

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 22.A.R*

For the reproduction of musical works

2021-01-01 –2023-12-31

Proposed citation:

*SOCAN Tariff No. 22.A.R, Reproduction of Musical Works Embedded in Music Videos for Transmission by a Service, 2021-2023*

PROPOSED STATEMENT OF ROYALTIES TO BE COLLECTED BY SOCAN FOR THE REPRODUCTION OF MUSICAL WORKS EMBEDDED IN MUSIC VIDEOS FOR THEIR TRANSMISSION BY A SERVICE, IN CANADA, FOR THE YEAR 2021-2023

*Short Title*

1. This tariff may be cited as *SOCAN Tariff No. 22.A.R, Reproduction of Musical Works Embedded in Music Videos for Transmission by a Service, 2021-2023*.

*Definitions*

2. In this tariff,

“authorized distributor” means any person who has entered into an agreement with a licensee permitting that person to distribute the service; (« *distributeur autorisé* »)

“download” means the receipt by an end-user of a file from a download service and making a reproduction thereof onto a storage device; (« *téléchargement* »)

“download service” means a service that transmits to end-users a file that is intended to be copied onto a storage device and results in a durable copy of that file; (« *service de téléchargement* »)

“end-user” means a person who accesses an online music service, whether the person pays a fee or provides other consideration for the service or uses the service free of charge; (« *utilisateur final* »)

“file” means a digital file of a music video; (« *fichier* »)

“free subscription” means the provision of free access to limited downloads or webcasts to a subscriber; (« *abonnement gratuit* »)

“gross revenue” means, in relation to an online music service, all revenues received by a licensee whether in cash, in kind, in barter or contra, including revenues received for use of the service, and revenues received for promotional activities, such as advertising, that are attributed to the operation of the service; (« *revenus bruts* »)

“hybrid webcast service” means a webcast service where the files transmitted to an end-user may also be copied onto a storage device for the purpose of listening to them later, and where the period for which such files are retained, or the number of files that may be so retained, or both, is limited, and established by the service; (« *service de webdiffusion hybride* »)

“identifier” means the unique identifier an online music service assigns to a file or bundle; (« *identificateur* »)

“interactive webcast service” means a webcast service where the files are chosen by the end-user and received at a place and time individually chosen by that person; (« *service de webdiffusion interactive* »)

“licensee” means a person that operates an online music service that is licensed under this tariff; (« *titulaire de licence* »)

“limited download service” means a download service where the downloaded files, through technological means, become unusable upon the happening of a certain event or events, such as the end of the end-user’s subscription; (« *service de téléchargement limité* »)

“mixed bundle” means a bundle that contains at least one file containing an audio track and at least one file containing a music video; (« *ensemble mixte* »)

“music video” means an audiovisual representation of one or more musical works, including a concert; (« *vidéo de musique* »)

“non-interactive webcast service” means a webcast service where the end-user exercises no control over the content nor the timing of the transmission of the files; (« *service de webdiffusion non interactive* »)

“online music service” means a non-interactive webcast service, a semi-interactive webcast service, an interactive webcast service, a hybrid webcast service, a limited download service, or a permanent download service; (« *service de musique en* »)

*ligne* »)

“permanent download service” means a download service, but does not include a limited download service; (« *service de téléchargement permanent* »)

“play” means the single performance of a file by an end-user; (« *écoute* »)

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

“repertoire” means the musical works for which *SOCAN* are entitled to grant a licence pursuant to section 3 of this tariff; (« *répertoire* »)

“semi-interactive webcast service” means a webcast service where the end-user exercises some level of control over the content of the files, or timing of the transmission of the files, or both; (« *service de webdiffusion semi-interactive* »)

“SOCAN” means the Society of Composers, Authors and Music Publishers of Canada (“SOCAN”), SODRAC 2003 Inc. and the Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) Inc.; (« *SOCAN* »)

“subscriber” means a person who accesses an online music service, pursuant to a contract or otherwise, whether the person pays a fee or provides other consideration for the service or uses the service free of charge; (« *abonné* »)

“unique visitor” means each end-user, excluding a subscriber, who receives a free on-demand stream from a service in a month; (« *visiteur unique* »)

“webcast service” means a service that transmits 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 or viewing the contents of the file at substantially the same time as when the file is received. (« *service de webdiffusion* »)

#### *Application*

3. (1) This tariff entitles an online music service that complies with this tariff, and its authorized distributors,

(a) to reproduce all or part of a musical work in the repertoire already embedded in a music video for the purpose of transmitting it in a file to end-users in Canada via the Internet or another digital network, including by wireless transmission;

(b) to authorize another person to reproduce a musical work for the purpose of delivering to the service a file that can then be reproduced and transmitted pursuant to paragraph (a); and

(c) to 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 paragraph (a),

in connection with the operation of the online music service.

(2) For greater certainty, this tariff does not apply to activities subject to the reproduction right licence in force between SODRAC and the Canadian Broadcasting Corporation / Société Radio-Canada or to activities subject *SODRAC Tariff No. 7* or *SOCAN Tariff No. 22.D.1.R* or *SOCAN Tariff No. 2.A.R.*

4. (1) This tariff does not authorize the reproduction of a musical work of the repertoire embedded in a music video in a medley, for the purpose of creating a mashup, for use as a sample or in association with a product, service, cause or institution.

(2) This tariff does not entitle the owner of the copyright in a sound recording of a musical work to authorize the reproduction of that work.

(3) This tariff does not authorize the production of a music video or the synchronization of a musical work in a music video. It authorizes only the transmission by any means whatsoever of existing music videos in which the musical work is already embedded.

*Royalties Payable*

*Permanent and Limited Download Services*

5. (1) The royalties payable by a licensee that operates a download service for music videos shall be 5.64 per cent of the amount paid by end-users for the downloads of music videos, multiplied by SOCAN share in those works payable to SOCAN.

*Subscription-Based Limited Download Service*

(2) The royalties payable by a licensee that operates a limited download service with a subscription for music videos, with or without webcasting shall be,

$$\frac{A \times B}{C}$$

where

(A) is 5.64 per cent of the gross revenue from the service for the month, excluding amounts paid by end-users for permanent downloads,

(B) is the number of plays of files requiring a SOCAN licence during the month multiplied by SOCAN's share in the musical work, and

(C) is the total number of plays of files during the month,

Where a service does not report to SOCAN the number of plays of files as limited downloads, (B) will be deemed to equal either (a) the number of plays of the same music video as a webcast during the month, or (b) if the music video has not been played as a webcast during the month, the average number of plays of all music videos as webcast during the month.

*Webcast*

(3) The royalties payable in a month by a service that offers webcast but does not offer limited downloads shall be

$$\frac{A \times B}{C}$$

where

(A) is 3.07 per cent of the gross revenue from the service for the month, excluding amounts paid by end-users for downloads,

(B) is the number of plays of files requiring a SOCAN/ licence during the month multiplied by SOCAN's share in the musical work, and

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

For clarity, if the service permits an end-user to copy files onto a local storage medium or device for later access, the service shall pay royalties pursuant to subsection (1), not pursuant to this subsection.

*Free Subscription to a Webcast Service*

(4) The royalties payable in a month by a service that offers a free webcast service shall be the lesser of 16.37¢ per unique visitor per month and 0.054¢ per free webcast requiring a SOCAN licence received by that unique visitor in that month.

(5) Where an online music service that is required to pay royalties under any of subsections (2) to (4) also offers downloads, the royalty payable by the service for each download requiring a SOCAN licence shall be 5.64 per cent of the amount paid by an end-user for the download, subject to a minimum of 2.6¢ per musical work in a music video that contains 19 musical works or more, per permanent download, and 8.04¢ per permanent download in all other cases.

#### *Minimum Royalties*

(6) The royalties payable by a licensee pursuant to subsection 5(1) shall be no less than \$0.066 per music video containing only one musical work, and \$0.026 per musical work in a music video containing two or more musical works, where both of these amounts are to be adjusted for the partial ownership of the musical works by SOCAN.

(7) The royalties payable by a licensee pursuant to subsection 5(2) shall be a minimum equal to the greater of

30.08¢ per subscriber; and

0.097¢ for each play of a file requiring a SOCAN licence.

(8) The royalties payable by a licensee pursuant to subsection 5(3) shall be a minimum equal to the greater of

16.37¢ per subscriber; and

0.054¢ for each play of a file requiring a SOCAN licence.

#### *Mixed Bundles*

(9) Where an end-user pays for a mixed bundle, the amount paid by the end-user for the files containing music videos in the bundle shall be deemed to be (a) the price of the bundle, multiplied by the price of the files containing the music videos when not sold in a bundle, divided by the sum of the prices of all files in the bundle when not sold in a bundle; or (b) when information required to calculate the amount in paragraph (a) is not available, the price of the bundle, multiplied by two, divided by the sum of the number of files containing audio tracks and two times the number of files containing a music video.

#### *Adjustments*

(10) For the purpose of calculating the minimum payable pursuant to subsection (2) and subsection (3), the number of subscribers shall be determined as at the end of the month in respect of which the royalties are payable.

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

#### ADMINISTRATIVE PROVISIONS

##### *Reporting Requirements*

6. No later than the earlier of 20 days after the end of the first month during which a licensee, in connection with the operation of an online music service, communicates or reproduces a file requiring a SOCAN licence under this tariff, or authorizes another person to do the same, and in any event before the service first makes that file available to the public, the licensee 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) the name of the proprietor of an individual proprietorship,

(iii) if a partnership, the name 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 and, if different from that name, address and email, for the payment of royalties, the provision of information pursuant to subsection 16(2) and any inquiries related thereto;

(d) the name of each online music service operated by the licensee;

(e) the name and address of any authorized distributor; and

(f) the Uniform Resource Locator (URL) of each Internet site at or through which the service is or will be offered.

*Music Use Report*

*Definition*

7. (1) In this section, “required information” means, in respect of a file, where available

(a) its identifier;

(b) the title of the musical work or works it contains;

(c) the name of each performer or group to whom the music video contained in the file is credited;

(d) the name of the person who released the music video contained in the file;

(e) if the licensee believes that a SOCAN licence is not required, information that establishes why the licence is not required;

(f) the name of each author of each musical work;

(g) the International Standard Recording Code (ISRC) assigned to the music video contained in the file;

(h) the name of each music publisher associated with each musical work contained in the file;

(i) the International Standard Musical Work Code (ISWC) assigned to each musical work contained in the file;

(j) the Global Release Identifier (GRid) assigned to the file and, if applicable, the GRid of the album or bundle in which the file was released;

(k) the running time of the file, in minutes and seconds; and

(l) any alternative title used to designate the musical work or the music video contained in the file.

(1.1) For certainty, information is “available” under subsection (1) if it is in the possession or control of the licensee operating the relevant online music service, regardless of the form or the way in which it was obtained.

*Permanent and Limited Download Services*

(2) No later than 20 days after the end of each quarter, a service that is required to pay royalties pursuant to subsection 5(1) shall provide to SOCAN a report setting out, for that quarter, allocated by month, in relation to each file that was downloaded by an end-user,

(a) the required information; and

(b) separately, the number of permanent downloads and limited downloads for each file, the amounts paid by end-users for the file, including, if the file is offered as a permanent download or limited download at different prices from time to time, the number of permanent downloads and limited downloads delivered at each different price.

*Subscription-Based Limited Download and Webcast Services*

(3) No later than 20 days after the end of each quarter, a service that is required to pay royalties pursuant to subsections 5(2) and 5(3) shall provide to SOCAN a report setting out, for that quarter, allocated by month,

(a) in relation to each file that was delivered as a limited download or webcast to an end-user, the required information;

(b) separately, the total number of plays of each file as a webcast and as a subscription-based limited download;

(c) the number of subscribers to the service during the quarter and the total amounts paid by them during that quarter;

(d) the number of plays by non-subscribers and the total amounts paid by them during that quarter;

(e) the gross revenue from the online music service for the quarter;

(f) if the online music service or any authorized distributor has engaged in any promotional programs during the quarter pursuant to which webcast and subscription-based limited downloads have been provided to end-users free of charge, details of those programs; and

(g) the number of subscribers provided with free subscriptions, the total number of limited downloads and webcast provided to such subscribers, and the total number of plays of all files by such subscribers as subscription-based limited downloads and, separately, as on-demand streams.

*Free Subscription to a Webcast Service*

(4) No later than 20 days after the end of each quarter, an online music service that is required to pay royalties pursuant to subsection 5(4) shall provide to SOCAN a report setting out, for that quarter, allocated by month,

(a) in relation to each file that was delivered as a free webcast, the required information;

(b) the total number of plays of all files as free webcasts;

(c) the number of unique visitors;

(d) a description of the manner in which each unique visitor is identified; and

(e) the number of free webcasts provided to each unique visitor.

(5) An online music service that is required to pay royalties pursuant to more than one subsection of section 5 shall file a separate report pursuant to each subsection of this section.

(6) Whenever an online music service is required to report its gross revenue for a month, it shall include, separately — and in addition to any other information specifically required by the relevant subsection — the amount of revenue received from subscribers, the amount received from non-subscribers, the amount received from advertisers, the amount attributable to sponsorships, and the amounts received from each additional revenue source.

(7) Using the information received pursuant to subsections (1) to (4) and any other information at its disposal, SOCAN shall make reasonable efforts to determine the information required to calculate and distribute the royalties payable pursuant to section 5.

(8) An online music service shall provide the information set out in subsection (1) with respect to each otherwise identical music video if the musical content in each such work is different.

(9) If the information supplied pursuant to subsection (1) or (8) does not allow SOCAN to reasonably proceed to the distribution of royalties, SOCAN, after first conducting its own reasonable search, may further inquire with the online music service, which will make reasonable efforts to supply any further, relevant information to assist SOCAN in its royalty distribution, including

(a) any alternate title, whether in the original language or not;

(b) the country, year and type of production;

(c) the theatrical or other release date; and

(d) the name of the director.

8. (1) As soon as possible after receiving the information set out in section 7, SOCAN shall notify the online music service of those music videos that include a work for which a SOCAN licence is required. With respect to such works, SOCAN shall also provide to the online music service a report setting out

(a) each musical work embedded in the music video;

(b) the duration of each musical work;

(c) for each musical work requiring a SOCAN licence, an indication to that effect;



(d) if SOCAN administers only part of the rights in a musical work, the fraction of rights SOCAN administers; and

(e) the amount of royalties payable to SOCAN for each file of the music video delivered to end-users.

(2) At least once each quarter, SOCAN shall provide a new report with respect to music videos for which the information set out in paragraph (1)(c) or (d) has changed.

9. Royalties payable pursuant to section 5 are due no later than six months after the quarter. If SOCAN does not provide the report under section 8 prior to the date where the payment is due, the payment of royalties for that quarter is deferred to the next quarter.

#### *Repertoire Disputes*

10. (1) A licensee that disputes the indication that a file contains a work in the repertoire or requires a SOCAN licence shall provide to SOCAN information that establishes why the licence is not required, unless the information was provided earlier.

(2) An online music service that disputes the indication more than 20 days after receiving a report pursuant to section 8 is not entitled to interest on the amounts owed to it.

#### *Adjustments*

11. (1) Updates to any information provided pursuant to sections 6, 7, 8 and 10 shall be provided with the next report dealing with such information.

(2) Subject to subsection (3), 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.

(3) Any excess payment resulting from a licensee providing incorrect or incomplete information about a file shall be deducted from future amounts owed in respect of works owned by the same person as the work in the file.

#### *Records and Audits*

12. (1) A licensee 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 subsection 5(9) and sections 6, 7, and 10 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 licensee 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*

13. (1) Subject to subsections (2) and (3), SOCAN and each licensee and authorized distributor 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) with the collectives' service providers, solely to the extent required by the service providers for the service they are contracted to provide;

(b) with the Copyright Board;

(c) in connection with proceedings before the Board and any other court or administrative tribunal, once the person whose information is to be shared has had a reasonable opportunity to request a confidentiality order;

(d) with any person who knows the information;

(e) to the extent required to effect the distribution of royalties, with royalty claimants; and

(f) if required by law or ordered by a court of law.

(3) Where confidential information is shared with a service provider as per paragraph 2(a), the service provider shall sign a confidentiality agreement, which shall be shared prior to the release of the information with the party whose information is to be disclosed, and shall not use any confidential information for any purpose other than to assist in the conduct of an audit or in the distribution of royalties to rights holders.

(4) Subsection (1) does not apply to information that is publicly available, or to information obtained from someone other than the collectives, a licensee or their authorized distributors, and who is not under an apparent duty of confidentiality to the service.

#### *Interests on Late Payments*

14. (1) Subject to subsection (4), any amount not received by the due date shall bear interest from that date until the date the amount is received.

(2) Any overpayment resulting from an error or omission on the part of SOCAN shall bear interest from the date of the overpayment until the overpayment is refunded.

(3) For the purposes of this section, a report provided pursuant to section 8 following the late reception of a report provided pursuant to section 7 is deemed to have been received within the time set out in section 8 as long as SOCAN provides the report no more than 20 days after receiving the late report.

(4) Any amount owing by an online music service as a result of an error or omission on the part of SOCAN shall not bear interest until 30 days after SOCAN has corrected the error or omission.

(5) 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.

#### *Delivery of Notices and Payments*

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

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

(2) To the extent possible, information that an online music service provides pursuant to section 7 shall be delivered electronically, in Excel format or in any other format agreed upon by SOCAN and the online music service. Each type of information shall be provided in a separate field.

(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 fax, by email or by FTP shall be presumed to have been received the day it is transmitted.

#### *Termination*

17. (1) SOCAN may, after providing 30 days' notice in writing, terminate the licence of an online music service that does not comply with this tariff.

(2) Upon termination of the licence, an online music service shall immediately withdraw from the market all copies it owns that contain a work of the repertoire.

*Term*

18. This tariff comes into force on January 1, 2021, and ends on December 31, 2023.