

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**.

Lara Taylor

Secretary General

Copyright Board Canada

56 Sparks Street, Suite 800

Ottawa, Ontario K1P 5A9

Telephone: 613-952-8624

Registry-greffe@cb-cda.gc.ca

PROPOSED TARIFF

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

2019-10-15

SOCAN

Tariff 22.D.3

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

2021-01-01 – 2023-12-31

Proposed citation:

SOCAN, Allied Audiovisual Services Tariff (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

As used in this tariff, the term “licence” means a licence to communicate to the public by telecommunication or to authorize the performance in public or 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.

Short Title

1. Tariff 22.D.3 may be cited as the *SOCAN Allied Audiovisual Services Tariff (2021-2023)*.

Application

2. Tariff 22.D.3 sets the royalties to be paid for the right to communicate to the public by telecommunication (including by making available to the public by telecommunication in a way that allows a member of the public to have access to a work from a place and at a time individually chosen by that member of the public) or to authorize the communication to the public by telecommunication, as the context may require, of works in SOCAN’s repertoire in connection with the operation of an Audiovisual Service that is allied with a Broadcast or BDU Service licensed under SOCAN Tariff 2.A or Tariff 17 and its authorized distributors during the years 2021 to 2023.

3. Except as provided for herein, this tariff does not apply to uses covered by other applicable SOCAN tariffs, certified or proposed, including those relating to

(a) Commercial Television Broadcasting (Tariff 2.A);

(b) Transmission of Pay, Specialty and other Television Services by Distribution Undertakings — Television (Tariff 17);

(c) Online Music Services (Tariff 22.A);

(d) Audiovisual Services and User-Generated Content Services (Tariffs 22.D.1 and 22.D.2);
and

(e) Game Sites (Tariff 22.G as certified by the Board for the years 1996 to 2006 and proposed by SOCAN as Tariff 22.6 [2007-2008], Tariff 22.F [2009-2012] and Tariff 22.G [2013-present]).

Definitions

4. In this tariff,

“additional information” means, in respect of each musical work contained in a file, the following information, if available:

- (a) the musical work’s identifier;
- (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 is credited;
- (e) the name of the person who released any sound recording contained in the file;
- (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* »)

“allied audiovisual service” means an audiovisual service analogous to, and operated in conjunction with, by or in support of, the operations of a conventional service or a BDU, the content of which is duplicative, complementary or adjunct to the content offered by the conventional service or BDU; (« *service audiovisuel allié* »)

“audiovisual service” means a service that delivers streams of audiovisual works to end-users over the Internet, and includes a hybrid service; (« *service audiovisuel* »)

“AV ratio” means, based on Internet-related revenue or usage data available to the licensee, (i) the ratio of AV SOCAN revenue to Internet-related revenue, or, if that ratio cannot be determined based on the revenue data available to the licensee, (ii) the ratio of AV usage to all

usage, or, if that ratio cannot be determined based on the usage data available to the licensee, (iii) 100 per cent; (« *ratio AV* »)

“AV SOCAN revenue” means Internet-related revenue arising from AV usage other than non-SOCAN AV usage; (« *revenus AV SOCAN* »)

“AV usage” means usage that allows a person to hear an audiovisual work; (« *utilisation AV* »)

“BDU” means a distribution undertaking as defined in the *Broadcasting Act*, S.C. 1991, c. 11; (« *EDR* »)

“Canadian AV SOCAN revenue” means AV SOCAN revenue arising from Canadian usage; (« *revenus AV canadiens de la SOCAN* »)

“Canadian usage” means usage of a service by persons in Canada; (« *utilisation canadienne* »)

“conventional service” means over-the-air television stations, pay and specialty services, community channels and other programming and non-programming services subject to SOCAN Tariff 2.A or 17; (« *service conventionnel* »)

“domestic ratio” means, based on Internet-related revenue or usage data available to the licensee, (i) the ratio of Canadian AV SOCAN revenue to all AV SOCAN revenue, or, if that ratio cannot be determined based on the revenue data available to the licensee, (ii) the ratio of Canadian usage to all usage, or, if that ratio cannot be determined based on the usage data available to the licensee, (iii) 10 per cent; (« *ratio national* »)

“file” means a digital file of an audiovisual work; (« *fichier* »)

“hybrid service” means an audiovisual service, the content of which may temporarily be cached by end-users for offline viewing; (« *service hybride* »)

“identifier” means the unique identifier an allied audiovisual service assigns to a file; (« *identificateur* »)

“Internet-related revenue” means all revenues generated by Internet-related activities, including membership, subscription and other access fees, advertising, product placement, promotion, 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) agency commissions;

(c) the fair market value of any advertising production services provided by the user; and

(d) network usage and other connectivity access fees; (« *revenus liés à Internet* »)

“non-SOCAN AV usage” means AV usage that allows a person to hear an audiovisual work containing musical works for which a SOCAN licence is not required, and for which the service

retains records establishing the basis upon which the service claims a SOCAN licence is not required; (« *utilisation AV non-SOCAN* »)

“on-demand stream” means a stream of a file selected by its recipient and transmitted at a time selected by its recipient; (« *transmission sur demande* »)

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

“production music” means music contained in interstitial programming such as commercials, public service announcements and jingles; (« *musique de production* »)

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

“rate base” means

(a) Canadian AV SOCAN revenue or, if not available;

(b) Internet-related revenue × AV ratio × domestic ratio; (« *assiette tarifaire* »)

“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 the file at substantially the same time as when the file is transmitted; (« *transmission* »)

“subscriber” means an end-user with whom an allied audiovisual service or its authorized distributor has entered into a contract for service, other than on a transactional per-download or per-stream basis, whether for a fee, for other consideration or free of charge, including pursuant to a free subscription; (« *abonné* »)

“usage” means usage of a service measured by such reasonable measures of usage as are commonly and/or customarily used by the service; (« *utilisation* »)

“year” means a calendar year. (« *année* »)

Royalties

5. Standard Rates

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

(i) for a service that charges per-program fees to end-users: 1.9 per cent of the amounts paid by Canadian end-users for plays for which a SOCAN licence was required, subject to a minimum of 1.3¢ per program communicated;

(ii) for a service that offers subscriptions to end-users: 1.9 per cent of the amounts paid by Canadian subscribers, subject to a minimum monthly fee of 7.5¢ 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 service that receives Internet-related revenue in connection with its communication of audiovisual works: 1.9 per cent of the rate base.

(b) A service with revenues from more than one of the categories in subparagraphs (5)(a)(i), (ii) and (iii) shall pay royalties in accordance with each applicable subparagraph, but the calculation in subparagraph (iii) shall exclude any fees charged to end-users pursuant to subparagraphs (i) and (ii), and the related usage.

(c) A service with no revenue shall pay an annual fee of \$15.00.

6. Low Music Use Rates

(a) Notwithstanding section 5, the royalty rate is 0.8 per cent if the allied audiovisual service's transmissions of audiovisual works contain musical works for which a licence from SOCAN is required, excluding production music, that in total account for less than 20 per cent of the overall time of the transmissions, and the service keeps and makes available to SOCAN, upon request, records sufficient to demonstrate this calculation for 90 days after a month in which the low music use rate is paid.

(b) Subject to the audit provisions in section 12, an allied audiovisual service may avail itself of the lower royalty rate set out in paragraph (a) above without keeping the records required by that subsection if

(i) the conventional service with which the allied audiovisual service is allied requires a licence from SOCAN, excluding production music, for less than 20 per cent of the conventional service's total air time and keeps and makes available to SOCAN, upon request, complete recordings of its last 90 broadcast days; and

(ii) the content and usage patterns of the allied audiovisual service are substantially similar to the conventional service with which it is allied.

Reporting Requirements

7. Service Identification

(a) No later than the earlier of 30 days after the end of the first month during which an allied audiovisual 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:

(i) the name of the person who operates the service, including:

(A) the name of a corporation and a mention of its jurisdiction of incorporation,

(B) the name of the proprietor of an individual proprietorship, or

(C) the names of the principal officers of any other service, and

(D) any other trade name under which the service carries on business;

(ii) the address of its principal place of business;

- (iii) 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 payments;
- (iv) the name and address of any authorized distributor; and
- (v) the Uniform Resource Locator (URL) of each Internet site at or through which the service is or will be offered.

8. Sales Reports

(a) No later than 30 days after the end of each month, each allied audiovisual service shall provide to SOCAN a report setting out for that month, in relation to the files that were streamed to end-users, the following information, if available:

- (i) the title of the program and/or series, episode name, number and season for each 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 each file;
- (v) in the case of a translated program, the title in the language of its original production; and
- (vi) the additional information.

(b) No later than 30 days after the end of each month, each allied audiovisual service shall also provide to SOCAN a report setting out for that month

- (i) for allied audiovisual services that charge per-program fees to end-users, the total amount paid by Canadian end-users for plays for which a SOCAN licence was required;
- (ii) for allied audiovisual services with subscribers,
 - (A) the number of subscribers to the service at the end of the month,
 - (B) the total amounts paid by subscribers to the service during that month,
 - (C) the number of subscribers provided with free trial subscriptions, and
 - (D) the total number of plays of all files as on-demand streams by subscribers provided with free trial subscriptions;
- (iii) for allied audiovisual services that are required to pay royalties pursuant to subparagraph (5)(a)(iii) above,
 - (A) the service's Internet-related revenue,
 - (B) if the service's rate base for the month was its Canadian AV SOCAN revenue, then its (1) Canadian AV SOCAN revenue, (2) AV

SOCAN revenue, (3) AV SOCAN usage, (4) AV usage, (5) Canadian usage and (6) total usage,

(C) if the service's rate base for the month was not its Canadian AV SOCAN revenue, then its AV ratio and its domestic ratio and all the usage data upon which each ratio was calculated, including, in respect of each play for which the service claims a SOCAN licence is not required, the information set out in paragraph (c).

(c) If the allied audiovisual 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.

(d) An allied audiovisual service that is required to pay royalties pursuant to more than one subparagraph of paragraph (5)(a) shall file a separate report pursuant to each paragraph of this subsection.

Administration

9. Calculation and Payment of Royalties

(a) Royalties shall be due no later than 30 days after the end of each month.

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

10. Late Payments

(a) 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.

11. Adjustments

(a) Adjustments to any information provided pursuant to sections 7 or 8 shall be provided with the next report dealing with such information.

(b) 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.

12. Records and Audits

(a) An allied audiovisual 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, 6, 7 and 8 can be readily ascertained, including — if the service has based its royalty calculation on either its AV ratio or domestic ratio, or both — all the usage data the service relied upon in calculating the AV ratio and/or domestic ratio.

(b) SOCAN may audit these records at any time during the period set out in paragraph (a), on reasonable notice and during normal business hours, but no more frequently than once in any 12-month period.

(c) Subject to paragraph (d), 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.

(d) For the purposes of paragraph (c), any amount owing as a result of an error or omission on the part of SOCAN shall not be taken into account.

13. Confidentiality

(a) Subject to paragraph (b), SOCAN, the allied audiovisual 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.

(b) Information referred to in paragraph (a) may be shared

(i) between the allied audiovisual service and its authorized distributors in Canada;

(ii) with the Copyright Board;

(iii) in connection with proceedings before the Board, once the allied audiovisual service has had a reasonable opportunity to request a confidentiality order;

(iv) with any person who knows the information;

(v) to the extent required to effect the distribution of royalties, with royalty claimants; and

(vi) if required by law.