

PROPOSED TARIFF

Filed with the Copyright Board by Canadian Musical Reproduction Rights Agency (“CMRRA”) on 2023-10-13 pursuant to subsection 67(1) of the *Copyright Act*.

Proposed Tariff Title: CMRRA Audiovisual Services Tariff, 2025-2027

For the reproduction of musical works, in Canada, by audiovisual services in 2025-2027.

Effective Period: 2025-01-01 – 2027-12-31

CMRRA AUDIOVISUAL SERVICES TARIFF (2025-2027)

STATEMENT OF ROYALTIES TO BE COLLECTED BY CMRRA FOR THE REPRODUCTION OF MUSICAL WORKS, IN CANADA, BY AUDIOVISUAL SERVICES IN 2025-2027

Short Title

1. This tariff may be cited as the *CMRRA Audiovisual Services Tariff, 2025-2027*.

Definitions

2. The following definitions apply in this tariff.

“additional information” means, in relation to each musical work contained in a file, the following information, if available:

- (a) the identifier of the musical work and, if applicable, of the sound recording in which it is embodied;
- (b) the name of the person who released the sound recording;
- (c) the International Standard Recording Code (ISRC) assigned to the sound recording;
- (d) if the sound recording is or has been released in physical format as part of an album or other product, the name, identifier, product catalogue number and Universal Product Code (UPC) assigned to the album or other product, together with the associated disc and track numbers;
- (e) the name of the music publisher associated with the musical work;
- (f) the International Standard Musical Work Code (ISWC) assigned to the musical work;
- (g) the Global Release Identifier (GRid) assigned to the sound recording and, if applicable, the GRid of the album or other product in which the sound recording was released;
- (h) the running time of the sound recording, in minutes and seconds; and
- (i) any alternative title used to designate the musical work or sound recording.
(« *renseignements additionnels* »)

“audiovisual content” means any combination of sounds and visual images that are intended to inform, enlighten, or entertain, irrespective of its duration, initial intended use, or manner of distribution, but excludes a music video covered by the *CMRRA Online Music Services Tariff (Music Videos)*. (« *contenu audiovisuel* »)

“audiovisual service” means a service that delivers audiovisual content to end users as streams, downloads, or both, by any means of telecommunication (including the Internet or another digital network), and includes, for greater certainty, any form of video-on-demand service. (« *service audiovisuel* »)

“bundle” means two or more digital files offered as a single product, if at least one file is a permanent download; (« *ensemble* »)

“CMRRA” means Canadian Musical Reproduction Rights Agency Ltd. (« *CMRRA* »)

“CMRRA work” means all or part of a musical or dramatico-musical work of which CMRRA may authorize the reproduction in Canada, in proportion to the rights it holds. (« *œuvre CMRRA* »)

“CSI” means CMRRA-SODRAC Inc. (« *CSI* »)

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

“file” means a digital file of audiovisual content. (« *fichier* »)

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

“identifier” means the unique identifier assigned to any audiovisual content, musical work, sound recording, cue sheet, file, album, or other product, as the case may be. (« *identificateur* »)

“gross revenue” means the aggregate of

(a) all revenues payable by or on behalf of end users for access to streams or downloads delivered by an audiovisual service or its authorized distributors, including membership, subscription, and other access fees;

(b) all other revenues payable to an audiovisual service or its authorized distributors in respect of the audiovisual service, including amounts paid for advertising, product placement, promotion, and sponsorship, and commissions on third-party transactions; and

(c) amounts equal to the value of the consideration received by an audiovisual service or its authorized distributors pursuant to any contra and barter agreements related to the operation of the audiovisual service,

excluding any revenues that are already included in calculating royalties pursuant to another CMRRA or CSI tariff. (« *revenus bruts* »)

“limited download” means a download that uses technology that causes the file to become unusable upon the happening of a certain event. (« *téléchargement limité* »)

“non-subscriber” means an end user other than a subscriber, and includes an end user who receives downloads or streams from an audiovisual service subject to the requirement that

advertising be viewed or listened to. (« *non-abonné* »)

“permanent download” means a download other than a limited download. (« *téléchargement permanent* »)

“play” means the single performance of a stream. (« *écoute* »)

“program” means any audiovisual content other than user-generated content (« *émission* »)

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

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

“required information” means, in relation to a file,

(a) the title of the audiovisual content it contains, including any subtitle or alternate title, and any unique identifier used by the audiovisual service in relation to the audiovisual content;

(b) the episode number or title of the episode it contains, if applicable, and any unique identifier used by the audiovisual service in relation to the episode;

(c) its duration in minutes and seconds;

(d) the International Standard Audiovisual Number (ISAN) assigned to the file, if applicable;

(e) in the case of a translated program, its title in the language of the original production; and

(f) in relation to each musical work embodied in the file,

(i) its title,

(ii) the name(s) of its author(s) and composer(s),

(iii) the name of each performer or group to whom the sound recording of the musical work is credited,

(iv) the duration of the musical work as embodied in the file, in minutes and seconds, and

(v) whether it is used as background or foreground music.

(« *renseignements obligatoires* »)

“stream” means a file that is intended to be copied onto a local storage medium or device only to the extent required to allow playing the file at substantially the same time as when the file is transmitted. (« *transmission* »)

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

“user-generated content” means any audiovisual content that includes one or more musical works and that is created by anyone other than the creator or creators of the underlying musical works or a person authorized by the creator or creators. (« contenu généré par les utilisateurs »)

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

Application

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

(a) reproduce a CMRRA work, as embodied in audiovisual content, in any material form and by any process now known or hereafter devised, solely for the purpose of transmitting that audiovisual content in a file to end users in Canada as streams, downloads, or both, by any means of telecommunication, including the Internet or another digital network;

(b) reproduce a CMRRA work, as embodied in audiovisual content, in making archival copies of the audiovisual service’s content;

(c) authorize a person to reproduce a CMRRA work, as embodied in audiovisual content, solely for the purpose of delivering to the audiovisual service a file that can then be reproduced and transmitted pursuant to paragraph (a); and

(d) authorize end users in Canada to further reproduce a CMRRA work, as embodied in audiovisual content reproduced and transmitted pursuant to paragraph (a), solely for their own private use,

all solely in connection with the operation of the service.

(2) The reproductions referred to in subsection (1) shall be limited to the CMRRA work as embodied in the audiovisual content, including the associated visual images.

4. This tariff does not authorize

(a) the reproduction of a CMRRA work in synchronization or timed relation with visual images, with any other work, or with any sound recording or performer’s performance;

(b) the reproduction of a CMRRA work by a third party, or the authorization of such reproduction by an audiovisual service, other than as expressly authorized in paragraphs 3(1)(c) and (d);

(c) the use of a CMRRA work as a sample or in a montage or mashup;

(d) the use of a CMRRA work in association with a product, service, cause or institution;

(e) the reproduction of a sound recording; or

(f) any use covered by any other CMRRA or CSI tariff, including the *CSI Online Music Services Tariff*, the *CMRRA CBC Television Tariff*, the *CMRRA Online Music Services Tariff (Music Videos)*, or the *CMRRA Commercial Television Tariff*.

ROYALTIES

Streams

5. (1) The royalties payable to CMRRA for a month by an audiovisual service that offers streams of programs, user-generated content, or both, with or without limited downloads, shall be 3.0 per cent of the gross revenue of the service for the reference month, subject to a minimum equal to the greater of

- (a) 19.5¢ per subscriber, if applicable; and
- (b) 1.3¢ for each play of a file.

Free On-Demand Streams

(2) The royalties payable for free on-demand streams shall be the lesser of 19.5¢ per unique visitor per month and 1.3¢ per free on-demand stream received by that unique visitor in that month.

Permanent Downloads

(3) The royalties payable to CMRRA for a month by an audiovisual service that offers downloads of programs, user-generated content, or both, shall be 6.11 per cent of the gross revenue of the service for the reference month, subject to a minimum equal to the greater of:

- (a) 6.79¢ per permanent download in a bundle that contains 12 or more files and
- (b) 81.43¢ per permanent download in all other cases.

Limited Downloads

(4) The royalties payable to CMRRA for a month by an audiovisual service that offers limited downloads shall be:

- (a) where the payment is per transaction, 6.11 per cent of the amount paid by an end-user for limited downloads, subject to a minimum of 4.52¢ per limited download in a bundle that contains 12 or more files and 52.28¢ per limited download in all other cases, and
- (b) where limited downloads are offered with a subscription,

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where

- (A) is 6.11 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 during the month, and
 - (C) is the number of plays of files during the month,
- subject to a minimum equal to the greater of 32.59¢ per subscriber, and 0.097¢ for each play of a file.

Where a service does not report to CMRRA the number of plays of files as limited downloads,

(B) will be deemed to equal either (a) the number of plays of the same audiovisual work as an on-demand stream during the month, or (b) if the audiovisual work has not been played as an on-demand stream during the month, the average number of plays of all audiovisual works as on-demand streams during the month.

(5) For clarity, an audiovisual service that permits an end user to copy files onto a local storage medium or device for later access shall pay royalties pursuant to subsection (3) or (4), not pursuant to subsection (1) or (2).

(6) 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.

(7) For the purpose of calculating the minimum amount payable in accordance with this section, the number of subscribers shall be determined as at the end of the reference month.

ADMINISTRATIVE PROVISIONS

Service Identification

6. No later than 20 days after the end of the first month during which an audiovisual service makes a file available to the public, the service shall provide to CMRRA the following information:

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

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

(ii) the name of the proprietor of an individual proprietorship,

(iii) the name of each partner of a partnership, and

(iv) the names of the principal officers of 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 address, for the payment of royalties, the provision of information pursuant to subsection 18(2) and any inquiries related thereto;

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

(e) the Uniform Resource Locator (URL) of each website at or through which the service is or will be offered, if applicable.

Payment of Royalties

7. No later than the first day of each month, a service shall

(a) pay the royalties for that month; and

(b) indicate the basis on which the royalties paid were calculated.

Cue Sheets

8. (1) No later than the first day of each month, an audiovisual service that offers programs shall provide CMRRA with any cue sheet(s) available in relation to programs that were delivered to end users for the first time during the reference month, indicating, in relation to each such program, the following information:

- (a) its title, including any subtitle or alternate title, and any identifier assigned to the program;
- (b) its episode number or title, if applicable, and any identifier assigned to the episode;
- (c) its duration, in minutes and seconds; and
- (d) in relation to each musical work embodied in the program,
 - (i) its title,
 - (ii) the name of its author(s), composer(s), and music publisher(s) and their respective shares of ownership in the copyright of the musical work,
 - (iii) the duration of the musical work as embodied in the audiovisual content, in minutes and seconds, and
 - (iv) the way in which it was used (for example, as background or foreground music); and
- (e) such other information as may be included in the cue sheet by the person who provided it to the audiovisual service, including any identifier assigned to the cue sheet.

(2) An audiovisual service shall provide a cue sheet, if available, for any program that is otherwise identical to any other program if their musical content differs in any way contemplated by paragraph (1)(d) or otherwise.

(3) The cue sheet that an audiovisual service shall provide is that which is received by the audiovisual service from the person from whom the audiovisual service acquires the right to transmit the program. An audiovisual service shall cooperate with CMRRA in any attempt by CMRRA to obtain cue sheets from third parties, regardless of whether such parties produced the program.

(4) In addition to any cue sheets required under paragraph (1), an audiovisual service shall also provide CMRRA with any available information that would assist CMRRA in identifying any program available to an end user for the first time during the reference month, and the musical works contained therein, no later than the first day of each month.

Usage Reports

9. (1) No later than the first day of each month, an audiovisual service shall provide to CMRRA a report setting out, for the reference month

- (a) in relation to each file that was delivered to an end user, the required information;
- (b) in relation to each musical work contained in each file, the additional information;
- (c) the total number of plays and downloads of each file;

- (d) the total number of plays and downloads of all files;
- (e) if applicable, the number of subscribers to the service as at the last day of the month and the total amount of subscription fees paid by all subscribers during the month;
- (f) the total amount of one-time transactional fees paid by end users for streams or downloads of each file, including, if the file was offered as a stream or download at different prices from time to time, the number of streams or downloads delivered at each different price;
- (g) the gross revenue of the service for the month, including the amounts specified in subsections (e) and (f);
- (h) the number of subscribers provided with free subscriptions and the total number of files delivered to such subscribers as streams and, separately, as downloads (each as applicable); and
- (i) the number of streams and downloads provided free of charge, other than pursuant to the terms of a subscription.

(2) Whenever an audiovisual 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.

Adjustments

10. 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. Adjustments to any information provided pursuant to sections 6 to 9 shall be provided with the next report dealing with such information.

Records and Audits

11. (1) An audiovisual 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 6 to 9 can be readily ascertained.

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

(3) CMRRA shall, upon receipt of the audit report, supply a copy to the audiovisual service.

(4) If an audit discloses that royalties due to CMRRA have been understated in any month by more than 10 per cent, the audiovisual service shall pay the reasonable costs of the audit within 30 days of a demand for such payment.

Breach and Termination

12. (1) An audiovisual service that fails to provide any information required under this tariff within five business days of the date on which the information is required, or to pay royalties within five business days of the date on which the royalties are due, is not entitled to do any of the acts described in section 3 as of the first day of the month in relation to which the

information should have been provided or the royalties should have been paid, as the case may be, and until the information is provided and the royalties and any accrued interest are paid.

(2) An audiovisual service that fails to comply with any other provision of this tariff is not entitled to do any of the acts described in section 3 as of five business days after CMRRA has notified the service in writing of that failure and until the service remedies that failure.

(3) An audiovisual service whose owner or operator becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of its creditors, files for protection under the *Companies' Creditors Arrangement Act* or other comparable legislation in another jurisdiction, winds up its affairs, ceases to carry on business, or has a receiver/manager appointed for it or for a substantial part of its property, is not entitled to do any of the acts described in section 3 as of the day immediately preceding the day of the relevant occurrence.

Confidentiality

13. (1) Subject to subsections (2) and (3), CMRRA shall treat in confidence information received pursuant to this tariff, unless the disclosing party consents in writing to the information being treated otherwise.

(2) CMRRA may share the information referred to in subsection (1):

- (a) with the members of its board of directors, its employees, and its legal, business and financial advisors;
- (b) in connection with the collection of royalties or the enforcement of a tariff, with any other collective society;
- (c) with the Copyright Board;
- (d) in connection with proceedings before the Board, once the audiovisual service 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, with royalty claimants; and
- (g) if ordered by law.

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

Interest on Late Payments

14. (1) In the event that an audiovisual service does not pay the amount owed under section 7 or provide the information required by sections 7 and 9 by the due date, the service shall pay to CMRRA interest calculated on the amount owed from the due date until the date both the amount and the information are received by CMRRA. 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.

(2) In the event that an audiovisual service does not provide the information required by sections 7 and 9 by the due date, the service shall pay to CMRRA a late fee of \$50.00 per day

from the due date until the date the information is received by CMRRA.

Addresses for Notices, etc.

15. (1) Anything that an audiovisual service sends to CMRRA shall be sent to 56 Wellesley Street West, Toronto, Ontario M5S 2S3, email: tariffnotices@cmrra.ca, fax number: 416-926-7521, or to any other address, email address, or fax number of which the service has been notified in writing.

(2) Anything that CMRRA sends to an audiovisual service shall be sent to the last address, email address, or fax number of which CMRRA has been notified in writing.

Delivery of Notices and Payments

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). A payment must be delivered by hand, by postage-paid mail, or as otherwise agreed upon by CMRRA and the audiovisual service.

(2) Information provided pursuant to sections 6 to 9 shall be delivered electronically, by way of a delimited text file or in any other format agreed upon by CMRRA and the audiovisual 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 fax, by email or by FTP shall be presumed to have been received the day it is transmitted.

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