

Copyright Board
Canada



Commission du droit d'auteur
Canada

CB-CDA 2025-037

Order of the Board

Proceeding: Online Music Video Services (2014-2018)

June 10, 2025

I. Overview

[1] This Order requires SOCAN to file a Statement of Case in relation to several identified issues. It also permits SOCAN to make submissions on any other issues.

II. Procedural Background

[2] Due to several procedural events, the scope of this proceeding has been significantly reduced.

[3] First, SOCAN had advised that it intends to withdraw those proposed tariffs covering the reproduction right. As such, reproduction rights are no longer under consideration in this proceeding. In line with this development, SOCAN has filed a Revised Request for Approval (the “RFA”), and only certain portions of the Tariff 22.A family of proposed tariffs remain under consideration (the “Proposed Tariffs”).

[4] Second, the two interveners in this proceeding, SiriusXM and Apple, have withdrawn from participation (confirmed by the Board in Notice CB-CDA 2025-035). SOCAN is now the only participant to this proceeding.

III. Certain issues

[5] In its letter of May 6, 2025, SOCAN submits that:

- issues pertaining to the reproduction right in musical works are no longer relevant and need not be considered in the proceeding; and
- given that the narrowed scope of the RFA applies only to services that predominantly offer music videos, and do not offer streams containing audio

tracks, the Board need not consider issues relating to the potential application of the tariff to diverse types of services, including those that make only minor uses of music videos.

[6] SOCAN further submits that the Board should “streamline the proceeding.”

[7] We agree, and do so as follows.

IV. SOCAN shall file submissions in relation to certain issues

[8] We are of the preliminary view that the Board can use the relevant portions of the most recently approved tariff that covered the activities under consideration, *CSI, SOCAN, SODRAC - Tariff for Online Music Services, 2010-2013*¹ (“*OMS (2010-2013)*”), as a proxy for the Proposed Tariffs. As such, SOCAN only has to file submissions and evidence—described in more detail below—in support of any changes between the rates and rate structure in that tariff and those in its RFA.

A. Minimum Fees

[9] In the most recently approved tariff that covered the activities under consideration, *OMS (2010-2013)*, the Board set the minimum fee for both music video streaming at \$100 per year.

[10] In the RFA, SOCAN’s royalties are proposed as:

4(1) The royalties payable in a month by an online music video service that offers on-demand and/or recommended streams shall be ... subject to a minimum fee, which shall be the lesser of 31¢ per subscriber or unique visitor per month, and 0.07¢ per stream requiring a SOCAN licence.

[11] The Board has previously expressed the following view on minimum fees in situations where the main activity involves the sale or rental of the copyrighted work:

[W]here a tariff sets royalties for the use of copyrighted content based on the revenues of a business engaged in selling a product or service consisting mainly of that copyrighted content, a risk may arise that a licensee could price their product or service so low such that they are no longer engaging in profit-maximization vis-à-vis the activity on which the royalties are based. One example of this is where a licensee offers a product or service using the copyrighted content as a loss leader, and where the tariff does not include in its rate base revenues from the cross-subsidized offering. In such situations, minimum royalties based on an estimate of some minimal

¹ *Online Music Services Tariff (CSI: 2011-2013, SOCAN: 2011-2013; SODRAC: 2011-2013)* (approved tariff) (August 26, 2017), C Gaz Supplement Vol. 151, No. 34.

reasonable price for the product (such as the price at which the activity has any prospect of being profitable) may be appropriate.²

[12] The Board referred to this principle again in its 2023 decision *SOCAN Tariff 22.D.3 – Audiovisual Services Allied with Programming and Distribution Undertakings (2007-2013)*.³

[13] Given this context:

1. (a) SOCAN shall file submissions on why the Board should approve per-file or per-subscriber minimum fees, as opposed to a single minimum annual amount.
- (b) SOCAN shall indicate whether any users of the Proposed Tariffs priced their service so low during the 2014-2018 period that “they are no longer engaging in profit-maximization vis-à-vis the activity on which the royalties are based.”
- (c) If available, SOCAN shall provide examples of such services, including the price of the service and evidence that the service’s strategy is not profit-maximizing. SOCAN may suggest reasons why the user employs such a pricing strategy.
2. (a) SOCAN shall file submissions in support of each of the minimum royalty rates in its RFA.
- (b) Such submissions should clearly identify what proxy or other reference is being used and how it was adjusted, if applicable.
3. (a) Based on any information it has, including any reports it has received from online music video services, SOCAN shall indicate or estimate how many users would have, using the RFA rates, paid a minimum fee during 2016.
- (b) If it does not have such information, SOCAN shall provide the closest comparable estimate it is reasonably able to make.

B. Free-of-charge streams

[14] In *OMS (2010-2013)*, the Board stated that:

[w]e do not certify additional specific rates for free webcasts in this matter—whether interactive, semi-interactive, or non-interactive—as we include in the rate base for webcasting both advertising and subscription revenues [...] While an interactive

² *Re:Sound - Tariff 3 (Background Music) (2010-2015)*, CB-CDA 2017-091 (reasons) (September 1, 2017) at para 127.

³ *SOCAN Tariff 22.D.3 – Audiovisual Services Allied with Programming and Distribution Undertakings (2007-2013)* 2023 CB 1 (February 24, 2023).

webcast can be offered free to the listener, it is not free to the advertiser. In a well-functioning market, advertising revenues monetize the webcast of musical works.

Lastly, even if we concluded that it was appropriate to set an additional rate for free webcasts, the analysis of the evidence presented by the Parties does not provide us with a reliable basis for doing so, as we concluded above.⁴

[15] In the RFA, SOCAN requests the following for such streams:

4.(2) Where an online music video service subject to subsection (1) also offers streams free of charge, the royalty shall be 0.07¢ per streamed file requiring a SOCAN licence.

[16] Given this context:

4. SOCAN shall file submissions in support of the Board including a separate royalty rate for free streams, and why the Board should not use the same royalty rate structure as in *OMS (2010-2013)*.

5. SOCAN shall file submissions in support of the rate for free on-demand streams. Such submissions should clearly identify what proxy or other reference is being used and how it was adjusted, if applicable.

6. SOCAN shall clarify whether revenues from free of charge streams form part of the revenue base for the purpose of calculating the royalties for other portions of the tariff. If so, it shall file its submissions in support of this rate structure. If not, SOCAN may suggest wording that would clarify which revenues form the revenue base.

[17] Finally, if SOCAN is of the view that the Board should not use *OMS (2010-2013)* as a proxy for the Proposed Tariffs, it shall file submissions on this issue as well, and provide justification for any alternate proxy or other reference that the Board should use.

[18] SOCAN shall file the above, along with any other arguments or evidence it wishes to file by **Tuesday, July 22, 2025**. This will constitute the final day on which any party may present their submissions to the Board for the purposes of *Time Limits in Respect of Matters Before the Copyright Board Regulations*, SOR/2020-264.

Hon. Luc Martineau, Chair
Katherine Braun, Member
René Côté, Member

⁴ *Supra* note 1 at paras 240–241.