

## PROPOSED TARIFF

Filed with the Copyright Board by SOCAN on 2022-10-15 pursuant to subsection 67(1) of the *Copyright Act*

Proposed Tariff Title: *SOCAN Tariff 22.D.1, Online Audiovisual Services (2024-2026)*

For the communication to the public by telecommunication of musical or dramatico-musical works

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

### SOCAN TARIFF 22.D.1, ONLINE AUDIOVISUAL 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 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.

#### *Application*

1. (1) This tariff sets the royalties to be paid for the communication to the public by telecommunication of works in SOCAN's 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, in connection with the operation of an online audiovisual service and its authorized distributors in the years 2024-2026.

(2) This tariff does not apply to uses covered by other tariffs, including SOCAN Tariffs 16 (Background Music Suppliers), 22.A (Online Music Services), 22.B (Internet – Commercial Radio and Satellite Radio), 22.C (Internet – Other Audio 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 26 (Pay Audio and Ancillary Services).

#### *Definitions*

2. In this tariff,

“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* »)

“cue sheet” means a report containing, at minimum, the following information: the title of the audiovisual work, the title of each of the musical works embedded into the audiovisual work, the name of the author of each of the musical works, the duration of each of the musical works, and the total running time of the audiovisual work; (« *rapport de contenu musical* »)

“file” means a digital file of an audiovisual 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, promotion and sponsorship, net revenues from the sale of goods or services and commissions on third-party transactions, but excluding

- (a) revenues that are already included in calculating royalties pursuant to another SOCAN tariff;
- (b) revenues generated by an Internet-based activity that is subject to another SOCAN tariff;
- (c) agency commissions;
- (d) the fair market value of any advertising production services provided by the service; and
- (e) network usage and other connectivity access fees; (« *recettes d'Internet* »)

“music video” means an audiovisual representation of a musical work or works, including a concert; (« *vidéo musicale* »)

“music video service” means a service that focuses primarily on music videos; (« *service de vidéo musicale* »)

“on-demand stream” means a stream selected by the end-user and received at a place and time individually chosen by that end-user; (« *transmission sur demande* »)

“online audiovisual service” means a service that delivers streams containing audiovisual works to end-users. For the avoidance of doubt, an “online audiovisual service” includes services that also offer end-users the ability to cache files for offline listening or viewing, but excludes a service that offers only streams that are selected by the service and can only be listened to or viewed at a time chosen by the service and for which no advance playlist is published; (« *service audiovisuel en ligne* »)

“play” means the single delivery of a stream; (« *écoute* »)

“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* »)

“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 or viewing of the file at substantially the same time as when the file is received; (« *transmission* »)

“subscriber” means an end-user with whom an online audiovisual 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* »)

### *Royalties*

3. (1) The royalties payable for the communication of an audiovisual program containing one or more musical works requiring a SOCAN licence shall be as follows:

(a) for a service that charges per-program fees to end-users: 3.0 per cent of the amounts paid by end-users, subject to a minimum of 1.3¢ per program;

(b) for a service that offers subscriptions to end-users: 3.0 per cent of the amounts paid by subscribers, subject to a minimum monthly fee of 19.5¢ per subscriber. In the case of a single, initial free trial of up to 31 days in any 12-month period offered to induce a prospective subscriber to enter into a paid subscription, there shall be no royalty fee payable;

(c) for a service that receives Internet-related revenues in connection with its communication of audiovisual programs:

$$3.0\% \times A \times B$$

where

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

(A) is the service’s Canadian Internet-related revenues, and

(B) is 1,

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

(A) is the service’s Internet-related revenues, and

(B) is 0.1.

(2) A service with revenues from more than one of the categories in paragraphs (1)(a), (b) and (c) shall pay royalties in accordance with each applicable paragraph, but the calculation in paragraph (1)(c) shall exclude any fees charged to end-users in the calculations in paragraphs (1)(a) and (b).

(3) A non-commercial service with no revenue shall pay an annual fee of \$25.00.

(4) In the case of a music video service, SOCAN Tariff 22.A (Online Music Services) shall apply.

### *Reporting Requirements*

#### *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, in relation to

each file that was delivered as a stream, the following information:

- (a) the title of the program and/or series, the year of production, episode name, number, season and running time, and any other information that would assist SOCAN in identifying the file;
- (b) the number of plays of each file;
- (c) the total number of plays of all files;
- (d) the International Standard Audiovisual Number (ISAN) assigned to the file;
- (e) in the case of a translated program, the title in the language of its original production; and
- (f) the additional information.

(3) No later than 20 days after the end of each month, a service shall also report, for that month, its revenues from each of the categories in paragraphs 3(1)(a), (b) and (c), as applicable, and with respect to paragraph 3(1)(c), its Canadian Internet-related revenues or Internet-related revenues, as applicable.

(4) 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.

(5) If the service claims that a SOCAN licence is not required for a file, the service shall provide information that establishes why the licence is not required.

(6) A service that is required to pay royalties pursuant to more than one paragraph of subsection 3(1) shall file a separate report pursuant to each subsection of this section.

#### *Files Made Available*

5. Upon request, a service shall provide to SOCAN, for each file that was 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,

- (a) if available, a cue sheet; or

(b) if the cue sheet is not available, the information specified in paragraph 4(2)(a).

SOCAN shall not make such a request more frequently than twice per year.

If the cue sheet is not available for a file, a service shall, at SOCAN's request, use commercially reasonable efforts to secure the cue sheet from any third party, including from the producer of the audiovisual work.

#### *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 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. 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. (1) Subject to subsection (2), 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.

(2) Any excess payment resulting from a service providing incorrect or incomplete information about a file shall be deducted from future amounts owed for the use of works owned by the same person as the work in that file.

#### *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*

12. (1) Subject to subsection (2), a notice may be delivered by hand, by postage-paid mail, by email or by File Transfer Protocol (FTP).

(2) 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.