

PROPOSED TARIFF

Filed with the Copyright Board by SOCAN on 2022-10-15 pursuant to subsection 67(1) of the *Copyright Act*

Proposed Tariff Title: *SOCAN Tariff 22.A, Online Music Services (2024-2026)*

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

Effective Period: 2024-01-01 – 2026-12-31

SOCAN TARIFF 22.A, ONLINE MUSIC SERVICES (2024-2026)

Proposed statement of royalties to be collected by the Society of Composers, Authors and Music Publishers of Canada (SOCAN) in compensation for the communication to the public by telecommunication, in Canada, of musical or dramatico-musical works forming part of its repertoire, which, where applicable, includes the making available of such works 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.

Application

1. (1) This tariff sets the royalties to be paid for the communication to the public by telecommunication of works in SOCAN's repertoire, which, where applicable, includes the making available of such works 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, in connection with the operation of an online music service and its authorized distributors in 2024-2026, including the use of a musical work in a music video or a concert.

(2) This tariff does not apply to uses covered by other tariffs, including SOCAN Tariff s 16 (Background Music Suppliers), 22.B (Internet – Commercial Radio and Satellite Radio), 22.C (Internet – Other Audio Services), 22.D.1 (Online Audiovisual Services), 22.D.2 (User Generated Content Services), 22.D.3 (Allied Audiovisual Services), 22.E (Internet – Canadian Broadcasting Corporation), 22.G (Internet – Game Services), 25 (Satellite Radio Services) and 26 (Pay Audio and Ancillary Services).

Definitions

Published by the Copyright Board of Canada, in accordance with section 68.2 of the Copyright Act, on November 18, 2022.

2. In this tariff,

“file” means a digital file of a sound recording of a musical work or works, and includes a music video; (« *fichier* »)

“free stream” excludes any stream (whether on-demand stream or semi-interactive stream) delivered to a subscriber; (« *transmission gratuite* »)

“free subscription” means the provision of free access to streams (whether on-demand streams or semi-interactive streams) to a subscriber; (« *abonnement gratuit* »)

“gross revenue” means the gross amounts paid to an online music service or its authorized distributors for access to and use of the service, including membership and subscription fees, amounts paid for advertising, sponsorship, promotion and product placement, commissions on third-party transactions, and amounts equal to the value of the consideration received by an online music service or its authorized distributors pursuant to any contra and barter agreements related to the operation of the service; (« *revenus bruts* »)

“hybrid service” or “hybrid service tier” means an online music service, or a service tier of an online music service, that offers end-users on-demand streams as well as the ability to cache files for offline listening or viewing; (« *service hybride* » or « *option de service hybride* »)

“music video” means an audiovisual representation of a musical work or works, including a concert; (« *vidéo musicale* »)

“on-demand stream” means a stream selected by the end-user and received at a place and time individually chosen by that end-user; (« *transmission sur demande* »)

“online music service” means a service that delivers streams containing musical work(s) (whether on-demand streams or semi-interactive streams) to end-users. For the avoidance of doubt, an “online music service” includes cloud-based music services and other services using similar technology, but excludes a service that offers only streams that are selected by the service and can only be listened to or viewed at a time chosen by the service and for which no advance playlist is published; (« *service de musique en ligne* »)

“play” means the single delivery of a stream (whether on-demand stream or semi-interactive stream); (« *écoute* »)

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

“required information” means, in respect of a file,

- (a) the unique identifier assigned by an online music service to the file;
- (b) the title of each musical work contained in the file;
- (c) the name of each performer or group to whom the sound recording contained in the file is credited;
- (d) the name of the person who released the sound recording;
- (e) the name of each author of each musical work;
- (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 each music publisher associated with each musical work;
- (i) the International Standard Musical Work Code (ISWC) assigned to each musical work;
- (j) the Global Release Identifier (GRid) assigned to each musical work and, if applicable, the GRid of the album in which the musical work was released;
- (k) the running time of the file, in minutes and seconds; and
- (l) any alternative title used to designate each musical work or sound recording;
(« *renseignements requis* »)

“semi-interactive stream” means a stream delivered by an information filtering system that allows an end-user to influence the content of the streams, the timing of the transmission of the streams, or both; (« *transmission semi-interactive* »)

“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 or viewing of the file at substantially the same time as when the file is received; (« *transmission* »)

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

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

Royalties

On-Demand and Semi-Interactive Streams

3. (1) The royalties payable in a month by an online music service that offers on-demand streams and/or semi-interactive streams, including a hybrid service or a service that offers a hybrid service tier, shall be

$$A \times B \times C \div D$$

where

(A) is 10.3 per cent; if the service offers only music videos, 5.9 per cent,

(B) is the gross revenue of the service for the month,

(C) is the number of plays of files requiring a SOCAN licence during the month, and

(D) is the number of plays of all files during the month,

subject to a minimum fee, which shall be the lesser of 60.8¢ per subscriber and 0.13¢ per stream of a file requiring a SOCAN licence.

Free Per-Stream Transactions

(2) Where an online music service subject to subsection (1) also offers free streams, the royalties shall be 0.13¢ per stream (whether on-demand stream or semi-interactive stream) of a file requiring a SOCAN licence.

Reporting Requirements

Service Identification

4. (1) No later than the earlier of 20 days after the end of the first month during which an online music 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:

(a) the name of the person who operates the service, including

(i) if a corporation, its name and a mention of its jurisdiction of incorporation,

- (ii) if a sole proprietorship, the name of the proprietor,
- (iii) if a partnership, the names of each partner, and
- (iv) in any event, the names of the principal officers or operators of the service or any other service,

together with any other trade name under which the service carries on business;

- (b) the address of its principal place of business;
- (c) 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 payment of royalties;
- (d) the name and address of any authorized distributor;
- (e) the Uniform Resource Locator (URL) of each website and the name of each application or platform at or through which the service is or will be offered, as applicable; and
- (f) all of the services or service tiers identified in section 3 that are offered by the service.

Sales and Music Use Reporting

(2) No later than 20 days after the end of each month, any online music service that is required to pay royalties pursuant to this tariff shall provide to SOCAN a report setting out, for that month, the following information:

- (a) in relation to each file that was delivered (whether as an on-demand stream or semi-interactive stream), the required information;
- (b) the number of plays of each file;
- (c) the total number of plays of all files;
- (d) the number of subscribers to the service during the month and the total amounts paid by them during that month;
- (e) the number of subscribers provided with free subscriptions and the total number of plays of all files by such subscribers as streams;
- (f) the gross revenue of the service for the month;
- (g) the total number of free streams delivered; and

(h) for the hybrid service or hybrid service tier, the number of times each file was cached onto end-users' local storage medium or device.

(3) If the 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.

(4) An online music service that offers more than one service or service tier identified in section 3 shall file a separate report for each service or service tier pursuant to each subsection of this section.

(5) An online music service that offers music videos shall file the required information separately from the information dealing with audio-only files.

Files Made Available

5. Upon request, an online music service shall provide to SOCAN the required information for all files that were made available to members of the public for on-demand streaming at any time during the year, regardless of whether the file was transmitted to any end-user. SOCAN shall not make such a request more frequently than twice per year.

Payment of Royalties and Interest on Late Payments

6. (1) Royalties shall be due no later than 20 days after the end of each quarter.

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

(3) All amounts required to be reported or paid under this tariff shall be reported or paid in Canadian dollars.

(4) 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.

Adjustments

7. Adjustments to any information provided pursuant to section 3 or 4 shall be provided with the next report dealing with such information.

8. (1) Subject to subsection (2), 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.

(2) Any excess payment resulting from an online music service providing incorrect or incomplete information about a file shall be deducted from future amounts owed for the use of works owned by the same person as the work in that file.

Records and Audits

9. (1) An online music 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 3 and 4 can be readily ascertained.

(2) SOCAN may audit these records at any time during the period set out in subsection (1) on reasonable notice and during normal business hours.

(3) Subject to subsection (4), if an audit discloses that royalties due have been understated in any quarter by more than 10 per cent, the online music service shall pay the reasonable costs of the audit within 30 days of the demand for such payment.

(4) For the purposes of subsection (3), any amount owing as a result of an error or omission on the part of SOCAN shall not be taken into account.

Confidentiality

10. (1) Subject to subsections (2) and (3), SOCAN, the online music 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.

(2) Information referred to in subsection (1) may be shared

(a) between the service and its authorized distributors in Canada;

(b) in connection with the collection of royalties or the enforcement of a tariff, with other collective societies;

(c) with the Copyright Board;

(d) in connection with proceedings before the Copyright Board, once the disclosing party has had a reasonable opportunity to request a confidentiality order;

(e) with any person who knows or is presumed to know the information;

(f) to the extent required to effect the distribution of royalties;

(g) with SOCAN's agents and service providers to the extent required by the service providers

for the service they are contracted to provide; and

(h) if required by law.

(3) Subsection (1) does not apply to information that must be provided pursuant to the *Copyright Act*, to information that is publicly available, to aggregated information, or to information obtained from someone other than the online music service or its authorized distributors and who is not under an apparent duty of confidentiality with respect to the supplied information.

Addresses for Notices

11. (1) Anything addressed to SOCAN shall be sent to 41 Valleybrook Drive, Toronto, Ontario M3B 2S6, email: licence@socan.com, or to any other address or email address of which an online music service has been notified in writing.

(2) Anything that SOCAN sends to an online music service shall be sent to the last address or email address of which SOCAN has been notified in writing.

Delivery of Notices

12. (1) Subject to subsection (2), a notice may be delivered by hand, by postage-paid mail, by email or by File Transfer Protocol (FTP).

(2) Information provided pursuant to sections 4 and 5 shall be delivered electronically, by way of delimited text file or in any other format agreed upon by SOCAN and the online music service.

(3) A notice or payment mailed in Canada shall be presumed to have been received four business days after the day it was mailed.

(4) A notice sent by email or by FTP shall be presumed to have been received the day it is transmitted.