

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.R, Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by a Service (2024-2026)*

For the reproduction of musical works.

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

SOCAN TARIFF 22.D.1.R, REPRODUCTION OF MUSICAL WORKS EMBEDDED IN AUDIOVISUAL WORKS FOR TRANSMISSION BY A SERVICE (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 right to reproduce, in Canada, musical works forming part of its repertoire.

Definitions

1. In this tariff,

“audiovisual work” means a movie, television program or other cinematographic work irrespective of its initial intended use, but excludes a music video; (« *œuvre audiovisuelle* »)

“bundle” means two or more digital files offered as a single product, if at least one file is a permanent download; (« *ensemble* »)

“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* »)

“download” means a file intended to be copied onto an end-user’s local storage medium or device; (« *téléchargement* »)

“file,” except in the definition of “bundle,” means a digital file of an audiovisual work embedding one or more musical works; (« *fichier* »)

“free on-demand stream” excludes an on-demand stream provided to a subscriber; (« *transmission sur demande gratuite* »)

“free subscription” means the provision of free access to limited downloads or on-demand streams to a subscriber; (« *abonnement gratuit* »)

“gross revenue” means the aggregate of (a) all revenues payable by or on behalf of end-users for access to streams or downloads delivered by a service or its authorized distributors, including membership, subscription and other access fees; (b) all other revenues payable to a service or its authorized distributors in respect of the service, including amounts paid for advertising, product placement, promotion and sponsorship, and commissions on third-party transactions; and (c) amounts equal to the value of the consideration received by a service or its authorized distributors pursuant to any contra and barter agreements related to the operation of the service; (« *revenus bruts* »)

“identifier” means the unique identifier a service assigns to a file or bundle; (« *identificateur* »)

“limited download” means a download that uses technology that causes the file to become unusable upon the happening of a certain event; (« *téléchargement limité* »)

“music video” means an audiovisual representation of one or more musical works, including a concert; (« *vidéo de musique* »)

“non-subscriber” means an end-user other than a subscriber, and includes an end-user who receives limited downloads or on-demand streams from a service subject to the requirement that advertising be viewed or listened to; (« *non-abonné* »)

“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* »)

“permanent download” means a download other than a limited download; (« *téléchargement permanent* »)

“play” means the single performance of a stream or a limited download; (« *écoute* »)

“repertoire” means the musical works for which SOCAN is entitled to grant a licence pursuant to section 2; (« *répertoire* »)

“semester” means from January 1 to June 30 and from July 1 to December 31; (« *semestre* »)

“service” means a service that delivers on-demand streams, limited downloads and permanent

downloads of an audiovisual work to end-users, by any means whatsoever ; (« *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 a service or its authorized distributor has entered into a contract for service other than on a transactional per-download or per-stream basis, for a fee, or for other consideration, including pursuant to a free subscription; (« *abonné* »)

“unique visitor” means each end-user, excluding a subscriber, who receives a free on-demand stream from a service in a month. (« *visiteur unique* »)

Application

2. This tariff entitles a service that complies with this tariff, and its authorized distributors,

(a) to reproduce all or part of a musical work in the repertoire already embedded in an audiovisual work for the purposes of transmitting it in a file to end-users in Canada by any means whatsoever;

(b) to authorize a third party to reproduce the musical work already embedded in an audiovisual work in order to deliver that file to the service that uses it for the purpose set out in paragraph (a); and

(c) for permanent and limited downloads, to authorize end-users in Canada to further reproduce the musical work already embedded in the audiovisual work for their own private use,

in connection with the operation of the service.

Restrictions

3. (1) This tariff only authorizes the reproduction of a musical work in association with the same images with which the musical work was embedded in the audiovisual work.

(2) For greater certainty, this tariff does not apply to activities subject to SOCAN Tariff No. 2.A.R.

(3) This tariff does not authorize the production of an audiovisual work or the synchronization of a musical work in an audiovisual work. It authorizes only the transmission by any means whatsoever of an existing audiovisual work in which a musical work is already embedded.

Royalties

Permanent Downloads

4. (1) Subject to paragraph (6)(a), the royalties payable in a month by a service that offers permanent downloads requiring a SOCAN licence shall be 6.11 per cent of the amount paid by an end-user for the download subject to a minimum of 6.79¢ per permanent download in a bundle that contains 12 or more files and 81.43¢ per permanent download in all other cases.

Limited Downloads

(2) The royalties payable in a month by a service that offers limited downloads requiring a SOCAN licence shall be:

(a) subject to paragraph (6)(a), where the payment is per transaction, 6.11 per cent of the amount paid by an end-user for limited downloads, subject to a minimum of 4.52¢ per limited download in a bundle that contains 12 or more files and 52.28¢ per limited download in all other cases, and

(b) subject to paragraph (6)(b), where limited downloads are offered with a subscription, with or without on-demand streams,

$$\frac{A \times B}{C}$$

where

(A) is 6.11 per cent of the gross revenue from the service for the month, excluding amounts paid by end-users for permanent downloads,

(B) is the number of plays of files requiring a SOCAN licence during the month, and

(C) is the total number of plays of files during the month,

subject to a minimum equal to the greater of

32.59¢ per subscriber, and

0.097¢ for each play of a file requiring a SOCAN licence.

Where a service does not report to SOCAN the number of plays of files as limited downloads, (B) will be deemed to equal either (a) the number of plays of the same audiovisual work as an on-demand stream during the month, or (b) if the audiovisual work has not been played as an on-demand stream during the month, the average number of plays of all audiovisual work as on-

demand streams during the month.

On-Demand Streams

(3) The royalties payable in a month by a service that offers on-demand streams but does not offer limited downloads shall be, subject to paragraph 6(b),

$$\frac{A \times B}{C}$$

where

(A) is 1.49 per cent of the gross revenue from the service for the month, excluding amounts paid by end-users for permanent downloads,

(B) is the number of plays of files requiring a SOCAN licence during the month, and

(C) is the number of plays of all files during the month,

subject to a minimum equal to the greater of

7.95¢ per subscriber, and

0.054¢ for each play of a file requiring a SOCAN licence.

For clarity, if the service permits an end-user to copy files onto a local storage medium or device for later access, the service shall pay royalties pursuant to subparagraph (2)(a), and not pursuant to this subsection.

Free On-Demand Streams

(4) Subject to paragraph (6)(a), the royalties payable for free on-demand streams shall be the lesser of 7.95¢ per unique visitor per month and 0.054¢ per free on-demand stream requiring a SOCAN licence received by that unique visitor in that month.

(5) Subject to paragraph (6)(a), where a service that is required to pay royalties under any of subsections (2) to (4) also offers permanent downloads, the service is required to pay royalties under subsection (1).

Adjustments

(6) Where SOCAN does not hold all the rights in a musical work,

(a) for the purposes of subsection (1), paragraph (2)(a) and subsection (4), the applicable royalty shall be the relevant rate multiplied by SOCAN's share in the musical work; and

(b) for the purposes of paragraph (2)(b) and subsection (3), only the share that SOCAN holds shall be included in (B).

(7) For the purpose of calculating the minimum payable pursuant to paragraph (2)(b) and subsection (3), the number of subscribers shall be determined as at the end of the month in respect of which the royalties are payable.

(8) All royalties payable under this tariff are exclusive of any bank fees and any federal, provincial or other governmental taxes or levies of any kind.

ADMINISTRATIVE PROVISIONS

Reporting Requirements

5. No later than the earlier of 20 days after the end of the first month during which a service reproduces 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) the name of the corporation and its jurisdiction of incorporation,

(ii) the name of the proprietor of an individual proprietorship,

(iii) the name of each partner of a partnership, or

(iv) the names of the principal officers of 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 address of the persons to be contacted for the purposes of notice, for the exchange of data and for the purposes of invoicing and payment;

(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 Reports

6. (1) In this section, “required information” means, in respect of a file,

- (a) the title of the audiovisual works in the languages in which the service offers them and, if applicable, the title in the original language;
- (b) the cue sheet;
- (c) its identifier (Universal Product Code, product number, ISBN); and
- (d) the reference number attributed by the service to each file.

Permanent and Transactional Limited Downloads

(2) No later than 20 days after the end of each semester, any service that is required to pay royalties pursuant to subsection 4(1) or paragraph 4(2)(a) shall provide to SOCAN a report setting out, for that semester, allocated by month,

- (a) in relation to each file that was delivered as a permanent or transactional limited download,
 - (i) the required information,
 - (ii) the number of times the file was downloaded as part of a bundle, the identifier of each such bundle, the number of files included in each such bundle, the amount paid by end-users for each such bundle, the share of that amount assigned by the service to the file, and a description of the manner in which that share was assigned, and
 - (iii) separately, the number of permanent downloads and transactional limited downloads for each file, the amounts paid by end-users for the file, including, if the file is offered as a permanent download or transactional limited download at different prices from time to time, the number of permanent downloads and transactional limited downloads delivered at each different price.

Subscription-Based Limited Downloads and On-Demand Streams

(3) No later than 20 days after the end of each semester, any service that is required to pay royalties pursuant to paragraph 4(2)(b) and subsection 4(3) shall provide to SOCAN a report setting out, for that semester, allocated by month,

- (a) in relation to each file that was delivered as limited downloads or as on-demand streams to an end-user, the required information;

- (b) the total number of plays of each file as limited downloads and, separately, as on-demand streams;
- (c) the number of subscribers to the service during the semester and the total amounts paid by them during that semester;
- (d) the number of plays by non-subscribers and the total amounts paid by them during that semester;
- (e) the gross revenue from the service for the semester;
- (f) if the service or any authorized distributor has engaged in any promotional programs during the month pursuant to which limited downloads and on-demand streams have been provided to end-users free of charge, details of those programs; and
- (g) the number of subscribers provided with free subscriptions, the total number of limited downloads and on-demand streams provided to such subscribers, and the total number of plays of all files by such subscribers as limited downloads and, separately, as on-demand streams.

Free On-Demand Streams

(4) No later than 20 days after the end of each semester, a service that is required to pay royalties pursuant to subsection 4(4) shall provide to SOCAN a report setting out, for that semester, allocated by month,

- (a) in relation to each file that was delivered as a free on-demand stream, the required information;
- (b) the total number of plays of all files as free on-demand streams;
- (c) the number of unique visitors;
- (d) a description of the manner in which each unique visitor is identified; and
- (e) the number of free on-demand streams provided to each unique visitor.

(5) A service that is required to pay royalties pursuant to more than one subsection of section 4 shall file a separate report pursuant to each subsection of this section.

(6) Whenever a service is required to report its gross revenue for a month, it shall include, separately — and in addition to any other information specifically required by the relevant subsection — the amount of revenue received from subscribers, the amount received from non-

subscribers, the amount received from advertisers, the amount attributable to sponsorships, and the amounts received from each additional revenue source.

(7) Using the information received pursuant to subsections (1) to (4) and any other information at its disposal, SOCAN shall make reasonable efforts to determine the information required to calculate and distribute the royalties payable pursuant to section 4.

(8) A service that does not supply a musical cue sheet pursuant to paragraph (1)(b) shall collaborate with SOCAN if SOCAN attempts to secure the cue sheet from anyone, including the producer of the audiovisual work. If SOCAN does not receive the cue sheet despite such collaboration, the service shall provide to SOCAN, if available,

- (a) the title or titles under which the audiovisual work is offered by the service;
- (b) the original title;
- (c) if the audiovisual work is part of a series, the number or title of the episode;
- (d) the International Standard Audiovisual Number (ISAN) code;
- (e) the name of the producer or, if not known, the name of the person from whom the service secured the distribution rights;
- (f) the title of each musical work embedded into the audiovisual work;
- (g) the name of the author and composer of each musical work; and
- (h) the duration of each musical work.

(9) A service shall provide the information set out in subsection (1) or (8) with respect to each otherwise identical audiovisual work if the musical content in each such work is different.

(10) If the information supplied pursuant to subsection (1), (8) or (9) does not allow SOCAN to reasonably proceed to the distribution of royalties, SOCAN, after first conducting its own reasonable search, may further inquire with the service, which will make reasonable efforts to supply any further, relevant information to assist SOCAN in its royalty distribution, including

- (a) any alternate title, whether in the original language or not;
- (b) the country, year and type of production;
- (c) the theatrical or other release date; and

(d) the name of the director.

7. (1) As soon as possible after receiving the information set out in section 6, SOCAN shall notify the service of those audiovisual works that include a work for which a SOCAN licence is required. With respect to such works, SOCAN shall also provide to the service a report setting out

(a) each musical work embedded in the audiovisual work;

(b) the duration of each musical work;

(c) for each musical work requiring a SOCAN licence, an indication to that effect;

(d) if SOCAN administers only part of the rights in a musical work, the fraction of rights SOCAN administers; and

(e) the amount of royalties payable to SOCAN for each file of the audiovisual work transmitted to end-users.

(2) At least once each semester, SOCAN shall provide a new report with respect to audiovisual works for which the information set out in paragraph (1)(c) or (d) has changed.

8. Royalties payable pursuant to section 4 are due no later than six months after the semester. If SOCAN does not provide the report under section 7 prior to the date where the payment is due, the payment of royalties for that semester is deferred to the next semester.

Repertoire Disputes

9. (1) A service that disputes the indication in a report received pursuant to section 7 that a file contains a musical work requiring a SOCAN licence shall provide to SOCAN the information on which the service relies to conclude that the licence is not required, unless the information was provided earlier.

(2) A service that disputes the indication more than 20 days after receiving a report pursuant to section 7 is not entitled to interest on the amounts owed to it.

Records and Audits

10. (1) A service and SOCAN shall keep and preserve, for a period of six years after the end of the semester to which they relate, records from which the information set out in sections 6 and 7 can be 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 semester 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

11. (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 who is not under an apparent duty of confidentiality with respect to the supplied information.

Adjustments

12. (1) Adjustments to any information provided pursuant to sections 4 and 5 shall be provided with the next report dealing with such information.

(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.

Interests on Late Payments

13. (1) Subject to subsection (4), any amount not received by the due date shall bear interest from that date until the date the amount is received.

(2) Any overpayment resulting from an error or omission on the part of SOCAN shall bear interest from the date of the overpayment until the overpayment is refunded.

(3) For the purposes of this section, a report provided pursuant to section 7 following the late reception of a report provided pursuant to section 6 is deemed to have been received within the time set out in section 7, as long as SOCAN provides the report no more than 20 days after receiving the late report.

(4) Any amount owing by a service as a result of an error or omission on the part of SOCAN shall not bear interest until 30 days after SOCAN has corrected the error or omission.

(5) 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.

Delivery of Notices and Payments

14. (1) Anything addressed to SOCAN shall be sent to 41 Valleybrook Drive, Toronto, Ontario M3B 2S6, email: licence@socan.com, fax number: 416-445-7108, or to any other address, email address or fax number of which the service has been notified in writing.

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

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

(2) To the extent possible, information that a service provides pursuant to section 6 shall be delivered electronically, in Excel format or in any other format agreed upon by SOCAN and the service. Each type of information shall be provided in a separate field.

(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 fax, by email or by FTP shall be presumed to have been received the day it is transmitted.