

Copyright Board
Canada



Commission du droit d'auteur
Canada

November 5, 2019

In accordance with section 68.2 of the *Copyright Act*, the Copyright Board hereby publishes the following proposed tariffs:

- SOCAN, Sports Events (2021-2023)
- SOCAN Tariff 22.A (Online Music Services), (2021-2023)
- SOCAN Tariff No. 22.A.R, Reproduction of Musical Works Embedded in Music Videos for Transmission by a Service (2021-2023)
- SOCAN, Internet – Commercial Radio, Satellite Radio and Pay Audio (2021-2023)
- SOCAN, Internet – Other Audio Websites (2021-2023)
- SOCAN, Internet – Audiovisual Content (2021-2023)
- SOCAN Tariff No. 22.D.1.R, Reproduction of Musical Work Embedded in Audiovisual Works for Transmission by a Service (2021-2023)
- SOCAN, Internet – User-Generated Content (2021-2023)
- SOCAN, Allied Audiovisual Services (2021-2023)
- SOCAN, Internet – Canadian Broadcasting Corporation (2021-2023)
- SOCAN, Internet – Game Sites (2021-2023)
- SOCAN, Satellite Radio Services (2021-2023)

By that same section, the Copyright Board hereby gives notice to any person affected by these proposed tariffs.

Users or their representatives who wish to object to the above-mentioned proposed tariffs may file written objections with the Board, at the address indicated below, no later than the 30th day after the day on which the Board published the proposed tariff under paragraph 68.2(a), that is no later than **December 5, 2019**.

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PROPOSED TARIFF

Filed with the Copyright Board pursuant to subsection 67(1) of the *Copyright Act*

2019-10-15

SOCAN

Tariff 22.A

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

2021-01-01 –2023-12-31

Proposed citation:

SOCAN Tariff 22.A (Online Music Services), 2021-2023

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 communicate to the public by telecommunication, in Canada, musical or dramatico-musical works forming part of its repertoire including the right to make such works available 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.

GENERAL PROVISIONS

All amounts payable under this tariff are exclusive of any federal, provincial or other governmental taxes or levies of any kind.

As used in this tariff, the term “licence” to communicate to the public by telecommunication or to authorize the communication to the public by telecommunication, including the right to make works available 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.

Each licence shall subsist according to the terms set out therein. SOCAN shall have the right at any time to terminate a licence for breach of terms or conditions upon 30 days’ notice in writing.

INTERNET

A. *Online Music Services*

[NOTE TO PROSPECTIVE USERS: The Copyright Board rendered its decision concerning SOCAN Tariff 22.A for the years 2011 to 2013 on August 25, 2017. This decision is now the subject of judicial review proceedings before the Federal Court of Appeal. SOCAN files Tariff 22.A for the years 2021-2023 as set out below but reserves the right to propose changes as may be justified as a consequence of the judicial review process.]

Short Title

1. This tariff may be cited as the *SOCAN Tariff 22.A (Online Music Services), 2021-2023*.

Definitions

2. In this tariff,

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

“download” means a file intended to be copied onto a consumer’s local storage device; (« *téléchargement* »)

“file” except in the definition of “bundle,” means a digital file of a sound recording of a musical work, and includes a music video; (« *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 gross amounts paid to an online music service or its authorized distributors for access to and use of the service, including membership and subscription fees, amounts paid for advertising, sponsorship, promotion and product placement, commissions on third-party transactions, and amounts equal to the value of the consideration received by an online music service or its authorized distributors pursuant to any contra and barter agreements related to the operation of the service; (« *revenus bruts* »)

“hybrid service” means an on-demand streaming service which, as an added feature of the mobile subscription tier, offers users the ability to cache tracks for offline listening; (« *service hybride* »)

“identifier” means the unique identifier an online music 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 a musical work, including a concert; (« *vidéo musicale* »)

“on-demand stream” means a stream selected by its recipient; (« *transmission sur demande* »)

“online music service” means a service that delivers streams (on-demand or semi-interactive) and downloads (limited or permanent) to subscribers. For greater certainty, “online music service” includes cloud-based music services and other services using similar technology, but excludes a service that offers only streams (other than semi-interactive) in which the file is selected by the service, which can only be listened to at a time chosen by the service and for which no advance playlist is published; (« *service de musique en ligne* »)

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

“play” means the single performance of an on-demand or semi-interactive stream; (« *écoute* »)

“portable limited download” means a limited download that uses technology that allows the subscriber to reproduce the file on a device other than a device to which an online music service delivered the file; (« *téléchargement limité portable* »)

“quarter” means from January to March, from April to June, from July to September and from October to December; (« *trimestre* »)

“semi-interactive stream” means a stream delivered by an information filtering system where the 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 device only to the extent required to allow listening to the file at substantially the same time as when the file is transmitted; (« *transmission* »)

“subscriber” means an end-user with whom an online music 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, for other consideration or free of charge, including pursuant to a free subscription; (« *abonné* »)

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

Application

3. (1) This tariff sets the royalties to be paid for the communication to the public by telecommunication of works in SOCAN’s repertoire, including making works available 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 music service and its authorized distributors in 2021-2023, including the use of a musical work in a music video or a concert.

(2) This tariff does not apply to uses covered by other applicable tariffs, including SOCAN Tariffs 16, 22.B-G, 24 and 25.

Royalties

On-Demand and Semi-Interactive Streams

4. (1) The royalties payable in a month by an online music service that offers on-demand and/or semi-interactive streams shall be

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

where

(A) is 10.3 per cent of the gross revenue of the service for the month, excluding amounts paid to the service for perma-

ment and limited downloads; if the service provides only music videos, the rate shall be 5.9 per cent,

(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 fee, which shall be the lesser of 60.8¢ per subscriber or unique visitor per month, and 0.13¢ per stream requiring a SOCAN licence.

In the case of hybrid services, the applicable rate for SOCAN on the mobile subscription tier shall be 50 per cent of the total rate certified by the Copyright Board for SOCAN and CSI for on-demand streams.

Limited Downloads

(2) The royalties payable in a month for an online music service that offers limited downloads of musical works shall be

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

where

(A) is 4.9 per cent of the gross revenues of the service during the month, excluding amounts paid to the service for on-demand streams, semi-interactive streams and permanent downloads; if the service provides only music videos, the rate shall be 2.8 per cent,

(B) is the number of limited downloads requiring a SOCAN licence during the month, and

(C) is the total number of limited downloads during the month,

subject to a minimum fee of 73.1¢ per subscriber or unique visitor per month if portable limited downloads are allowed; 47.9¢ per subscriber or unique visitor per month if not.

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

Permanent Downloads

(3) The royalties payable in a month for an online music service that offers permanent downloads requiring a SOCAN licence shall be

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

where

(A) is 4.1 per cent of the gross revenue of the service for the month, excluding amounts paid to the service for on-demand streams, semi-interactive streams and limited downloads,

(B) is the number of permanent downloads requiring a SOCAN licence during the month, and

(C) is the total number of permanent downloads during the month,

subject to a minimum of 2.04¢ per file in a bundle that contains 13 or more files, and 2.8¢ per file in all other cases.

Free Per-Stream Transactions

(4) Where an online music service subject to subsection (1), (2) or (3) also offers streams free of charge, the royalty shall be 0.13¢ per streamed file requiring a SOCAN licence.

ADMINISTRATIVE PROVISIONS

Reporting Requirements: Service Identification

5. No later than 20 days after the earlier of the end of the first month during which an online music 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 a corporation and a mention of its jurisdiction of incorporation,
 - (ii) the name of the proprietor of an individual proprietorship, or (iii) 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 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 at or through which the service is or will be offered.

Sales Reports

Definition

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

- (a) its identifier;
- (b) the title of the musical work;
- (c) the name of each performer or group to whom the sound recording is credited;
- (d) the name of the person who released the sound recording;
- (e) if the service believes that a SOCAN licence is not required, information that establishes why the licence is not required;
- (f) the name of each author of the musical work;
- (g) the International Standard Recording Code (ISRC) assigned to the sound recording;
- (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) if the sound recording is or has been released in physical format as part of an album, the name, identifier, product catalogue number and Universal Product Code (UPC) assigned to the album, together with the associated disc and track numbers;
- (k) the Global Release Identifier (GRid) assigned to the file and, if applicable, the GRid of the album or bundle in which the file was released;
- (l) the running time of the file, in minutes and seconds; and
- (m) any alternative title used to designate the musical work or sound recording.

On-Demand and Semi-Interactive Streams

(2) No later than 20 days after the end of each month, any online music service that is required to pay royalties pursuant to

subsection 4(1) shall provide to SOCAN a report setting out, for that month, the following information:

- (a) in relation to each file that was delivered as an on-demand or semi-interactive stream, the required information;
- (b) the number of plays of each file;
- (c) the total number of plays of all files;
- (d) the number of subscribers to the service during the month and the total amounts paid by them during that month;
- (e) the number of subscribers provided with free subscriptions and the total number of plays of all files by such subscribers as on-demand or semi-interactive streams;
- (f) the gross revenue of the service for the month; and
- (g) the total number of streams provided free of charge.

Limited Downloads

(3) No later than 20 days after the end of each month, an online music service that offers limited downloads shall provide to SOCAN a report setting out, for that month,

- (a) the identifier, number of portable limited downloads, number of other limited downloads, and number of plays of each file that requires a SOCAN licence;
- (b) the total number of portable limited downloads, other limited downloads, and plays of files that require a SOCAN licence;
- (c) the total number of portable limited downloads, other limited downloads, and plays of all files;
- (d) the number of subscribers entitled to receive portable limited downloads at the end of the month, the number of other subscribers at the end of the month and the total amounts paid by all subscribers;
- (e) the gross revenue of the service for the month; and
- (f) the total number of streams provided free of charge.

Permanent Downloads

(4) No later than 20 days after the end of each month, an online music service that offers permanent downloads shall provide to SOCAN a report setting out, for that month,

- (a) the total number of permanent downloads supplied;
- (b) the total number of permanent downloads requiring a SOCAN licence supplied and the total amount payable by subscribers for those downloads;
- (c) with respect to each permanent download requiring a SOCAN licence,
 - (i) the number of times the file was downloaded,
 - (ii) the number of times the file was downloaded as part of a bundle, the identifier of each such bundle and of the file as included in that bundle, the amount paid by consumers 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) the identifier and number of other permanent downloads of the file and the amounts paid by consumers for the file, including, if the file is offered as a permanent download at different prices from time to time, the number of permanent downloads of the file at each different price;
- (d) the total amount paid by consumers for bundles;
- (e) the total amount paid by consumers for permanent downloads;

- (f) the gross revenue of the service for the month; and
- (g) the total number of streams provided free of charge.

Free On-Demand Streams

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

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

(6) An online music 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.

(7) An online music service that is required to pay royalties with respect to music videos shall file the required information separately from the information dealing with audio-only files.

Payment of Royalties

7. Royalties shall be due no later than 20 days after the end of each quarter.

Adjustments

8. Adjustments to any information provided pursuant to section 5 or 6 shall be provided with the next report dealing with such information.

9. (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 an online music 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

10. (1) An online music 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 5 and 6 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) If an audit discloses that royalties due have been understated in any quarter by more than 10 per cent, the online music service shall pay the reasonable costs of the audit within 30 days of the demand for such payment.

Confidentiality

11. (1) Subject to subsections (2) and (3), SOCAN shall treat in confidence information received pursuant to this tariff, unless the online music service consents in writing to the information being treated otherwise.

(2) Information referred to in subsection (1) may be shared

- (a) in connection with the collection of royalties or the enforcement of a tariff, with CMRRA or CSI;
- (b) with the Copyright Board;

- (c) in connection with proceedings before the Copyright Board, once the online music service 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, with royalty claimants; and
- (f) if ordered by law.

(3) Subsection (1) does not apply to information that is publicly available, or to information obtained from someone other than an online music service or its authorized distributors and who is not under an apparent duty of confidentiality to the service.

Interest on Late Payments

12. 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.

Addresses for Notices, etc.

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

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

Delivery of Notices and Payments

14. (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) Information provided pursuant to sections 5 and 6 shall be delivered electronically, by way of delimited text file or in any other format agreed upon by SOCAN and the online music 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 fax, by email or by FTP shall be presumed to have been received the day it is transmitted.

(5) All amounts required to be reported or paid under this tariff shall be reported or paid in Canadian dollars.