect royalties retroactively.

Having first filed a proposed Tariff 22 for the year 1996, and then for each subsequent year, SOCAN is entitled to collect royalties for the use of its repertoire in Internet uses starting in 1996. In other words, the publication of the proposed Tariff 22 in the September 30, 1995 edition of the *Canada Gazette* put all potential Internet users of music on notice that, at some point, they would be required to comply with a tariff going back to January 1, 1996.

Note: The certified tariff, along with the Reasons and a News Release, can be found on the Board's website under "What's New": www.cb-cda.gc.ca.

TABLE - CERTIFIED RATES

	RATE AND RATE BASE (Except for C, the Rate Base is always Internet-Related Revenues)	RATE BASE DISCOUNT ("At least" means the discount can be increased by reporting to SOCAN)	
		Discount for Non-Audio Page Impressions	Discount for Non-Canadian Page Visits
B. Commercial Radio	1.5% if low music use 4.2% otherwise	At least 50%	0
C. Non-Commercial Radio	1.9% of gross Internet operating costs	At least 50%	0
D. Commercial Television, Non-Broadcast Television, Pay Audio Services, Satellite Radio Services	Applicable rate pursuant to main tariffs (2.A, 17, Pay Audio Services, Satellite Radio Services)	At least 50% for music video, pay audio and satellite radio services At least 90% for any other service	0 for Canadian service At least 90% for any other service
E. CBC, TVO, Télé-Québec	10% of the total amount payable pursuant to Tariffs 1.C, 2.B, 2.C or 2.D	At least 85%	0
F. Audio Websites	1.5% if music use is 20% or less, subject to an annual minimum fee of \$28 4.2% if music use is more than 20% and less than 80%, subject to an annual minimum fee of \$79 5.3% if music use is 80% or more, subject to an annual minimum fee of \$100	At least 50%	<u>Canadian Site</u> 95% of non-Canadian visits, if a report is made to SOCAN 0 otherwise <u>Non-Canadian Site</u> At least 90% (all non-Canadian visits count)
G. Game Sites	0.8%, subject to an annual minimum fee of \$15	0, unless a report is made to SOCAN	<u>Canadian Site</u> 95% of non-Canadian visits, if a report is made to SOCAN 0 otherwise <u>Non-Canadian Site</u> At least 90% (all non-Canadian visits count)