

**Copyright Board**Filed by / Déposé par: SOCANDate: 2022-11-14***Notice of Grounds for Proposed Tariff*****SOCAN Tariff 22.A – Online Music Services (2024-2026)**

November 14, 2022

1. Description of Uses Covered by the Proposed Tariff

This tariff applies to the communication to the public by telecommunication (including, where applicable, the making available) of works in SOCAN's repertoire in connection with the operation of an online music service (and its authorized distributors), defined as a service that delivers streams containing musical works (whether on-demand streams or semi-interactive streams) to end-users.

2. Description of Users / Groups of Users Covered by the Proposed Tariff

Users are operators and providers of online music services and their authorized distributors. Importantly, it is the nature of the *use*, and not the nature of the *user*, that determines whether the tariff applies.

3. Explanation of How Royalties are Determined

The proposed royalty rate for 2024-2026 is 10.3% of the gross revenue of the service (for services that only offer music videos, the proposed royalty rate is 5.9% of the gross revenues of the service), multiplied by a ratio that reflects SOCAN repertoire use on the service, with a minimum fee of the lesser of 0.13¢ per stream of a file requiring a SOCAN licence and 60.8¢ per subscriber.

The proposed rate is intended to reflect changes in the market, including increased efficiencies and expanded uses of music. It is anticipated that as part of the 2024-2026 tariff proceeding, objectors will produce information and documents that will assist in establishing the value and monetization of online music services during the relevant period. The anticipated information and documents are highly confidential and not otherwise available to SOCAN. As in prior tariff proceedings, it is expected that this relevant information and expert analysis will enable SOCAN to provide a detailed valuation analysis to permit the Copyright Board to set an equitable royalty rate for online music services during the relevant period.

4. Submissions on the Collection of Information

The proposed tariff requires each licensee to report, on a monthly basis, the gross revenue of the service, the number of plays of each file, the total number of plays of all files, the number of subscribers, the amount paid by subscribers, the number of subscribers provided with free subscriptions, the number of free streams delivered, and, for hybrid services or hybrid service tiers, the number of times each file was cached onto end users' local storage. The proposed tariff also requires each licensee to report the music use information for each file streamed.

Following the decision of the Supreme Court of Canada in *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30, which clarified the meaning of the making available provision (section 2.4(1.1)) of the *Copyright Act*, the proposed tariff introduces

This document has not been made nor issued by the Copyright Board. It has not been translated and is only available in the language in which it was filed with the Board.

Le présent document n'émane pas de la Commission du droit d'auteur. Il n'a pas été traduit et il est disponible uniquement dans la langue dans laquelle il a été déposé auprès de la Commission.

a new reporting requirement, namely a provision that allows SOCAN to request, no more than twice per year, a list of files made available by the service for on-demand streaming.

The proposed tariff also requires each licensee to report basic service-identification information.

The information collected under the proposed tariff is needed to identify users, calculate royalties and distribute those royalties to rights holders.

5. Explanation of Changes from Previously Approved Tariff

1. The proposed tariff introduces a new royalty rate.
2. Several of the definitions in the proposed tariff (including the definition for “online music service”) have been amended for clarity.
3. The proposed tariff introduces new reporting requirements, described above.
4. The proposed tariff introduced changes to the confidentiality provisions to allow sharing of reporting information with SOCAN’s agents and service providers. SOCAN relies on service providers to facilitate efficient processing of reporting data, among other things.
5. SOCAN has proposed the same percentage of revenue rate and same minimum fees since 2017. The Copyright Board last certified Tariff 22.A in 2017 for the years 2011-2013. The period 2014-2018 is currently before the Board for approval.

This document has not been made nor issued by the Copyright Board. It has not been translated and is only available in the language in which it was filed with the Board.

Le présent document n'émane pas de la Commission du droit d'auteur. Il n'a pas été traduit et il est disponible uniquement dans la langue dans laquelle il a été déposé auprès de la Commission.