



## Copyright Board

Filed by / Déposé par: SOCAN

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### ***Notice of Grounds for Proposed Tariff***

### **SOCAN Tariff 22.D.3 – Allied Audiovisual Services (2024-2026)**

November 14, 2022

#### **1. Description of Uses Covered by the Proposed Tariff**

This tariff applies the communication to the public by telecommunication (including, where applicable, the making available) of works in SOCAN's repertoire by audiovisual services (and their authorized distributors) analogous to, and operated in conjunction with, by or in support of, the operations of over-the-air television stations, pay and specialty services, community channels, other programming and non-programming services, or a broadcast distribution undertaking (BDU) subject to SOCAN Tariff 2.A or 17.

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

Users are online allied audiovisual services and their authorized distributors. This includes audiovisual services associated with a particular BDU or a broadcast or specialty channel, for example.

#### **3. Explanation of How Royalties are Determined**

The proposed royalty rate for 2024-2026 is 3% of revenue from one or more of the following categories, depending on the business model of the allied audiovisual service:

- (a) program fees charged to end-users
- (b) amounts paid by subscribers, and
- (c) the service's revenue related to Canadian audiovisual usage (calculated according to the ratio defined in the tariff as "rate base")

with a minimum fee of 1.3¢ per program in the case of (a), and 19.5¢ per subscriber in the case of (b).

For services with low music use (i.e. less than 20% of the overall time of the transmissions), the royalty rate is 1.5%.

Non-commercial services with no revenue pay an annual fee of \$25.

The proposed rate increase 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 allied audiovisual 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 allied audiovisual services during the relevant period.

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#### **4. Submissions on the Collection of Information**

The proposed tariff requires each licensee to report, on a monthly basis, the relevant revenue of the service; the number of plays of each file; the total number of plays of all files; for allied audiovisual services that charge per-program fees to end-users, the total amount paid by Canadian end-users for plays for which a SOCAN licence was required; and for allied audiovisual services with subscribers, the number of subscribers, the amount paid by subscribers, the number of subscribers provided with free subscriptions, and the total number of plays of all files by subscribers provided with free trial subscriptions. The proposed tariff also requires each licensee to report basic identification data 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 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 (and, if available, any cue sheet data available for those files, and, if not available, basic identification data).

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 Proposed Tariff**

1. The proposed tariff introduces a new royalty rate.
2. The proposed tariff adjusts the annual fee for non-commercial services from \$15 to \$25.
3. Several of the definitions in the proposed tariff have been amended for clarity.
4. The proposed tariff introduces new reporting requirements, described above.
5. 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.

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