



# FACT SHEET

## **Online Music Services Tariff (CSI: 2011-2013; SOCAN: 2011-2013; SODRAC: 2010-2013)**

August 25, 2017

### ***What is the Copyright Board of Canada?***

The Copyright Board of Canada 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 owner cannot be located.

### ***What are online music services?***

The Copyright Board's first decisions relating to online music services, rendered in 2007, addressed only three types of music activities:

- The provision of permanent downloads of music tracks;
- The provision of limited downloads of music tracks; and
- The provision of on-demand streams of music tracks.

Subsequently, the Board also certified tariffs in relation to:

- The provision of on-demand streams of music videos.

To these are now added several new activities:

- Webcasting (with varying degrees of interactivity);
- The provision of hybrid services;
- The provision of webcasts (interactive and semi-interactive) of music videos; and
- The provision of permanent downloads of music videos.

It is now becoming clear that downloads and streams are not to be considered as a simple dichotomy, but rather as two ends of a spectrum with new activities falling somewhere in between. This characterization of online-music-service offerings informs this decision.

***What is the tariff the Board certifies today?***

The tariff the Board certifies today sets some of the royalties that persons who provide online music services in Canada must pay for the use of copyrighted musical works. Depending on the type of service provided, these royalties will be payable to the following three collective societies: SOCAN (Society of Composers, Authors and Music Publishers of Canada), CSI (Canadian Musical Reproduction Rights Agency and the Society for Reproduction Rights of Authors, Composers and Publishers in Canada), and SODRAC (the Society for Reproduction Rights of Authors, Composers and Publishers in Canada).

***What are the various types of activities of online music services this tariff applies to?***

This decision deals with several types of services, namely, permanent downloads, limited downloads, and webcasts (non-interactive, semi-interactive, interactive and hybrid) of audio tracks. It also deals with permanent downloads, and semi-interactive and interactive webcasts, of music videos. Furthermore, it addresses situations where mixed bundles containing both audio tracks and music videos are sold to customers.

Royalties are payable to SOCAN for the semi-interactive, interactive, and hybrid webcasts of audio tracks and the semi-interactive and interactive webcasts of music videos. Royalties are payable to CSI for permanent and limited downloads, as well as webcasts (non-interactive, semi-interactive, interactive and hybrid), of audio tracks. Royalties are payable to SODRAC for the permanent downloads of music videos.

***What are the rates set in today's decision?***

Today's decision involves several different rates for several different uses that persons who provide online music services must pay to SOCAN, CSI, and SODRAC. The following table shows the details of the rates certified today:

**AUDIO TRACKS**

<b>Activity</b>	<b>SOCAN Royalties</b>	<b>CSI Royalties</b>
<b>Permanent Downloads</b>	–	8.91 per cent of revenues  <u>Minimum fee</u> 3.6¢ per track if in a bundle of 13 tracks or more 6.6¢ per track otherwise
<b>Limited Downloads</b>	–	8.91 per cent of revenues  <u>Minimum fee</u> \$100 per year
<b>Non-interactive Webcasts</b>	–	1.49 per cent of revenues  <u>Minimum fee</u> \$100 per year

<b>Semi-interactive or Interactive Webcasts</b>	5.3 per cent of revenues <u>Minimum fee</u> \$100 per year	1.49 per cent of revenues <u>Minimum fee</u> \$100 per year
<b>Hybrid Webcasts</b>	3.48 per cent of revenues <u>Minimum fee</u> \$100 per year	3.13 per cent of revenues <u>Minimum fee</u> \$100 per year

**MUSIC VIDEOS**

<b>Activity</b>	<b>SOCAN Royalties</b>	<b>SODRAC Royalties</b>
<b>Permanent Downloads</b>	–	5.64 per cent of revenues  <u>Minimum fee</u> 6.6¢ per music video containing only one musical work 2.6¢ per musical work in a music video containing two or more musical works
<b>Semi-interactive or Interactive Webcasts</b>	2.99 per cent of revenues <u>Minimum fee</u> \$100 per year	–

***What are the total royalties that this new tariff will generate?***

The present tariff covers a number of new activities that were not covered by the previous tariffs. The present tariff also has a larger rate base for webcasting services that now includes advertising revenues specifically related to each webcasting activity; the rate base in previous applicable tariffs consisted only of subscription revenues. The Board is usually able to evaluate the total royalties generated by a tariff. However, in this matter, the Board does not have the required detailed information on the revenues associated with the various specific activities covered by the tariff to do so.

***Does the decision address the use of music in a cloud storage environment?***

Some of the collectives proposed tariffs that could be interpreted as applying to the communication of musical works from a cloud storage service provider to an end-user of such cloud storage service. However, given that some collectives asserted that their proposals do not apply to certain cloud services, the variation in which such services are offered, the possibility that no communication to the public takes place through the use of such services, and the possible application of the recently enacted exceptions provided under subsections 31.1(4)–(6) of the *Copyright Act*, the certified tariff excludes from its application those portions of the services that allow users to remotely store and retrieve music.

***Does this decision set a royalty for the making available of works to the public by telecommunication?***

The protection of the making available of works to the public by telecommunication in a way that allows a member of the public to have access to it from a place and at a time individually chosen by that member of the public only came into force on November 7, 2012. Furthermore, there was insufficient usable evidence adduced by the Parties for the Board to be able to price the act of making available distinct from other acts of communication by telecommunication, or how to adjust the price for communication by telecommunication to account for its broadening in scope. However, this does not mean that the Board cannot do so in future matters.

***Definitions***

**Permanent download service** means a service that transmits to end users a file that is intended to be copied onto a storage device and results in a durable copy of that file.

**Limited download service** means a download service where the downloaded files, through technological means, become unusable upon the happening of a certain event or events, such as the end of the end user's subscription.

**Webcast service** means a service that transmits files to end users, where the files are intended to be copied by the end user onto a storage device only to the extent required to allow listening or viewing the contents of the file at substantially the same time as when the file is received.

**Non-interactive webcast service** means a webcast service where the end user exercises no control over the content nor the timing of the transmission of the files.

**Semi-interactive webcast service** means a webcast service where the end user exercises some level of control over the content of the files, or timing of the transmission of the files, or both.

**Interactive webcast service** means a webcast service where the files are chosen by the end user and received at a place and time individually chosen by that person.

**Hybrid webcast service** means a webcast service where the files transmitted to an end user may also be copied onto a storage device for the purpose of listening to them later, and where the period for which such files are retained, or the number of files that may be so retained, or both, is limited, and established by the service.

**Mixed bundle** means a bundle that contains at least one file containing an audio track and at least one file containing a music video.