

Copyright Board  
Canada



Commission du droit d'auteur  
Canada

**Date** 2024-09-20

**Citation** *SOCAN 22.D.3 (2014-2024)*, 2024 CB 6

**Members** The Honourable Luc Martineau  
Katherine Braun

**Proposed Tariffs Considered** SOCAN Tariff 22.D – Internet – Other Uses of Music – Audiovisual Content (2014, 2015) [as applicable to AV allied services]  
SOCAN Tariff 22.D.1 – Internet – Other Uses of Music – Audiovisual Content (2016, 2017, 2018) [as applicable to AV allied services]  
SOCAN Tariff 22.D.3 – Internet – Other Uses of Music – Audiovisual Services Allied With Broadcast and BDU Services (2019-2020, 2021-2023, 2024-2026)

### **Approval of Proposed Tariffs**

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*SOCAN Tariff 22.D.3 – Online Allied Audiovisual Services (2014-2024)*

### **REASONS FOR DECISION**

#### **I. OVERVIEW**

[1] The Society of Composers, Authors and Music Publishers of Canada (“SOCAN”) administers the rights to perform in public and to communicate to the public by telecommunication the musical works in its repertoire.

[2] SOCAN filed the following Proposed Tariffs with the Board:

- SOCAN Tariff 22.D – Internet - Other Uses of Music - Audiovisual Content (2014, 2015)
- SOCAN Tariff 22.D.1 – Internet - Other Uses of Music - Audiovisual Content (2016, 2017, 2018)
- SOCAN Tariff 22.D.3 – Internet - Other Uses of Music - Audiovisual Services Allied With Broadcast and BDU Services (2019-2020, 2021-2023, 2024-2026)

[3] The Proposed Tariffs cover the communication over the Internet of musical works in SOCAN’s repertoire that are part of audiovisual programs. As we will describe in detail below, only the portions of the Proposed Tariffs for 2014 to 2018 that apply to communications made by Allied Audiovisual Services are before us. Additionally, only the 2024 period of the Proposed Tariff for 2024 to 2026 is before us.

[4] For the reasons that follow, we approve the Proposed Tariffs for allied audiovisual service providers as modified by the Jointly Submitted Text and with additional modifications, discussed below. We rely on the last-approved tariffs as proxies of what is fair and approve the Proposed Tariffs as a single tariff named *SOCAN 22.D.3 (2014-2024)* (the “Tariff”).

[5] The Tariff establishes a main royalty rate of 1.9% of relevant revenues and a low-use royalty rate of 0.8% of relevant revenues. If the service provider<sup>1</sup> charges per-programming fees, it will pay at least 1.3¢ per program communicated. If the service provider sells subscriptions to end-users, it will pay at least 7.5¢ per subscriber. Finally, in the case that the service provider has no revenues whatsoever in a given year, the royalties are \$15.

## II. BACKGROUND

### A. PROCEDURAL HISTORY

[6] Although the Proposed Tariffs for 2014 to 2018 broadly include all online audiovisual service providers, this proceeding considers a tariff for a narrower subset of users: service providers that are allied with conventional television broadcasters and distribution undertakings.

[7] On June 4, 2018, SOCAN, the Canadian Association of Broadcasters (the “CAB”) and a group of broadcast distribution undertakings (appearing as the “BDUs”)<sup>2</sup> filed a text in the form of a tariff (the “Jointly Submitted Text”). Together, they asked the Board to approve a tariff for allied audiovisual service providers, titled *SOCAN 22.D.3*, covering the years 2007 to 2018 and based on the Jointly Submitted Text.

[8] Based on this request, the Board severed the portions of the proposed tariffs that were covered by the Jointly Submitted Text into a separate proceeding titled “SOCAN 22.D.3 - Online Allied Services (2007-2018)”.<sup>3</sup> This new proceeding only included those portions of the proposed tariffs “as applicable to AV allied services”.<sup>4</sup>

[9] On February 24, 2023, the Board approved *SOCAN 22.D.3 (2007-2013)*.<sup>5</sup> This approval left the Proposed Tariffs for the years 2014 to 2018 remaining.

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<sup>1</sup> Issue 4, below, discusses an ambiguity that is present in the term, “service”, as used in the tariff. Given this ambiguity, and for the utmost clarity, we use “service provider” in these reasons when referring to entities. Our only exception to this practice is when quoting the filings of SOCAN, the CAB and the BDUs.

<sup>2</sup> The BDU group consists of Bell Canada, Bragg Communications Inc. (carrying on business as Eastlink), Rogers Communications Canada Inc., Cogeco Communications Inc., Quebecor Media Inc., Telus Communications Company, and the Canadian Communications Systems Alliance.

<sup>3</sup> Order of the Board CB-CDA 2021-047, 22 September 2021.

<sup>4</sup> *Ibid* at 2.

<sup>5</sup> *SOCAN Tariff 22.D.3 – Audiovisual Services Allied with Programming and Distribution Undertakings (2007-2013)* 2023 CB 1 (reasons) (February 22, 2023) (where the Board approved these other proposed tariffs for 2007 to 2013 based on the Jointly Submitted Text). [*SOCAN 22.D.3 (2007-2013)*]

[10] The CAB<sup>6</sup> and the BDUs<sup>7</sup> withdrew as participants from the proceeding pursuant to their agreement with SOCAN. Despite withdrawing, the CAB and the BDUs have continued to act in the proceeding to support the agreement and the Jointly Submitted Text.

[11] Goodlife Fitness, Stingray Digital Group, Apple and Apple Canada, and Sirius XM Canada filed objections to the 2019-2020 proposed tariff. Stingray Digital Group and the Canadian Broadcasting Corporation filed objections to the 2021-2023 proposed tariff. None remain as participants in this proceeding, having withdrawn or being deemed to have withdrawn.<sup>8</sup>

[12] The Proposed Tariffs for 2019 to 2023 contain the same language as the Jointly Submitted Text. On March 13, 2023, the Board added the proposed tariffs for 2019 to 2023 to the proceeding and ordered SOCAN, the CAB, and the BDUs to file submissions in support of the Jointly Submitted Text.<sup>9</sup> SOCAN filed joint submissions on April 17, 2023.<sup>10</sup> In these submissions, SOCAN asked the Board to issue a confidentiality order prior to filing the document containing their underlying agreement (the “Agreement”). The Board issued Confidentiality Order 2023-034<sup>11</sup> on May 30, 2023 and SOCAN filed the Agreement on May 31, 2023.

[13] On December 21, 2023, we expressed preliminary views on two issues pertaining to the wording of the Jointly Submitted Text and asked SOCAN, the CAB, and the BDUs to provide revisions to address these issues.<sup>12</sup> SOCAN filed a revised text on January 31, 2024.

[14] On May 16, 2024, we asked SOCAN, the CAB and the BDUs to comment on a draft of the tariff, and specifically wording that sought to clarify a potential ambiguity.<sup>13</sup> SOCAN and the CAB and the BDUs filed separate comments on May 31, 2024.<sup>14</sup>

[15] On June 28, 2024, the Board received a joint request from SOCAN, the CAB, and the BDUs to extend the term of the Jointly Submitted Text to include 2024.<sup>15</sup> The 2024-2026 proposed tariff contains changes to the royalty rates and other terms and conditions, to which the CAB and the BDUs are the only objectors. We granted this request on July 11, 2024,<sup>16</sup> joining the Proposed

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<sup>6</sup> Email from Kathleen Simmons, Counsel to the CAB, “CAB withdraws objection to various SOCAN tariffs”, 18 July 2018.

<sup>7</sup> Email from Jay Kerr-Wilson, Counsel to the group of BDUs, “RE: Draft Email to Board requesting certification of 22D3 (2007-2018)”, 19 July 2018.

<sup>8</sup> See Ruling of the Board CB-CDA 2023-013, 13 March 2023, and Order of the Board CB-CDA 2023-015, 28 March 2023. (for the status of objectors and the non-responsive objectors that were deemed to no longer be participating in the proceeding).

<sup>9</sup> *Ibid.*

<sup>10</sup> Joint submissions of SOCAN, the CAB, and the BDUs, “Re: Request for Confidentiality Order and Submissions in Support of Jointly-Submitted Text”, 17 April 2023. [*Joint Submissions on JST*]

<sup>11</sup> Order of the Board CB-CDA 2023-034, 30 May 2023.

<sup>12</sup> Order of the Board CB-CDA 2023-067, 21 December 2023.[CB-CDA 2023-067]

<sup>13</sup> Notice of the Board CB-CDA 2024-035, 16 May 2024.

<sup>14</sup> SOCAN response to Notice CB-CDA 2024-035, 31 May 2024; CAB and the BDUs response to Notice CB-CDA 2024-035, 31 May 2024.

<sup>15</sup> SOCAN response to Order CB-CDA 2024-042, 28 June 2024.

<sup>16</sup> Ruling of the Board CB-CDA 2024-057, 11 July 2024.

Tariff for 2024 to the current proceeding. The Proposed Tariff for 2025-2026 is split from 2024 and remains to be considered in a future proceeding.

## **B. THE JOINTLY SUBMITTED TEXT**

[16] The Jointly Submitted Text sets out royalty rates for the right to communicate to the public by telecommunication, the works in SOCAN's repertoire "in connection with the operation of an Audiovisual Service that is allied with a Broadcast or BDU Service licenced under SOCAN Tariff 2.A or Tariff 17".

[17] The Jointly Submitted Text defines "Allied Audiovisual Service" as

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.

[18] Thus, the Audiovisual Service may be provided by a Conventional Service or a BDU (both defined terms) or, by a closely-associated entity. In the latter case, the Jointly Submitted Text explicitly permits the user to authorize the communication to the public by telecommunication for the purposes of the operation of an allied service.

[19] The Jointly Submitted Text sets out a main royalty rate of 1.9% of the rate base, where the rate base depends on the business model of the user:

1. for a service that charges per-program fees to end-users, the rate base is the amounts paid by Canadian end-users for plays;
2. for a service that offers subscriptions to end-users, the rate base is the amounts paid by Canadian subscribers; and
3. for a service that receives Internet-Related Revenue in connection with its communication of audiovisual works, the rate base is its Canadian revenue related to audiovisual internet activities.

[20] Services whose transmissions of audiovisual works are comprised of less than 20% of musical works in SOCAN's repertoire pay a royalty rate of 0.8%, applied to the same rate bases as above. Where minimum fees apply,

1. services that charge per-program fees are subject to a 1.3¢ minimum per program communicated;
2. services that offer subscriptions to end-users are subject to a 7.5¢ minimum per subscriber; and
3. services with no revenue are subject to an annual fee of \$15.

### C. THE LAST-APPROVED TARIFFS

[21] In this proceeding, two tariffs can be said to be last-approved. For the Members of the CAB, the last-approved tariff is *SOCAN Tariff 22.D.3 (2007-2013)*.<sup>17</sup> For all other allied service providers, the last-approved tariff is *SOCAN Tariff 22.D.1 (2007-2013)*.<sup>18</sup>

[22] Both tariffs provide a main royalty rate of 1.9% of the relevant revenue from per-program fees, subscriptions, and other Internet-related sources. For *SOCAN 22.D.1 (2007-2013)*, this rate first applied in the year 2011. For *SOCAN 22.D.3 (2007-2013)*, the rate applied to the whole period. The Jointly Submitted Text mirrors the royalty rate and rate base in both last-approved tariffs.

### III. ISSUES

[23] We identify the following five issues:

1. Are references to other tariffs in the Jointly Submitted Text clear enough for service providers to easily determine whether they qualify as users?
2. Does the Jointly Submitted Text provide clear guidance on situations where service providers cannot distinguish between Tariff 22.D.3 uses and uses for which other tariffs apply?
3. Are the last-approved tariffs usable proxies of what could be fair?
4. Should the tariff clarify when “service” refers to an entity or to the actions the entity takes?
5. Should any other changes be made to tariff wording?

### IV. ANALYSIS

#### A. ISSUE 1: ARE REFERENCES TO OTHER TARIFFS IN THE JOINTLY SUBMITTED TEXT CLEAR ENOUGH FOR SERVICE PROVIDERS TO EASILY DETERMINE WHETHER THEY QUALIFY AS USERS?

[24] Additional clarity concerning references to other tariffs in the Jointly Submitted Text is required and so, we modify these references to enhance clarity, precision and finality.

[25] The Jointly Submitted Text references other tariffs in two ways. First, the Jointly Submitted Text twice refers to both SOCAN Tariffs 2.A and 17 when defining the scope of the tariff. This occurs in the Application section (in subsection 2.1) and again, in the definition of “Conventional Services” (part of the definition of “Allied Audiovisual Service” in paragraphs 3.1(2) and 3.1(11)). The result is a stacking of references where the tariff applies to Conventional Services that are

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<sup>17</sup> See *SOCAN 22.D.3 (2007-2013) [Jurisdictional Ruling]*, 2020 CB 003 (July 9, 2020) (limiting *SOCAN 22.D.3 (2007-2013)* to the Members of the CAB); see also *SOCAN 22.D.3 (2007-2013)*, *supra* note 4 (reasons supporting the approved tariff).

<sup>18</sup> *SOCAN Tariff 22.D.1 – Internet – Online Audiovisual Services (2007-2013)* CB-CDA 2017-008 (reasons) (27 January 2017). [*SOCAN Tariff 22.D.1 (2007-2013)*]

“subject to [Tariffs 2.A and 17]” and that are also allied with a “Broadcast or BDU Service licensed under [Tariffs 2.A and 17]”. These stacked references make interpreting the scope difficult.

[26] Second, the Jointly Submitted Text excludes activities by referencing tariff families (in subsection 2.2): Tariffs 2.A, 17, 22.A, 22.D.1, 22.D.2, 22.G. We find that these references lack finality because they refer to tariff families, the contents of which could change in the future.<sup>19</sup>

[27] At our request,<sup>20</sup> SOCAN, the CAB, and the BDUs provided new language for the Application section, the definitions of Allied Audiovisual Service and Conventional Service, and references to other tariffs.

[28] We find these descriptions appropriate and so make the following modifications. First, references to Tariffs 2.A and 17 are removed from section 2.1 in the Application section. The definitions of “Allied Audiovisual Service” and “Conventional Service” are also modified. Now, Tariffs 2.A and 17 are only referenced in the definition of a Conventional Service. Second, all references to tariffs are replaced with descriptions. For example, references to Tariff 2.A were replaced with: “communications to the public by telecommunication by a broadcast television station, such as those covered by *SOCAN Tariff 2.A (2009-2013)*”. Finally, to avoid referring to all other tariffs—including those that do not cover similar activities—as well to avoid circular and ambulatory references, we remove the phrase “other applicable SOCAN tariffs, certified or proposed, including” in section 2.2<sup>21</sup>.

[29] These changes promote clarity and ensure precision and finality in the scope of the tariff. Removing stacking references will help service providers interpret the tariff so they can determine whether they qualify as users. Because the provided descriptions still include references to tariff families, we have modified these references so that they reference specific approved tariffs in keeping with the Practice Notice on filing of Proposed Tariffs.

**B. ISSUE 2: DOES THE JOINTLY SUBMITTED TEXT PROVIDE CLEAR GUIDANCE ON SITUATIONS WHERE SERVICE PROVIDERS CANNOT DISTINGUISH BETWEEN TARIFF 22.D.3 USES AND USES FOR WHICH OTHER TARIFFS APPLY?**

[30] We add a section to the tariff clarifying how service providers should pay royalties and file reports when they do not track online activities separately from conventional broadcasting activities.

[31] Our analysis identified the possibility of situations where it may be unclear whether Tariffs 2.A, 17, or 22.D.3 apply to a particular use. We asked SOCAN, the CAB, and the BDUs for submissions on this potential overlap. They provided the following:

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<sup>19</sup> See *Practice Notice on Filing a Proposed Tariff, PN 2019-004.rev 4 at pp 2-3* (24 July 2024).[PN 2019-004.rev 4]

<sup>20</sup> CB-CDA 2023-067, *supra* note 11.

<sup>21</sup> See PN 2019-004.rev 4, *supra* note 19, “References to Other Proposed or Approved Tariff”.

Broadcasters and the BDUs often bundle access to their “Over-the-Top” (OTT) and “TV On-Demand” (TVOD) services with their traditional service offerings. The “overlap” between tariffs 2A, 17, and 22D3 [sic] recognizes that – from an accounting perspective – the broadcasters and the BDUs do not separately track subscribers to their OTT and TVOD services when they are sold this way. The only separately tracked subscribers are the ones who purchase OTT or TVOD services separately from a traditional cable package. The provisions in the Allied A/V Services agreement allow broadcasters and BDUs to report their bundled subscribers under a single tariff of their choice (17 or 2A) [sic], provided they capture all users and all revenues, and they accurately track online usage ratios.<sup>22</sup>

[32] We have no reason to question the provided explanation, which accords with our understanding of the complexities of the industry. The Jointly Submitted Text, however, does not address this possibility. Approving a tariff without modifying the Jointly Submitted Text would leave users unaware of the possibility of overlap or of the provisions in the Agreement that allow reporting under a single tariff.

[33] Users should only pay and file reports under one tariff for a particular use and the text of the tariff should contain all information needed for a user to determine what uses should be accounted for and reported under that tariff.

[34] Thus, we directed SOCAN, the CAB, and the BDUs to provide new language that resolves this issue. They filed the following text:

2.3 Royalties for uses covered by this tariff shall be paid either by the Allied Audiovisual Service under the terms of this tariff or by its allied Conventional Service under the terms of the SOCAN tariff applicable to that Conventional Service, provided, that, in doing so:

- (1) all uses and revenues referred to in this tariff are accounted and paid for,
- (2) the Rate Base, if applicable, is determined and reported to SOCAN appropriately,  
and
- (3) all royalties payable by the Allied Audiovisual Service and the Conventional Service under this and other applicable SOCAN tariffs are paid.

[35] We modify this text so that it describes the problem, clarifies that qualifying users are exempt and specifies what is exempt with references to other sections of the tariff. Finally, we remove language in paragraph 2.3(3) that suggests that the exemption is conditional on a user’s compliance with other tariffs. The revised text reads:

2.3 If an Allied Audiovisual Service or its allied Conventional Service does not track subscribers to its Streams of audiovisual works over the Internet separately from subscribers to its Streams of audiovisual content by broadcast television or other means of transmission,

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<sup>22</sup> SOCAN response to Order CB-CDA 2023-067, 31 January 2024.

the service is exempt from paying royalties under subsection 4.1(1)(b) or subsection 4.2(2)(b), provided, that,

(a) all uses and amounts paid by Canadian Subscribers, referred to in subsection 4.1(1)(b) or subsection 4.2(2)(b) are accounted and paid for under the appropriate tariff for Conventional Services, either *SOCAN Tariff 2.A (2009-2013)* or *SOCAN Tariff 17 (2009-2013)*;

(b) the Rate Base, if applicable, is determined and reported to SOCAN appropriately, and

(c) all royalties that would otherwise be payable by the Allied Audiovisual Service or the Conventional Service under subsections 4.1(1)(a), 4.1(1)(c), 4.2(2)(a), and 4.2(2)(c) are paid.

[36] With these changes, we find that the section appropriately addresses the scenario where service providers cannot distinguish between uses and so modify the tariff accordingly. The new language provides guidance on how users can report their uses and pay royalties. It makes clear that users need only pay under one tariff. This modification reflects market realities and ensures clear guidance for users.

### **C. ISSUE 3: ARE THE LAST-APPROVED TARIFFS USABLE PROXIES OF WHAT COULD BE FAIR?**

[37] We find that the last-approved tariffs are usable proxies for what could be fair.

[38] Often, the last-approved tariff is a starting point for the Board's analyses by acting as a proxy of what could be fair and equitable.<sup>23</sup> Starting with the presumption that the last-approved tariff is fair for the period in which it was approved, one reason to question whether the last-approved tariff is an appropriate proxy for the next period is if the relevant market has changed.<sup>24</sup> Where collective societies and users agree to maintain the *status quo*, their agreement can be evidence that they do not think that the market has changed in a way that affects the rate.<sup>25</sup>

[39] In the current proceeding, the terms and conditions in the Jointly Submitted Text mirror the last-approved tariffs. As described above, two tariffs can be said to be last-approved: *SOCAN 22.D.3 (2007-2013)*<sup>26</sup> [for CAB members] and *SOCAN 22.D.1 (2007-2013)*<sup>27</sup> [for all other users]. These tariffs contain the same royalty structure and rates as the Jointly Submitted Text. In the case of *SOCAN 22.D.3 (2007-2013)*, this similarity is because that decision was also based on the Jointly Submitted Text, which covers the period from 2007 to 2018. We infer from the fact that

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<sup>23</sup> See *SOCAN Tariff 21 – Recreational Facilities Operated by a Municipality, School, College, University, Agricultural Society or Similar Community Organizations (2013-2020)*, CB-CDA 2018-222 (reasons) (December 7, 2018) at para 18.

<sup>24</sup> See *SOCAN Tariff 9 – Sports Events (2024-2026)* 2023 CB 4 (July 7, 2023) at paras 11-12.

<sup>25</sup> See *SOCAN Tariff 22.G – Game Sites (2007-2019)* 2022 CB 7 (August 5, 2022) at para 14.

<sup>26</sup> See *SOCAN 22.D.3 (2007-2013)*, *supra* note 5.

<sup>27</sup> *SOCAN Tariff 22.D.1 (2007-2013)*, *supra* note 17.



the CAB and the BDUs have agreed to royalty rates that maintain the *status quo* over this period that they do not think the market has changed in a way that would affect rates.

[40] Additionally, SOCAN's other television tariffs, *SOCAN Tariff 2.A (2009-2013)* and *SOCAN Tariff 17 (2009-2013)* also contain the same main royalty rate as the Jointly Submitted Text. The similarity of the Jointly Submitted Text to these other television tariffs also stems from the Agreement, where SOCAN, the CAB and the BDUs agree to maintain the *status quo* for Tariffs 2.A and 17, including royalty rates. The main rate of 1.9% in these tariffs was first implemented in 2002.<sup>28</sup> The fact that these rates are stable across SOCAN's television tariffs and a period of over 20 years adds further support to our finding that the market has not changed.

[41] This *status quo* is supported by a majority of the television industry. The CAB submits that it represents the vast majority of commercial television broadcasters and discretionary service providers operating in Canada.<sup>29</sup> The BDUs further submit that they represent more than 95% of all subscribers in Canada.<sup>30</sup> While we make no finding on whether the CAB and the BDUs can represent the interests of all users, we accept their submissions that they represent a majority of the television industry.

[42] Given this strong evidence that the market has not changed, we adopt the last-approved tariffs as proxies. Applying these proxies, we find that the royalty rates and related terms and conditions in the Jointly Submitted Text, are fair and equitable.

#### **D. ISSUE 4: SHOULD THE TARIFF CLARIFY WHEN “SERVICE” REFERS TO AN ENTITY OR TO THE ACTIONS THE ENTITY TAKES?**

[43] The term “service” is found frequently throughout the Jointly Submitted Text. When read in context, this term is ambiguous, referring either to an entity (i.e., users) or to the actions the entity takes (i.e., uses). We approve the tariff without modifying the term because we do not know if the ambiguity actually causes confusion for users. Conversely, SOCAN, the CAB, and the BDUs say that departing from the Jointly Submitted Text would introduce confusion in their dealings.

[44] In the television and radio context, the term “service” can be used in several ways. The term can refer to the offerings of content, such as “television services”, to which one might subscribe. The term, however, can also refer to the entity offering the content, the “service provider”.

[45] The Jointly Submitted Text appears to use both senses of the term. For example, both senses seem to appear in the definition of “Usage”—the first referring to the offering of content and the second referring to the entity providing the service. It is not clear, for example, how usage of an

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<sup>28</sup> The royalty rate of 1.9 per cent of a station's gross income (SOCAN 2.A) and of affiliation payments from a BDU to a programming undertaking (SOCAN 17) was first implemented for 2002 in *SOCAN Tariff 2.A – Commercial Television Stations (1998-2004); Tariff 17 – Pay and Specialty Television Services (2001-2004)* (approved tariff) (20 March 2004), C Gaz Supplement vol 138, No 12.

<sup>29</sup> *Joint Submissions on JST*, *supra* note 10 at p 4.

<sup>30</sup> *Ibid.*

entity would allow a person to hear an audiovisual work (as the term is used by the definition of “AV Usage”):

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

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

[46] The Board raised concerns with similar ambiguities in the term “service” in *Online Music Services (2010-2013)*.<sup>31</sup> As highlighted in that decision, a “service provider” might offer multiple “services”, making the distinction particularly important to clearly identify obligations and prevent overlap or duplication.<sup>32</sup>

[47] We asked SOCAN, the CAB, and the BDUs to comment on language that sought to resolve this ambiguity. They submit that the change is unnecessary and would introduce uncertainty and cause further confusion. In addition, and without prejudice to its submissions opposing any changes, SOCAN provided additional revisions to the text of the tariff that imposed minimum fee and reporting obligations on a per-service basis. The CAB and the BDUs oppose these revisions, saying that such changes could increase minimum fees and reporting obligations (by imposing obligations on a per-service basis instead of a per-service provider basis).

[48] Although we find a real ambiguity in the text of the tariff, we retain the language of the Jointly Submitted Text because the ambiguity may not cause confusion in the industry, and we do not know whether users of the tariff would find the term to be confusing.

[49] The CAB and the BDUs emphasize that they have been operating for more than six years without issue and on the understanding that the term “Allied Audiovisual Services” refers to the entity rather than the activity. We recognize that SOCAN, the CAB and the BDUs have negotiated this Agreement based on a shared understanding of the term. Although the opposition expressed by the CAB and the BDUs might highlight the limits of this Agreement and the need for further clarity, the parties appear to have been operating without this being an issue.

[50] We also do not know whether users of this tariff would find the term to be confusing. Given the Agreement between SOCAN, the CAB, and the BDUs, it is possible that the signatory members of the CAB and the BDUs will not be users of this tariff by operation of section 74 of the *Copyright Act*. If the members of the CAB and the BDUs are not users, the record contains little information on any other users of the tariff. While such users may be less sophisticated and

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<sup>31</sup> *Online Music Services (CSI: 2011-2013; SOCAN: 2011-2013; SODRAC: 2010-2013)*, CB-CDA 2017-086 (reasons) (25 August 2017).

<sup>32</sup> *Ibid* at paras 346-347.

may not benefit from understandings of the terms shared between SOCAN, the CAB and the BDUs, we lack any information that would support any assumptions on these points.

**E. ISSUE 5: SHOULD ANY OTHER CHANGES BE MADE TO TARIFF WORDING?**

[51] We modify the Jointly Submitted Text to reflect the language of *SOCAN 22.D.3 (2007-2013)*. When the Board approved this tariff, it modified the language of the Jointly Submitted Text to address three points: to clarify the scope of the application of the tariff (section 2.1), to clarify the low-use rate provisions (sections 4.2 and 5.2) and to clarify references to “license”, including to avoid the implication that the Tariff is a license.

[52] While the Board removed certain references to “licenses” in *SOCAN 22.D.3 (2007-2013)* it chose not to modify other references to the term.<sup>33</sup> Specifically, the Board retained the term “license” where it described a use of copyright-protected works for which authorization from SOCAN would be required to prevent infringement.

[53] In retaining these terms, the Board accepted SOCAN’s argument that using a different term may have unforeseen consequences. The Board also accepted SOCAN’s submissions that it is the owner or exclusive licensor of the rights for the works at issue, that a license is required to use these works, and that the term “license” has a well-understood legal meaning.

[54] We make these changes to address the same three points in this proceeding, given that we use *SOCAN 22.D.3 (2007-2013)* as a proxy for what is fair. We also retain the same references to “license” as were retained in the last-approved tariff to prevent unforeseen consequences and recognizing SOCAN’s role in licensing of musical works.

[55] We also infer that SOCAN, the CAB, and the BDUs support these modifications because they were included in a revised version of the Jointly Submitted Text filed on January 31, 2024.<sup>34</sup>

**V. DECISION**

[56] For the above reasons, we approve the Proposed Tariffs for allied audiovisual service providers, as modified by the Jointly Submitted Text and with additional modifications.

[57] We approve a main royalty rate of 1.9% of relevant revenues and a low-use royalty rate of 0.8% of relevant revenues. If the service provider charges per-programming fees, it will pay at least 1.3¢ per program communicated. If the service provider sells subscriptions to end-users, it will pay at least 7.5¢ per subscriber. Finally, in the case that the service provider has no revenues whatsoever in a given year, the royalties are \$15.

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<sup>33</sup> *SOCAN 22.D.3 (2007-2013)*, *supra* note 5 at paras 64-68.

<sup>34</sup> SOCAN response 31 January 2024), *supra* note 22.

[58] In the application and definition sections, we replace references to other tariffs with descriptions of the tariffs being referenced. We also remove the “stacked” references to Tariffs 2.A and 17 from the application section. We add a clause to the application section clarifying how users that do not distinguish between online and conventional television uses should pay royalties and report these uses.

[59] We approve the Proposed Tariffs under the title *SOCAN Tariff 22.D.3 – Online Allied Audiovisual Services (2014-2024)*.