

Copyright Board
Canada



Commission du droit d'auteur
Canada

November 5, 2019

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

- SOCAN, Sports Events (2021-2023)
- SOCAN Tariff 22.A (Online Music Services), (2021-2023)
- SOCAN Tariff No. 22.A.R, Reproduction of Musical Works Embedded in Music Videos for Transmission by a Service (2021-2023)
- SOCAN, Internet – Commercial Radio, Satellite Radio and Pay Audio (2021-2023)
- SOCAN, Internet – Other Audio Websites (2021-2023)
- SOCAN, Internet – Audiovisual Content (2021-2023)
- SOCAN Tariff No. 22.D.1.R, Reproduction of Musical Work Embedded in Audiovisual Works for Transmission by a Service (2021-2023)
- SOCAN, Internet – User-Generated Content (2021-2023)
- SOCAN, Allied Audiovisual Services (2021-2023)
- SOCAN, Internet – Canadian Broadcasting Corporation (2021-2023)
- SOCAN, Internet – Game Sites (2021-2023)
- SOCAN, Satellite Radio Services (2021-2023)

By that same section, the Copyright Board hereby gives notice to any person affected by these proposed tariffs.

Users or their representatives who wish to object to the above-mentioned proposed tariffs 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 5, 2019**.

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PROPOSED TARIFF

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

2019-10-15

SOCAN

Tariff 25

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

2021-01-01 – 2023-12-31

Proposed citation:
SOCAN, *Satellite Radio Services (2021-2023)*

PROPOSED STATEMENT OF ROYALTIES TO BE COLLECTED BY THE SOCIETY OF COMPOSERS, AUTHORS AND MUSIC PUBLISHERS OF CANADA (SOCAN)

in compensation for the right to communicate to the public by telecommunication, in Canada, musical or dramatico-musical works forming part of its repertoire including the right to make such works available 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.

Tariff No. 25

USE OF MUSIC BY SATELLITE RADIO SERVICES

GENERAL PROVISIONS

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

As used in this tariff, the terms “licence,” “licence to perform” and “licence to communicate to the public by telecommunication” means a licence to communicate to the public by telecommunication or to authorize the communication to the public by telecommunication, including the right to make works available 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.

Each licence shall subsist according to the terms set out therein. SOCAN shall have the right at any time to terminate a licence for breach of terms or conditions upon 30 days’ notice in writing.

Short Title

1. This tariff may be cited as the *Re:Sound-SOCAN Satellite Radio Services Tariff (Re:Sound: [...]; SOCAN: 2021-2023)*.

Definitions

2. In this tariff,

“month” means a calendar month; (« *mois* »)

“number of subscribers” means the average number of subscribers during the reference month; (« *nombre d’abonnés* »)

“reference month” means the second month before the month for which royalties are being paid; (« *mois de référence* »)

“service” means a multi-channel subscription satellite radio service licensed by the Canadian Radio-television and Telecommunications Commission as well as any similar service distributed in Canada; (« *service* »)

“service revenues” means the amounts paid by subscribers for a service, advertising revenues, product placement, promotion and sponsorship, net revenues from the sale of goods or services and commissions on third-party transactions. This includes activation and termination fees, as well as membership, subscription and all other access fees. It excludes advertising agency fees, revenue accruing from any business that is not a necessary adjunct to the distribution of the service or the use of the service’s broadcasting facilities and revenue generated from the sale of hardware and accessories used in the reception of the service; (« *recettes du service* »)

“subscriber” means a person who is authorized to receive in Canada one or more signals offered by a service, whether for free or for valuable consideration, excluding a commercial subscriber; (« *abonné* »)

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

Application

3. (1) This tariff sets the royalties to be paid each month by a service to communicate to the public by telecommunication, in Canada, published sound recordings in Re:Sound’s repertoire embodying musical works, performers’ performances in

Re:Sound's repertoire of such works, and musical or dramatico-musical works in SOCAN's repertoire, in connection with the operation of the service, for direct reception by subscribers for their private use.

(2) This tariff does not authorize

(a) any use of a work, sound recording or a performer's performance by a service in connection with its delivery to a commercial subscriber; or

(b) any use by a subscriber of a work or sound recording or a performer's performance transmitted by a service other than a use described in subsection (1).

(3) This tariff does not apply to uses covered by other tariffs, including Re:Sound Tariff 1.A, 1.C, 3, 5, 6, or 8, SOCAN Tariff 16, 18 or 22, or the *SOCAN-Re:Sound Pay Audio Services Tariff*. For greater certainty, this tariff does not apply to the communication to the public by telecommunication of sound recordings or musical works to end-users via the Internet, a cellular, mobile or wireless network or any similar network, but does permit the use of wireless functionalities (such as a Wi-Fi or Bluetooth functionality) integrated with a satellite radio receiving device that allows the relay of a satellite radio signal to local speakers for subscribers' private use.

Royalties

4. (1) A service shall pay to SOCAN, for each month of the tariff term, 5 per cent of its service revenues for the reference month, subject to a minimum fee of 50¢ per subscriber.

(2) A service shall pay to Re:Sound each month [...].

Reporting Requirements

5. (1) No later than on the first day of each month of the tariff term, a service shall pay the royalties for that month as set out in section 4 and shall provide for the reference month

(a) the total number of subscribers to the service; and

(b) its service revenues, broken down into amounts paid by subscribers for the service, advertising revenues, sponsorship revenues and other revenues.

Sound Recording and Musical Work Use Information

6. (1) Each month, a service shall provide, to both Re:Sound and SOCAN, the following information in respect of each musical work, or part thereof, and each sound recording embodying a musical work, or part thereof, broadcast by the service:

(a) the date, time and duration of the broadcast of the musical work and sound recording;

(b) the title of the work and sound recording and the name of its author and composer; and

(c) the name of the main performer or performing group and, if applicable, the album name and the record label.

However, the service shall not be deemed to be in contravention of this subsection (1) for failure to report the complete information listed above for any given musical work or sound recording or parts thereof unless there were commercially reasonable means available to the service to obtain such information, and the unreported information exists with respect to the musical work or sound recording.

(2) In addition to the reporting required under subsection (1), where such information is available on a commercially reasonable basis to the service, the service shall also provide to both Re:Sound and SOCAN the following information in respect of each musical work, or part thereof, and each sound recording embodying a musical work, or part thereof, transmitted by the service:

(a) the catalogue number of the album;

(b) the International Standard Musical Work Code (ISWC) of the work;

(c) the Universal Product Code (UPC) of the album;

- (d) the International Standard Recording Code (ISRC) of the sound recording;
- (e) the names of all of the other performers (if applicable);
- (f) the duration of the musical work and sound recording as listed on the album, the track number on the album, and the year of the album and track;
- (g) the type of usage (feature, theme, background, etc.); and
- (h) whether the track is a published sound recording.

(3) The information set out in subsections (1) and (2) shall be provided electronically, in a format agreed upon by Re:Sound, SOCAN and the service, no later than 10 business days after the service receives the monthly music information report from its music information report supplier for a given month (in the case of SiriusXM Canada Inc., such supplier is SiriusXM Radio Inc.), and in any case no later than 45 days plus 10 business days after the end of a given month.

Records and Audits

7. (1) A service shall keep and preserve, for a period of six months after the end of the month to which they relate, records from which the information set out in section 6 can be readily ascertained.

(2) A service 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 section 5 can be readily ascertained.

(3) Re:Sound and/or SOCAN may audit these records at any time during the period set out in subsection (1) or (2), on reasonable notice and during normal business hours.

(4) Re:Sound and SOCAN shall, upon receipt, supply a copy of the report of the audit to the service that was audited and to the other collective society.

(5) If an audit discloses that royalties due to any collective society have been understated in any month by more than 10 per cent, the service shall pay the amount of the understatement and the reasonable costs of the audit within 30 days of the demand for such payment, provided that the understatement has been shown by an audit report supplied to the service under subsection (4) and the audit costs are evidenced by an invoice issued by the auditor.

Confidentiality

8. (1) Subject to subsections (2) and (3), information received from a service pursuant to this tariff shall be treated in confidence, unless the service that supplied the information consents in writing to the information being treated otherwise.

(2) A collective society may share information referred to in subsection (1)

(a) with another collective society that is subject to this tariff;

(b) with the Copyright Board;

(c) in connection with proceedings before the Copyright Board, if the service that supplied the information had the opportunity to request a confidentiality order;

(d) to the extent required to effect the distribution of royalties, with any other collective society, collecting body, royalty claimant, and their agents; and

(e) if required by law.

(3) Subsection (1) does not apply to information that is publicly available, or to information obtained from someone other than the service that supplied the information and who is not under any actual or apparent duty of confidentiality with respect to the supplied information.

Adjustments

9. Adjustments in the amount of royalties owed (including excess payments), as a result of discovering an error or otherwise, shall be made on the date the next royalty payment is due.

Interest on Late Payments

10. 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.

Addresses for Notices, etc.

11. (1) Anything addressed to Re:Sound shall be sent to 1235 Bay Street, Suite 900, Toronto, Ontario M5R 3K4, email: satellite@resound.ca, fax number: 416-962-7797, or to any other address, email address or fax number of which the service has been notified in writing.

(2) Anything addressed to SOCAN shall be sent to 41 Valleybrook Drive, Toronto, Ontario M3B 2S6, email: licence@socan.com, fax number: 416-445-7108, or to any other address, email address or fax number of which the service has been notified in writing.

(3) Anything addressed to a service shall be sent to the last address, email address or fax number of which the collective society has been notified in writing.

Delivery of Notices and Payments

12. (1) A notice may be delivered by hand, by postage-paid mail, by fax, by email or by file transfer protocol (FTP). A payment may be delivered by hand, by postage-paid mail or by electronic bank transfer.

(2) The information set out in section 6 shall be sent by email.

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

(4) Anything sent by fax, by email, by FTP or by electronic bank transfer shall be presumed to have been received on the day it was transmitted.