

## 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.E, Internet – Canadian Broadcasting Corporation (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.E, INTERNET - CANADIAN BROADCASTING CORPORATION (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 transmission of audio and audiovisual content by the Canadian Broadcasting Corporation/Société Radio-Canada (the "Corporation") in the years 2024-2026.

(2) This tariff does not apply to uses covered by other applicable tariffs, including Tariffs 1.C (CBC Radio), 2.D (CBC Television), 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.1 (Online Audiovisual Services), 22.D.2 (User Generated Content Services), 22.D.3 (Allied Audiovisual Services), 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 an audiovisual file, the following information, if available:

- (a) the musical work’s unique identifier assigned by the Corporation or its authorized distributor;
- (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 contained in the audiovisual file;
- (f) the International Standard Recording Code (ISRC) assigned to the sound recording;
- (g) if the sound recording 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* »)

"audio page impression" means a page impression that allows a person to hear a sound, including audio and audiovisual content. (« *consultation de page audio* »)

“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 audio or audiovisual work. (« *fichier* »)

“hybrid service” or “hybrid service tier” means an online music service, or a service tier of an online music service, that offers end-users on-demand streams as well as the ability to cache files for offline listening or viewing (« *service hybride* » or « *option de service hybride* »).

"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 Corporation; and
- (e) network usage and other connectivity access fees. (« *recettes d'Internet* »)

“non-interactive stream” means a stream where the end user exercises no control over the content nor the timing of the transmission. (« *transmission non interactive* »)

“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 programming” means Internet-distributed audio and audiovisual content. (« *programmation en ligne* »)

"page impression" means a request to load a single page from a site. (« *consultation de page* »)

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

“required information” means, in respect of a file, where available

- (a) its unique identifier assigned by the Corporation or its authorized distributor;

- (b) the title of each musical work contained in the file;
- (c) whether the file contains an audio track or a music video;
- (d) the name of each performer or group to whom the audio track or music video contained in the file is credited;
- (e) the name of the person who released the audio track or music video contained in the file;
- (f) if the licensee believes that a SOCAN licence is not required, information that establishes why the licence is not required;
- (g) the name of each author of each musical work;
- (h) the International Standard Recording Code (ISRC) assigned to the audio track or music video contained in the file;
- (i) in the case of a file containing an audio track, if the audio track contained in the file 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;
- (j) the name of each music publisher associated with each musical work contained in the file;
- (k) the International Standard Musical Work Code (ISWC) assigned to each musical work contained in the file;
- (l) the Global Release Identifier (GRid) assigned to each musical work and, if applicable, the GRid of the album in which the file was released;
- (m) the running time of the file, in minutes and seconds; and
- (n) any alternative title used to designate the musical work, music video, or sound recording contained in the file. (« *renseignements requis* »)

“semi-interactive stream” means a stream delivered by an information filtering system where an end-user exercises some level of control over the content of the files, or timing of the transmission of the files, or both. (« *transmission semi-interactive* »)

“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 the Corporation 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 by the Corporation shall be the total of paragraphs (a), (b) and (c) as follows:

#### **Online Audiovisual Services**

(a) For each of the online audiovisual services “*tou.tv*”, “*Gem*” and each similar Internet-distributed audiovisual service operated by the Corporation during the term of this tariff (each a “CBC Online Audiovisual Service”):

(i) for a CBC Online Audiovisual 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;

(ii) for a CBC Online Audiovisual 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; and

(iii) for a CBC Online Audiovisual Service that receives Internet-related revenues in connection with its communication of audiovisual programs, the royalty calculation shall be 3.0 per cent of Internet-related revenues from the CBC Online Audiovisual Service.

Where a CBC Online Audiovisual Service with revenues from more than one of the categories in above-mentioned paragraphs (i), (ii) and (iii) shall pay royalties in accordance with each applicable paragraph, but the calculation in paragraph (iii) shall exclude any fees charged to end-users pursuant to paragraphs (i) and (ii).

#### **Online Music Services**

(b) For online music services such as “cbcmusic.ca”, “espace.mu” (also known as “icimusique.ca”) and any similar online music service operated by the Corporation during the term of this tariff (collectively “the CBC Online Music Services”) that offer

(i) on-demand or semi-interactive streams, including hybrid services or a service that offers a hybrid service tier: 10.3 per cent of Internet-related revenues from the CBC Online Music Service subject to a minimum fee, which shall be the lesser of 60.8¢ per subscriber and 0.13¢ per stream of a file requiring a SOCAN licence;

(ii) non-interactive streams only:

(A) 2.0 per cent of the CBC Online Music Service’s Internet-related revenues if the SOCAN repertoire use is 20 per cent or less, 5.5 per cent if the use is between 20 and 80 per cent, and 7.0 per cent if the use is 80 per cent or more,

(B) subject to a minimum fee of \$37 per year if the combined SOCAN repertoire use on the service is 20 per cent or less, \$104 if the combined use is between 20 and 80 per cent, and \$132 if the combined use is 80 per cent or more.

### **Other online programming**

(c) For the Corporation’s transmissions of online programming other than those to which paragraphs (a) and (b) refers:

$A \times B$

where

(A) is 10 per cent of the total amount payable by the Canadian Broadcasting Corporation pursuant to Tariffs 1.C (Radio — Canadian Broadcasting Corporation) and 2.D (Television — Canadian Broadcasting Corporation) or an agreement with SOCAN, and

(B) the ratio of audio page impressions to all page impressions relating to online programming, if that ratio is available, and 0.15 if not.

### *Reporting*

4. (1) No later than 20 days after the end of each month, if the Corporation is required to pay royalties pursuant to paragraph 3(1)(a), the Corporation shall:

(a) in relation to each CBC Online Audiovisual Service, provide to SOCAN a report setting out for that month, in relation to each audiovisual file that was delivered as a stream, the following information, if available: (i) 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; (ii) the number of plays of each file; (iii) the number of plays of all files; (iv) the International Standard Audiovisual Number (ISAN) assigned to the file; (v) in the case of a translated program, the title in the language of its original production; and (vi) the additional information as defined in section 2;

(b) if the CBC Online Audiovisual Service offers subscriptions in connection with its provision of streams, provide to SOCAN the following information: (i) the number of subscribers to the service at the end of the month and the total amounts paid by them during that month; and (ii) the number of subscribers provided with free trial subscriptions and the total number of plays of all audiovisual files provided to such subscribers as streams, if available; and

(c) in relation to each CBC Online Audiovisual Service, provide to SOCAN the following information: (i) the CBC Online Audiovisual Service's Internet-related revenues; and (ii) Uniform Resource Locator (URL) of each website and the name of each application or platform at or through which the CBC Online Audiovisual Service is or will be offered, as applicable.

(2) No later than 20 days after the end of each month, if the Corporation is required to pay royalties pursuant to paragraph 3(1)(b), the Corporation shall, in relation to each CBC Online Music Service, provide to SOCAN a report setting out, for that month: (a) in relation to each file that was transmitted to an end user, the required information as defined in section 2; (b) the number of plays of each file; (c) the total number of plays of all files; (d) the CBC Online Music Service's Internet-related revenues; and (e) the Uniform Resource Locator (URL) of each website and the name of each application or platform at or through which the CBC Online Music Service is or will be offered, as applicable.

(3) When royalties are payable pursuant to paragraph 3(1)(c),

(a) Upon receipt of a written request from SOCAN, the Corporation shall provide, with respect to each musical work the Corporation transmitted during the days listed in the request:

(i) the date and time of the transmission;

(ii) the title of the work, the name of its author;

(iii) where applicable, the title of the album, the name of the performers or performing groups and the record label; and

(iv) where available, the number of persons who listened to the work.

(b) The Corporation shall provide the information set out in paragraph 4(3)(a) in electronic format where possible, otherwise in writing, no later than 14 days after the end of the month to which it relates.

(c) The Corporation is not required to provide the information set out in paragraph 4(3)(a) with respect to more than 14 days in a year.

#### *Files Made Available*

5. (1) Upon request, the Corporation shall provide to SOCAN, for each file that was made available by each CBC Online Audiovisual Service 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, the cue sheet; or

(b) if a cue sheet is not available, the information specified in paragraph 4(1)(a).

(2) If a cue sheet is not available for a file, the Corporation 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.

(3) Upon request, the Corporation shall provide to SOCAN the required information for all files that were made available by each CBC Online Music Service to any 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

(4) SOCAN shall not make such a request under subsection 5(1) or 5(3) more than twice per year.

#### *Payment of Royalties and Interest on Late Payments*

6. (1) When royalties are payable pursuant to section 3, the time periods to be used in calculating royalties, as well as the dates at which payments must be effected, shall be the same as in Tariffs 1.C and 2.D, as applicable.

(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. (1) Adjustments to any information provided pursuant to sections 3 and 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 the Corporation 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) The Corporation 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 Corporation 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 Corporation 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 Corporation 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 Corporation 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](mailto:licence@socan.com), or to any other address or email address of which the Corporation service has been notified in writing.

(2) Anything that SOCAN sends to the Corporation 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 Corporation

(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.