

**Copyright Board**Filed by / Déposé par: SOCANDate: 2022-11-14***Notice of Grounds for Proposed Tariff*****SOCAN Tariff 22.G – Internet – Game 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 an online service ordinarily accessed to play games, including gambling.

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

Users are services ordinarily accessed to play games, including gambling services. 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 3% of the service's Canadian Internet-related revenues, with a minimum annual fee of \$25.

If a service cannot determine its Canadian Internet-related revenues, the royalty is based on the service's global Internet-related revenues multiplied by 0.1.

The royalties payable with respect to any game containing less than 20% music use for which a licence is required from SOCAN are 1.5% of the service's Canadian Internet-related revenues generated by such a game. If the service cannot determine such Canadian Internet-related revenues, then the royalties payable are 1.5% of the service's global Internet-related revenues generated by such a game multiplied by 0.1.

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 online game 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 game 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 service's Internet-related revenues. The proposed tariff introduces new reporting requirements, which includes requiring a service to report identification information about each game that was delivered as a stream, the number of starts of all games delivered as streams, the number of hours end users played of all games, the number of subscribers and the total amount paid by subscribers, and the number of subscribers provided with free

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trial subscriptions (as well as additional information relating to such free trial subscribers). 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 a new reporting requirement, namely a provision that allows SOCAN to request, no more than twice per year, a list of games 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 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 and calculation formula.
2. The proposed tariff includes a new rate applicable for games with less than 20% music use.
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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