

PROPOSED TARIFF

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~~Statement of Royalties to Be Collected by SOCAN for the Communication to the Public by Telecommunication, in Canada, of Musical or Dramatico-Musical Works
Tariffs Nos. 22.B to 22.G Internet – Other Uses of Music (1996-2006)~~

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~~FILE: Public Performance of Musical Works~~

~~Statement of Royalties to Be Collected by SOCAN for the Communication to the Public by Telecommunication, in Canada, of Musical or Dramatico-Musical Works~~

~~In accordance with~~

Filed with the Copyright Board by SOCAN on 2022-10-15 pursuant to subsection ~~68(4)~~67(1) of the *Copyright Act*, ~~the Copyright Board has certified and hereby publishes the~~

Proposed Tariff Title: SOCAN Tariff 22.C, Internet – Other Audio Services (2024-2026)

For the communication to the public by telecommunication, as the context may require, of musical or dramatico-musical works

Effective Period: 2024-01-01 – 2026-12-31

SOCAN TARIFF 22.C, INTERNET – OTHER AUDIO SERVICES (2024-2026)

Proposed statement of royalties to be collected by the Society of Composers, Authors and Music Publishers of Canada (SOCAN) in compensation for the communication to the public by telecommunication, in Canada, of musical or dramatico-musical works ~~in respect of Tariffs Nos. 22.B to 22.G (Internet – Other Uses of Music) for the years 1996 to 2006~~ forming part of its repertoire, which, where applicable, includes the making available of such works to the public by telecommunication in a way that allows a member of the public to have access to them from a place and at a time individually chosen by that member of the public.

~~Ottawa, October 25, 2008~~

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~~Le 25 octobre 2008~~

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~~STATEMENT OF ROYALTIES TO BE COLLECTED BY THE SOCIETY OF COMPOSERS, AUTHORS AND MUSIC PUBLISHERS OF CANADA (SOCAN) FOR THE COMMUNICATION TO THE PUBLIC BY TELECOMMUNICATION, IN CANADA, OF MUSICAL OR DRAMATICO-MUSICAL WORKS FOR THE YEARS 1996 TO 2006~~

~~Note: The reader will notice that the tariff contains a reference to the year 2008 even though the tariff itself expires at the end of 2006. This is because the tariff was certified after the date it was due to expire. Transitional provisions ensure that users have a reasonable amount of time after the tariff is certified to fulfil their obligations. Furthermore, through the application of subsection 68.2(3) of the Copyright Act, the tariff, though it expires on December 31, 2006, continues to apply on an interim basis until the Board certifies a further tariff for the period starting January 1, 2007.~~

~~GENERAL PROVISIONS~~

~~All amounts payable under this tariff are exclusive of any federal, provincial or other governmental taxes or levies of any kind.~~

~~As used in this tariff, the term "licence" means a licence to communicate to the public by telecommunication or to authorize the communication to the public by telecommunication, as the context may require.~~

~~Except where otherwise specified, fees payable for any licence granted by SOCAN shall be due and payable upon the grant of the licence. Any amount not received by the due date shall bear interest from that date until the date the amount is received. Interest shall be calculated daily, at a rate equal to one per cent above the Bank Rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.~~

~~Each licence shall subsist according to the terms set out therein. SOCAN shall have the right at any time to terminate a licence for breach of terms or conditions upon 30 days notice in writing.~~

~~Tariff No. 22~~

~~INTERNET – OTHER USES OF MUSIC~~

Application

1. (1) This ~~part of Tariff 22~~ tariff sets the royalties to be paid for the communication to the public by telecommunication of works in SOCAN's repertoire ~~by means of certain Internet transmissions or similar transmission facilities,~~ which, where applicable, includes the making available of such works to the public by telecommunication in a way that allows a member of the public to have access to them from a place and at a time individually chosen by that member of the public, in connection with an online service ordinarily accessed to listen to audio-only content, other than a service that is subject to 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), in the years ~~1996 to 2006~~ 2024-2026.

(2) This ~~part of the~~ tariff does not apply to uses covered by other ~~applicable~~ tariffs, including SOCAN Tariffs 16 (Background Music Suppliers), 22.A (Internet – Online Music Services), 22.B (Internet – Commercial Radio and Satellite Radio), 22.D.1 (Online Audiovisual Services), 22.D.2 (User

Generated Content Services), 22.D.3 (Allied Audiovisual Services), 22.E (Internet – Canadian Broadcasting Corporation), 22.G (Internet – Game Services) and 24.26 (Ringtones Pay Audio and Ancillary Services).

Definitions

2. In this ~~part of the~~ tariff,

~~“audio page impression” means a page impression that allows a person to hear a sound. (« consultation de page audio~~
additional information” means, in respect of each musical work contained in a file, the following information:

(a) the musical work’s unique identifier assigned by a service;

(b) the title of the musical work;

(c) the name of each author of the musical work;

(d) the name of each performer or group to whom the sound recording contained in the file is credited;

(e) the name of the person who released the sound recording;

(f) the International Standard Recording Code (ISRC) assigned to the sound recording;

(g) if the sound recording is or has been released in physical format as part of an album, the name, identifier, product catalogue number and the Universal Product Code (UPC) assigned to the album, together with the associated disc and track numbers;

(h) the name of the music publisher associated with the musical work;

(i) the International Standard Musical Work Code (ISWC) assigned to the musical work;

(j) the Global Release Identifier (GRid) assigned to the musical work and, if applicable, the GRid of the album in which the musical work was released;

(k) the running time of the musical work, in minutes and seconds; and

(l) any alternative title used to designate the musical work or sound recording; (« renseignements additionnels »)

“Canadian Internet-related revenues” means all Internet-related revenues generated in connection

with end-users with Canadian IP addresses: (« recettes d'Internet provenant du Canada »)

“channel” means a single transmission of content ~~other than an “on-demand stream” or a “download” as defined in Tar-iff 22.A.;~~ (« canal »)

“file” means a digital file of an audio work: (« fichier »)

“Internet-related revenues” means all revenues generated by Internet-related activities, including membership, subscription and other access fees, amounts paid for advertising, product placement, promo-tion, and sponsorship, net revenues from the sale of goods or services and commissions on third-party transactions, but excluding

~~(a)~~ (a) revenues that are already included in calculating royalties pursuant to another SOCAN tariff;

~~(b)~~ (b) revenues generated by an Internet-based activity that is subject to another SOCAN tariff;

~~(c)~~ (c) agency commissions;

~~(d)~~ (d) the fair market value of any advertising production ser-vices provided by the ~~user~~ service; and

~~(e)~~ (e) network usage and other connectivity access fees; (« re-cettes d'Internet »)

“~~page impression~~ play” means ~~a request to load a~~ the single ~~page from~~ delivery of a ~~site~~ stream; (« ~~consultation de page~~ ») écoute »)

~~“site” means a collection of pages accessible via a common root URL. (« site~~

“quarter” means from January to March, from April to June, from July to September and from October to December: (« trimestre »)

“service” means a person or corporation that communicates musical works in SOCAN’s repertoire to the public (which, where applicable, includes making such works available to be accessed by members of the public at a time and place of each member’s choosing) by means of Internet transmissions or similar transmission facilities: (« service »)

“SOCAN repertoire use” means the share of total transmission time, excluding music used in interstitial programming such as commercials, public service announcements and jingles, that uses the works in the SOCAN repertoire; (« utilisation du réper-toire SOCAN »)

~~“user” means anyone who is subject to this part of Tariff 22. (« usage;~~ stream” means a file that is intended to be

copied onto a local storage medium or device only to the extent required to allow listening to the file at substantially the same time as when the file is received; (« transmission »)

“subscriber” means an end-user with whom a service or its authorized distributor has entered into a contract for service other than on a transactional per-stream basis, whether for a fee, for other consideration or free of charge, including pursuant to a free subscription; (« abonné »)

“year” means a calendar year. (« année »)

~~B. Commercial Radio~~

~~3.~~

Royalties

3. (1) The royalties payable by a radio station that is subject to Tariff 1.A (Commercial Radio) service ordinarily accessed to listen to audio-only content, other than a service subject to SOCAN Tariffs 1.A, 1.B, 1.C, 22.A, 22.B, or 22.E, are

~~A~~ ~~×~~ B ~~×~~ C

where

~~(A) (A) is 1.5 per cent of the station’s Internet-related revenues if the station pays at that rate pursuant to Tariff 1.A, and 4.2 per cent for any other station, and~~

~~(B) is the ratio of audio page impressions to all page impressions, if that ratio is provided to SOCAN and 0.5 if not.~~

~~C. Non-Commercial Radio~~

~~4. (1) Subject to subsection (2), the royalties payable by a radio station that is subject to Tariff 1.B (Non-Commercial Radio) are~~

~~$A \times B$~~

~~where~~

~~(A) is 1.9 per cent of: (i) 2.0 per cent if the SOCAN repertoire use on the service is 20 per cent or less, (ii) 5.5 per cent if the use is between 20 and 80 per cent, and (iii) 7.0 per cent if the use is 80 per cent or more.~~

if the station service can determine its Canadian Internet-related revenues:

(B) is the service's gross Canadian Internet-operating costs-related revenues, and

~~(B) is the ratio of audio page impressions to all page impressions, if that ratio is provided to SOCAN and 0.5 if not.~~

~~(2) Notwithstanding subsection (1) and section 9, a station that includes its gross Internet operating costs in calculating the royalties payable pursuant to Tariff 1.B is not required to pay any royalties or to provide any information pursuant to this section.~~

~~**D. Commercial Television, Non-Broadcast Television, Pay Audio Services, Satellite Radio**~~

~~5. The royalties payable by a broadcaster that is subject to Tariff 2.A (Commercial Television Stations), Tariff 17 (Transmission of Pay, Specialty and Other Television Services by Distribution Undertakings), the Pay Audio Services Tariff or the Satellite Radio Tariff are~~

~~$A \times B \times C \times (1 - D)$ where~~

~~(A) is the rate applicable to the broadcaster pursuant to the above referenced tariffs,~~

(C) is 1,

if the service cannot determine its Canadian Internet-related revenues:

~~(B) (B) is the broadcaster service's Internet-related revenues,~~

~~(C) is~~

~~(i) the ratio of audio page impressions to all page impressions, if that ratio is provided to SOCAN; and~~

~~(ii) if not, 0.5 for a music video service, a pay audio service or a satellite radio service and 0.1 for any other service,~~

~~(D) is~~

~~(i) 0 for a Canadian service;~~

~~(ii) for any other service, the ratio of non-Canadian page impressions to all page impressions, if that ratio is provided to SOCAN and 0.9 if not.~~

~~**E. Canadian Broadcasting Corporation, Ontario Educational Communications Authority, Société de télédiffusion du Québec**~~

~~6. The royalties payable by the Canadian Broadcasting Corporation, the Ontario Educational Communications Authority or the Société de télédiffusion du Québec are~~

~~$A \times B$~~

~~where~~

~~(A) is 10 per cent of the total amount payable by the corporation pursuant to Tariffs 1.C (Radio Canadian Broadcasting Corporation), 2.B (Ontario Educational Communications Authority), 2.C (Société de télédiffusion du Québec), 2.D (Television Canadian Broadcasting Corporation) or an agreement with SOCAN; and~~

~~(B) is the ratio of audio page impressions to all page impressions, if that ratio is provided to SOCAN and 0.15 if not.~~

F. Audio Websites

~~7. (1) The royalties payable by a site ordinarily accessed to lis- ten to audio- only content, other than a site subject to sections 3 to 6 or 8 or an on- demand stream or a download as defined in Tariff 22.A, is~~

~~$A \times B \times [1 - (C \times D)]$ where~~

~~(A) is 1.5 per cent of the site's Internet related revenues if the SOCAN repertoire use is 20 per cent or less, 4.2 per cent if the use is between 20 and 80 per cent and 5.3 per cent if the use is 80 per cent or more,~~

~~(B) is the ratio of audio page impressions (excluding audio- visual page impressions) to all page impressions (including audio- visual page impressions), if that ratio is provided to SOCAN and 0.5 if not,~~

~~(C) is 0.95 for a Canadian site and 1 for any other site, and~~

~~(D) is~~

~~(i) the ratio of non- Canadian page impressions to all page impressions, if that ratio is provided to SOCAN; and~~

(C) is 0.1,

~~(ii) if not, 0 for a Canadian site and 0.9 for any other site,~~ subject to a minimum fee of: (i) \$2837 per year if the combined SOCAN repertoire use on the ~~site~~service is 20 per cent or less, ~~\$79~~(ii) \$104 if the combined use is between 20 and 80 per cent, and (iii) \$400132 if the combined use is 80 per cent or more.

(2) For the purposes of subsection (1), the applicable rate shall be determined by using the channel's SOCAN repertoire use for revenues that are tracked on a per- channel basis, and by using the combined SOCAN repertoire use of all channels for all other revenues.

~~G. Game Sites~~

~~8. The royalties payable by a site ordinarily accessed to download or play games, including gambling, other than a site subject to sections 3 to 7, are~~

$$~~A \times B [1 - (C \times D)]~~$$

~~where~~

~~(A) is 0.8 per cent of the site's Internet-related revenues,~~

~~(B) is the ratio of audio page impressions to all page impressions, if that ratio is provided to SOCAN and 0 if not,~~

~~(C) is 0.95 for a Canadian site and 1 for any other site; and~~

~~(D) is~~

~~(i) the ratio of non-Canadian page impressions to all page impressions, if that ratio is provided to SOCAN; and~~

~~(ii) if not, 0 for a Canadian site and 0.9 for any other site, subject to a minimum fee of \$15 per year.~~

Reporting Requirements

~~9. When royalties are payable pursuant to sections 3 to 6, the time periods to be used in calculating royalties, as well as the dates at which payments must be effected and information reported, shall be the same as in the tariff referred to in the applicable provision.~~

Service Identification

4. (1) No later than the earlier of 20 days after the end of the first month during which a service communicates a file requiring a SOCAN licence and the day before the service first makes such a file available to the public, the service shall provide to SOCAN the following information:

(a) the name of the person who operates the service, including

(i) if a corporation, its name and a mention of its jurisdiction of incorporation,

(ii) if a sole proprietorship, the name of the proprietor,

(iii) if a partnership, the names of each partner, and

(iv) in any event, the names of the principal officers or operators of the service or any other service,

together with any other trade name under which the service carries on business;

(b) the address of its principal place of business;

(c) the name, address and email of the persons to be contacted for the purposes of notice, for the exchange of data and for the purposes of invoicing and payment of royalties;

(d) the name and address of any authorized distributor; and

(e) the Uniform Resource Locator (URL) of each website and the name of each application or platform at or through which the service is or will be offered, as applicable.

Sales and Music Use Reporting

(2) No later than 20 days after the end of each month, any service that is required to pay royalties pursuant to this tariff shall provide to SOCAN a report setting out, for that month, the following information:

(a) the service's Canadian Internet-related revenues or Internet-related revenues, as applicable;

(b) in relation to each file that was delivered:

(i) the number of plays of each file;

(ii) the total number of plays of all files; and

(iii) the additional information.

(3) If the service offers subscriptions in connection with its provision of streams, the service shall provide the following information:

(a) the number of subscribers to the service at the end of the month and the total amounts paid by them during that month; and

(b) the number of subscribers provided with free trial subscriptions and the total number of plays of all files by such subscribers as streams.

Files Made Available

5. Upon request, a service shall provide to SOCAN the additional information for all files that were made available to members of the public for on-demand streaming at any time during the year, regardless of whether the file was transmitted to any end-user. SOCAN shall not make such a request more frequently than twice per year.

Payment of Royalties and Interest on Late Payments

6. (1) Royalties shall be due no later than 20 days after the end of each month.

(2) All amounts payable under this tariff are exclusive of any ~~fed-eral~~ federal, provincial or other governmental taxes or levies of any kind.

(3) All amounts required to be reported or paid under this tariff shall be reported or paid in Canadian dollars.

(4) Any amount not received by the due date shall bear interest from that date until the date the amount is received. ~~Inter-est~~ Interest shall be calculated daily, at a rate equal to one per cent above the Bank Rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.

Adjustments

7. Adjustments to any information provided pursuant to section 3 or 4 shall be provided with the next report dealing with such information.

8. Adjustments in the amount of royalties owed, including excess payments, as a result of the discovery of an error or otherwise, shall be made on the date the next royalty payment is due.

Records and Audits

9. (1) A service shall keep and preserve, for a period of six years after the end of the month to which they relate, records from which the information set out in sections 3 and 4 can be readily ascertained.

(2) SOCAN may audit these records at any time during the period set out in subsection (1) on reasonable notice and during normal business hours.

(3) Subject to subsection (4), if an audit discloses that royalties due have been understated in any quarter by more than 10 per cent, the service shall pay the reasonable costs of the audit within 30 days of the demand for such payment.

(4) For the purposes of subsection (3), any amount owing as a result of an error or omission on the part of SOCAN shall not be taken into account.

Confidentiality

10. (1) Subject to subsections (2) and (3), SOCAN, the service and its authorized distributors shall treat in confidence information received pursuant to this tariff, unless the disclosing party consents in writing to the information being treated otherwise.

(2) Information referred to in subsection (1) may be shared

(a) between the service and its authorized distributors in Canada;

(b) with the Copyright Board;

(c) in connection with proceedings before the Copyright Board, once the disclosing party has had a reasonable opportunity to request a confidentiality order;

(d) with any person who knows or is presumed to know the information;

(e) to the extent required to effect the distribution of royalties;

(f) with SOCAN's agents and service providers to the extent required by the service providers

for the service they are contracted to provide; and

(g) if required by law.

(3) Subsection (1) does not apply to information that must be provided pursuant to the *Copyright Act*, to information that is publicly available, to aggregated information, or to information obtained from someone other than the service or its authorized distributors and who is not under an apparent duty of confidentiality with respect to the supplied information.

Addresses for Notices

11. (1) Anything addressed to SOCAN shall be sent to 41 Valleybrook Drive, Toronto, Ontario M3B 2S6, email: licence@socan.com, or to any other address or email address of which a service has been notified in writing.

(2) Anything that SOCAN sends to a service shall be sent to the last address or email address of which SOCAN has been notified in writing.

Delivery of Notices

~~10.~~ 12. (1) Subject to subsection (2), royalties payable pursuant to section 7 or 8 shall be calculated and paid yearly; a notice may be delivered by hand, by postage-paid mail, by email or by File Transfer Protocol (FTP).

~~(2) As soon as the royalties payable for a year exceed \$350, payments for the rest of that year and for the following year shall be made on a quarterly basis.~~

~~11. (1) No later than 30 days after the end of the year, a user subject to subsection 10(1) shall pay the royalty for that year and shall report the information used to calculate the royalty.~~

~~(2) No later than 30 days after the end of the quarter, a user subject to subsection 10(2) shall pay the royalty for that quarter and shall report the information used to calculate the royalty.~~

~~12. (1) Upon receipt of a written request from SOCAN, a user shall provide, with respect to each musical work the user transmitted during the days listed in the request:~~

~~(a) the date and time of the transmission;~~

~~(b) the title of the work, the name of its author and composer;~~

~~(c) where applicable, the title of the album, the name of the performers or performing groups and the record label; and~~

~~(d) where available, the number of persons who listened to the work.~~

~~(2) A user shall provide the information set out in subsection (1) in electronic format where possible, otherwise in writing, no later than 14 days after the end of the month to which it relates.~~

~~(3) A user is not required to provide the information set out in subsection (1) with respect to more than 14 days in a year.~~

~~Record Keeping: Audio Websites~~

~~13. (1) A user that is subject to section 7 shall keep, for a period of 90 days, information that allows SOCAN to verify each channel's SOCAN repertoire use.~~

~~(2) If the information referred to in subsection (1) is unavailable, the SOCAN repertoire use is presumed to be 80 per cent or more.~~

Audit

~~14. SOCAN shall have the right to audit the books and records of a user, on reasonable notice and during normal business hours, to verify the statements rendered and the royalty payable.~~

Transitional Provisions

~~15. In sections 16 to 18, "transition period" means the period from January 1, 1996 to December 31, 2008.~~

~~16. Notwithstanding sections 9 and 10, during the transition period, the ratio of audio page impressions to all impressions, the ratio of non-Canadian page impressions to all page impressions and the SOCAN repertoire use remain the same in any given year.~~

~~17. (1) For the purposes of sections 3 to 8, in any given year during the transition period, the ratio of audio page impressions to all page impressions and the ratio of non-Canadian page impressions to all page impressions is calculated using the information available for~~

~~a. that year;~~

~~b. the previous year, if no information is available for that year;~~

~~c. the following year, if no information is available for that year or the previous year;~~

~~d. the transition period, if no information is available for that year, the previous year or the following year;~~

~~e. October 2008 to March 2009, if no information is available for that year, the previous year, the following year or the transition period.~~

~~(2) If no information is available with respect to any of the periods mentioned in subsection (1), the applicable ratio is the ratio set out in the relevant provision.~~

~~18. For the purposes of section 7, in any given year during the transition period, the SOCAN repertoire use of a channel or site~~

~~(a) is deemed to be less than 20 per cent if the use is less than 20 per cent:~~

~~(i) in the relevant year, based on available information for that year;~~

~~(ii) in the previous year, based on available information for that year, if no information is available for the relevant year;~~

~~(iii) in the following year, based on available information for that year, if no information is available for the relevant year or the previous year;~~

~~(iv) during the transition period, based on available information for that period, if no information is available for the relevant year, the previous year or the following year;~~

~~(v) from October 2008 to March 2009, based on available information for that period, if no information is available for the relevant year, the previous year, the following year or the transition period;~~

~~(b) is presumed to be 80 per cent or more if~~

~~(i) the use is not deemed to be less than 20 per cent pursuant to paragraph (a);~~

~~(ii) no use information is available for any part of the transition period; and~~

~~(iii) the use is 80 per cent or more from October 1, 2008 to March 31, 2009,~~

~~(c) is deemed to be between 20 and 80 per cent in all other cases.~~

~~19. Any amount that would otherwise be payable pursuant to this tariff before December 31, 2008 shall be due no later than January 31, 2009 and shall be increased by using the multiplying factor (based on the Bank Rate) set out in the following table with respect to each period. Information pertaining to that same period shall be filed with the payment and shall be supplied only if it is available.~~

	1996	1997	1998	1999	2000	2001	2002
	1,4872	1,4516	1,4040	1,2545	1,2002	1,2407	1,2211
2003	2004	2005	2006	2007	2008		
	1,1898	1,1630	1,1354	1,0965	1,0510	1,0122	

Information provided pursuant to sections 4 and 5 shall be delivered electronically, by way of delimited text file or in any other format agreed upon by SOCAN and the service.

(3) A notice or payment mailed in Canada shall be presumed to have been received four business days after the day it was mailed.

(4) A notice sent by email or by FTP shall be presumed to have been received the day it is transmitted.