

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2023-022]

NOTICE OF THE BOARD

File: Online Music Services (SOCAN: 2007–2018) (Tariff 22)

April 28, 2023

[1] The Board is seeking input – as detailed in the Annex to the present Notice – from potentially affected parties (including under the continuation of rights of the relevant portions of the to-be approved Tariff 22) on the proposed administrative terms.

[2] The Board notes that the Request for Certification” (RFC) of Tariff 22.B and Tariff 22.C (Exhibit SOCAN-5, attached) provides for administrative terms that were not included in the last-approved corresponding tariff (*SOCAN - Tariffs 22.B to 22.G (Internet - Other Uses of Music), 1996-2006*) (OMS 1996-2006).¹

[3] The Board also notes that several of the RFC administrative terms can be found in the last-approved *CSI, SOCAN, SODRAC - Tariff for Online Music Services, 2010-2013* (OMS 2011-2013).²

[4] Answers to the questions and other comments in relation to the questions are due **May 19, 2023**. All may reply to answers and comments no later than **May 26, 2023**.

Lara Taylor
Secretary General

¹ Approved 2008-10-25, available online: <<https://decisions.cb-cda.gc.ca/cb-cda/certified-homologues/en/item/366408/index.do>>.

² Approved 2017-08-26, available online: <<https://decisions.cb-cda.gc.ca/cb-cda/certified-homologues/en/item/366478/index.do>>.

ANNEX

QUESTIONS RELATING TO TARIFF 22.B

1. *Reporting*

SOCAN shall explain the purpose of paragraph (5(1)(c) of the RFC of Tariff 22.B, which sets out new reporting requirements (compared to the last-approved corresponding tariff OMS 1996-2006), particularly with respect to the “additional information.”

The explanation should state whether this information can be provided retroactively and why the qualifier “where available” (and associated definition of “available”) found in OMS 2011-2013 is not included.

CAB and SiriusXM should indicate whether they would be able to provide the required information for periods in the past, if required to do so.

2. *Calculation and Payment of Royalties*

SOCAN shall explain why royalties are due on a monthly basis under s. 6 of the RFC for Tariff 22.B and why this different from the last-approved corresponding tariff (i.e., OMS 1996-2006), which provided for an annual payment or payment on a quarterly-basis if the royalties for a year exceed \$350.

CAB and SiriusXM may comment.

3. *Records and Audit*

Context

Subsection 9(1) of the RFC provides that certain information must be kept for a period of six years, for audit purposes:

- The royalties payable, the rate base, and the applicable rate;
- The service identification information; and
- The music use reports, including the additional information and the page-impressions.

We note that this standard applies under OMS 2011-2013, i.e., to services which would otherwise be covered by the RFC of Tariff 22.A.

Questions

SOCAN shall explain why this standard should also apply to services which are covered by the RFC of Tariff 22.B.

To CAB: If your members were required to comply with section 9 of RFC of Tariff 22.B (Commercial Radio), would they be able to do so for periods in the past?

To SiriusXM: If you were required to comply with section 9 of RFC of Tariff 22.B (Satellite Radio), would you be able to do so for periods in the past?

4. *Pay Audio*

Context

SOCAN has proposed Tariff 22.B (Pay Audio) for the years 2007-2018. In its application to exclude music videos from Tariff 22.A, SOCAN states that it has reached an agreement with “Stingray on the licensing of Stingray Mobile for the audio-only activities covered by the Proposed Tariff [defined as *Tariff 22.A – Internet – Online Music Services for the years 2014 to 2018*] for the Tariff Period [defined as January 1, 2014 to December 31, 2018].”

In its Statement of case (Exhibit SOCAN-1, para 115), with respect to proposed Tariff 22.B (Pay Audio), SOCAN states that: “To SOCAN’s knowledge, the only remaining service to be considered in this proceeding is the semi-interactive, streaming-only, subscription-based mobile webcast service that is provided by Stingray directly to end-user consumers (i.e., not via a BDU), which service is commonly known as “Stingray Mobile” during 2014 to 2018.”

SOCAN submits (Exhibit SOCAN-1, para 116) that this stand-alone, direct-to-consumer music service should be subject to SOCAN Tariff 22.A and licensed at the rate of 5.3% for semi-interactive streaming.

Questions

SOCAN shall answer the following questions:

- Does the agreement include administrative terms? If so, provide a copy of that portion of the agreement.
- Are there any acts covered by proposed Tariff 22.B that not covered by the agreement (for example, acts carried out before the agreement period)?
- If there are no such acts, does SOCAN intend to withdraw the Pay Audio portion of Tariff 22.B?
- If there are such acts, how does SOCAN suggest that the Board proceed, given that SOCAN has requested to – in effect – withdraw the semi-interactive audio webcast portion of proposed Tariff 22.A (2014-2018)?

QUESTIONS RELATING TO TARIFF 22.C

To the extent they are relevant to the RFC of Tariff 22.C, SOCAN shall answer the same questions #1-#3 abovementioned.

In addition, SOCAN shall address the following:

1. Section 6 of the RFC of Tariff 22.C provides for monthly royalty payments. The last-approved corresponding tariff portion, as contained in OMS 1996-2006 (Tariff 22.F) provided for payments that were either annual or quarterly, depending on the total amount to be paid.

- Why has the payment frequency of this tariff changed?
- Going forward, how would the payment of the monthly royalties inter-operate with the payment of the minimum fees on an annual basis? For example, would all users have to pay the minimum fee and then deduct the minimum fees from the royalties owing?

2. Exhibit SOCAN-10, Appendix 9 (this appendix contains highly confidential information not reproduced herein) shows the royalties paid by all users under the continuation of rights for OMS 1996-2006 (Tariff 22.F). Some users paid the minimum fee and some users paid a percentage of their revenues.

- Is it necessary to collect the additional information (see question 1, above) for those users who paid the minimum fee?
- Given the total royalties to be collected for RFC of Tariff 22.C, is it necessary to collect the additional information at all?