

Copyright Board
Canada



Commission du droit d'auteur
Canada

November 6, 2019

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

- CMRRA/SOCAN - Non-Commercial Radio Reproduction Tariff (2021-2023)

By that same section, the Copyright Board hereby gives notice to any person affected by this proposed tariff that users or their representatives who wish to object to this proposed tariff 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 6, 2019**.

Lara Taylor

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PROPOSED TARIFF

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

2019-10-15

CMRRA and SOCAN

Non-Commercial Radio Reproduction Tariff

for the reproduction of musical works by non-commercial radio stations

2021-01-01 to 2023-12-31

Proposed citation:

Non-Commercial Radio Reproduction Tariff (2021-2023)

STATEMENT OF ROYALTIES TO BE COLLECTED BY THE CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY (CMRRA) AND BY THE SOCIETY OF COMPOSERS, AUTHORS AND MUSIC PUBLISHERS OF CANADA, THE SOCIÉTÉ DU DROIT DE REPRODUCTION DES AUTEURS, COMPOSITEURS ET ÉDITEURS AU CANADA INC. AND SOCAN 2003 INC. (SOCAN), FOR THE REPRODUCTION OF MUSICAL WORKS IN THE REPERTOIRE OF CMRRA OR SOCAN BY NON- COMMERCIAL RADIO STATIONS, FOR THE YEARS 2021-2023

Short Title

1. This tariff may be cited as the *Non-Commercial Radio Reproduction Tariff, 2021-2023*

Definitions

2. In this tariff,

“audio track” means a sound recording of a single musical work; («*piste sonore* »)

“collective societies” means CMRRA and SOCAN; («*sociétés de gestion* »)

“copy” means any format or material form on or in which a musical work in the repertoire is fixed by a non-commercial radio station by any known or to be discovered process; («*copie* »)

“CRTC log” means a program log as prescribed under the *Radio Regulations, 1986 SOR/86-982*, section 8(1); («*Registre du CRTC* »)

“download” means a file intended to be copied onto an end user’s storage medium or device; («*téléchargement* »)

“file” means a digital file of either an audio track or a program segment («*fichier* »)

“French-language station” means a station that is licensed by the Canadian Radio-television and Telecommunications Commission (CRTC) to operate in the French language or as an ethnic station («*station de langue française* »)

“gross operating costs” means all direct expenditures of any kind and nature (whether in money or other form) incurred by the non-commercial radio station or on its behalf in connection with the products and services that are subject to the licence covered by this tariff; («*dépenses brutes d’opération* »)

“identifier” means the unique identifier a non-commercial radio station assigns to a file, if any. («*identificateur*»)

“network” means a network within the meaning of the *Regulations Prescribing Networks (Copyright Act)*, SOR/99-348, *Canada Gazette*, Part II, Vol. 133, No. 19, p. 2166; («*réseau* »)

“non-commercial radio station” means any AM or FM radio station other than a Canadian Broadcasting Corporation radio station, licensed under the *Broadcasting Act*, S.C. 1991, c. 11, by the CRTC as a station owned or operated by a not-for-profit corporation or organization, whether or not any part of its gross operating costs is funded by advertising revenues, including any station that is

owned or operated on a not-for-profit basis, or any AM or FM radio station owned or operated by a similar corporation or organization, that holds a licence from the Canadian Radio-television and Telecommunications Commission; (« *station de radio non commerciale* »)

“on-demand stream” means the transmission of a file that is chosen by the end user and received at a time and place individually chosen by that person, and where the file is intended to be copied by the end user onto a storage device only to the extent required to allow listening to the contents of the file at substantially the same time as when the file is received. (« *transmission sur demande* »)

“program segment” means an audio program containing more than one sound recording, each of a single musical work, such as an archived broadcast or a podcast, but excludes any audio program containing more than one musical work from the same album or performed at the same concert or other musical performance, up to a maximum duration of 90 minutes. (« *extrait d’émission* »)

“repertoire” means, in relation to each of CMRRA and SOCAN the musical works for which it is entitled to grant a licence pursuant to section 3 of this tariff; (« *répertoire* »)

“reproduction” means the fixation of a musical work by any known or to be discovered process, in any format or material form, including the fixation on the random access memory (RAM) or hard disk of a computer; (« *reproduction* »)

“simulcasting” means the simultaneous, unaltered, real-time streaming of the over-the-air broadcast signal of the station, or of another station that is part of the same network as the station, via the Internet or other similar computer network; (« *diffusion simultanée* »)

“sound recording” has the meaning given to it in the Copyright Act, R.S.C. 1985, c. C-42; (« *enregistrement sonore* »)

“webcast” means the continuous transmission of files to end users, where the files are intended to be copied by the end user onto a storage device only to the extent required to allow listening to the contents of the file at substantially the same time as when the file is received, but excludes on-demand streams. (« *webdiffusion* »)

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

Application

3. (1) Each of CMRRA and SOCAN grants to a non-commercial radio station, a non-exclusive, non-transferable licence for the duration of this tariff, authorizing the reproduction, as often as desired during the term of the licence, of the musical works in the repertoire by a conventional, over-the-air non-commercial radio station and the use of copies resulting from such reproduction for the purpose of:

- (a) upon payment of the royalties set out in subsection 4(1) of this tariff, its radio broadcasting operations, including simulcasting; and
- (b) upon payment of the royalties set out in subsection 4(2) of this tariff, transmitting a musical work in a file to end users in Canada, via the Internet or another similar digital network,
 - (i) if the file contains an audio track, as part of a webcast; or

- (ii) if the file contains a program segment, as a download, on-demand stream, or as part of a webcast.

(2) Upon payment of the royalties set out in subsection 4(2) of this tariff, this tariff also entitles a non-commercial radio station that complies with this tariff, to:

- (a) authorize another person to reproduce a musical work for the purpose of delivering to the non-commercial radio station a file that can then be reproduced and transmitted pursuant to subsection 3(1)(b); and

- (b) authorize members of the public in Canada to further reproduce, for their own private use, a musical work that has been reproduced and transmitted pursuant to subsection 3(1)(b).

(3) Despite subsections (1) and (2), this tariff

- (a) does not authorize the use of any copy made pursuant to this tariff in association with a product, service, cause or institution;

- (b) does not authorize the reproduction of a musical work in a medley, for the purpose of creating a mashup, or for use as a sample, in connection with the uses set out in paragraph 3(1)(b)(i) or 3(i)(b)(ii); and

- (c) does not apply to any non-commercial audio service that is not a conventional, over-the-air radio broadcasting service.

Royalties

4. (1) In consideration of the licence granted pursuant to section 3(1)(a) of this tariff, the annual royalties payable to CMRRA and SOCAN by a non-commercial radio station shall be as follows:

- (a) if the station is not a French-language station,

	CMRRA	SOCAN
on the first \$625,000 of gross operating costs in the year for which the royalties are being paid	0.1472%	0.0128%
on the next \$625,000 gross operating costs	0.2852%	0.0248%
on the rest	0.4232%	0.0368%

(b) if the station is a French-language station,

	CMRRA	SOCAN
on the first \$625,000 of gross operating costs in the year for which the royalties are being paid	0.0368%	0.1232%
on the next \$625,000 gross operating costs	0.0713%	0.2387%
on the rest	0.1058%	0.3542%

(2) In consideration of the licence granted pursuant to with section 3(1)(b) of this tariff, the royalties payable to CMRRA and SOCAN by a non-commercial radio station in respect of each year shall be \$96 to CMRRA and \$4 to SOCAN.

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

Payments, Accounts and Records

5. (1) Royalties payable by a non-commercial radio station to the collective societies for each calendar year shall be due on the 31st day of January of the year following the calendar year for which the royalties are being paid.

(2) With each payment, a non-commercial radio station shall provide to CMRRA and SOCAN, as follows:

(a) a non-commercial radio station with gross operating costs of \$1,250,000 or greater shall forward audited financial statements for the year for which the payment is made;

(b) a non-commercial radio station with gross operating costs of less than \$1,250,000 shall forward a report of the station's actual gross operating costs for the year for which payment is made;

(3) Upon receipt of a written request from CMRRA or SOCAN, a non-commercial radio station that engages in any use of the repertoire as set out in subsection 3(1)(a) herein shall provide to each of CMRRA and SOCAN, CRTC logs with respect to all musical works broadcast by the station during the days selected by CMRRA and SOCAN. The collective societies must give 30 days' notice for such a request and may formulate such a request no more than once a year, each time for a period of 12 days, which may not necessarily be consecutive. The Station shall then forward the information requested to CMRRA and SOCAN in electronic format where possible or in writing, within 15 days of the last day of the period indicated in CMRRA and SOCAN's requests.

(4) Upon receipt of a written request from CMRRA or SOCAN, a non-commercial radio station that engages in any use of the repertoire as set out in subsection 3(1)(b) herein shall provide to the applicable collective society with respect to each file transmitted during the days selected by them, the following information, where available:

- (a) its identifier;
- (b) whether the file is a program segment or an audio track; and
- (c) in respect of each sound recording of a musical work contained within the file:
 - the title of the musical work;
 - the name of each author and composer of the musical work;
 - the name of the performers or of the performing group;
 - the International Standard Recording Code (ISRC) assigned to the sound recording;
 - 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;
 - the name of the person who released the sound recording;
 - the name of each music publisher associated with the musical work;
 - the International Standard Musical Work Code (ISWC) assigned to each musical work contained in the file;
 - the Global Release Identifier (GRid) assigned to the file and, if applicable, the GRid of the album in which the file was released;
 - the running time of the file, in minutes and seconds; and
 - any alternative title used to designate the musical work or sound recording contained in the file.

(4.1) For certainty, information is “available” under subsection (4) if it is in the possession or control of the non-commercial radio station, regardless of the form or the way in which it was obtained.

(5) The collective societies must give 30 days’ notice for a request made pursuant to subsection 5(4) and may formulate such a request no more than once a year, each time for a period of 12 days, which may not necessarily be consecutive. The non-commercial radio station shall then forward the information requested to CMRRA and SOCAN in electronic format where possible or in writing, within 15 days of the last day of the period indicated in CMRRA and/or SOCAN’s requests.

(6) A non-commercial radio station that pays less than \$2,000 per year in royalties will be required to submit the information described in subsections (3), or (4) or both, as applicable, for a period of only four days, which may not necessarily be consecutive.

(7) A non-commercial radio station shall keep and preserve, for a period of one month after the end of the period to which they relate, records from which the information set out in subsections (3), or (4) or both, as applicable, can be readily ascertained.

(8) A non-commercial radio station shall keep and preserve, for a period of six years after the end of the year to which they relate, records from which the information set out in subsection (2) can be readily ascertained.

(9) Each of CMRRA and SOCAN may audit these accounts, records and logs at any time during the period set out in subsections (7) and (8), on reasonable notice and during normal business hours.

(10) Each of CMRRA and SOCAN shall, upon receipt of a report of an audit, supply a copy of the report to the non-commercial radio station that was the object of the audit.

(11) If an audit discloses that royalties due to CMRRA and/or SOCAN have been understated in any year by more than 15 per cent, the non-commercial radio station that was the object of the audit shall pay the reasonable costs of the audit within 30 days of the demand for such payment.

(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.

(13) Adjustments in the amount of royalties owed (including excess payments), as a result of the discovery of an error or otherwise, shall be made within 30 days following the conclusion of an agreement to this effect with CMRRA and SOCAN.

Confidentiality

6. (1) Subject to subsections (2) and (3), SOCAN and CMRRA shall treat in confidence information received from a non-commercial radio station pursuant to this tariff, unless the non-commercial radio station consents in writing to the information being treated otherwise.

(2) SOCAN and CMRRA may share information referred to in subsection (1)

(a) amongst themselves;

(b) with the Copyright Board;

(c) in connection with proceedings before the Board;

(d) to the extent required to effect the distribution of royalties, with its royalty claimants; or

(e) if ordered by law or by a court of law.

(3) Subsection (1) does not apply to information that is publicly available, or to information obtained from someone other than the non-commercial radio station and who is not under an apparent duty of confidentiality to that non-commercial radio station.

Delivery of Notices and Payments

7. (1) All notices and payments to CMRRA shall be sent to 56 Wellesley Street West, Suite 320 Toronto, Ontario M5S 2S3, email: tariffnotices@cmrra.ca, fax number: 416 926-7251, or to any other address or fax number of which the non-commercial radio station has been notified in writing.

(2) All notices and payments to SOCAN shall be sent to 41 Valleybrook Dr., Toronto, Ontario M3B 2S6, email: licence@socan.com, fax number: 416-442-3371, or to any other address or fax number of which the non-commercial radio station has been notified in writing

All communications from CMRRA and SOCAN to a non-commercial radio station shall be sent to the last address or fax number provided in writing by that non-commercial radio station to CMRRA or SOCAN.

(3) A communication or a notice may be delivered by hand, by postage-paid mail or by fax. A payment must be delivered by hand or by postage-paid mail.

(4) All communications, notices or payments mailed in Canada shall be presumed to have been received four business days after the day they were mailed. All communications or notices sent by fax shall be presumed to have been received the day they were transmitted.