

NOTICE OF GROUNDS FOR PROPOSED TARIFF

Filed with the Copyright Board by SOCAN on 2023-10-23 pursuant to Rule 15 of *Copyright Board Rules of Practice and Procedure*

SOCAN Tariff 17 – Transmission of Pay, Specialty and Other Television Services by Distribution Undertakings (2025-2027)

1. Description of Uses Covered by the Proposed Tariff

This tariff applies to communications to the public by telecommunication of any or all of the works in SOCAN's repertoire, in connection with the transmission of a television signal for private or domestic use.

2. Description of Users / Groups of Users Covered by the Proposed Tariff

Users are programming undertakings and distribution undertakings. Importantly, it is the nature of the use, and not the nature of the user, that determines whether the tariff applies.

3. Explanation of How Royalties are Determined

The proposed royalty rate for 2025-2027 is 2.1% of the programming undertaking's affiliation payments and gross revenues, subject for adjustments for receiving TVROs and for cleared music ("Modified Blanket Licence"). The proposed tariff sets a lower rate of 0.9% for low music use programming undertakings.

SOCAN has proposed a rate increase to reflect the fact that the value of music on cable television has increased since the tariff was last approved. The proposed rate is based on the previously approved tariff and changes in the market since the last contested hearing on Tariff 17 which took place in 2003 for the 2001-2004 tariff period. SOCAN cannot know the full extent of the changes to the market since the last contested hearing that warrant the rate increase until the interrogatory phase of this proceeding. In light of recent jurisprudence from the Federal Court of Appeal, SOCAN is proposing an increase to 2.1% (0.9% for low music use programming undertakings) to provide sufficient notice to users.

It is anticipated that as part of the 2025-2027 tariff proceeding, objectors will produce information and documents that will assist in establishing the value and monetization of pay and specialty television stations during the relevant period. The anticipated information and documents are highly confidential and not otherwise available to SOCAN. As in prior tariff proceedings, it is expected that this relevant information and expert analysis will enable SOCAN to provide a detailed valuation analysis to permit the Copyright Board to set an equitable royalty rate for pay and specialty television stations during the relevant period.

SOCAN reserves the right to adopt and advance additional or alternative valuation methodologies and inflationary rates in the course of the proceedings relating to the proposed tariff.

The proposed tariff also sets rates for smaller systems and community services. These rates have remained unchanged from the previously approved tariff.

4. Submissions on the Collection of Information

The proposed tariff requires each user to report, on a two-month trailing basis, the information required to calculate the applicable royalty for the relevant month.

If a user elects for the modified blanket licence, the proposed tariff requires the user to provide a list of each cleared program that identifies the music used in that program and any document supporting the user's claim that the music identified is cleared music, or a reference to that document, if the document was provided previously.

The information collected under the proposed tariff is needed to identify users, calculate royalties and to distribute those royalties to rights holders.

These reporting requirements are the same as those set out in the previously approved tariff.

5. Explanation of Changes from Previously Approved Tariff

Proposed Tariff 17 includes the following changes from the previously approved tariff:

- 1) The proposed royalty rate has been increased to 2.1% (0.9% for a low music use programming undertaking).
- 2) The proposed tariff revises the confidentiality provisions. These revisions are intended to harmonize confidentiality provisions across SOCAN tariffs.
- 3) The application clause has been updated to improve clarity and consistency with other SOCAN tariffs and to comply with the Board's *Practice Notice on Filing of Proposed Tariffs* [PN 2019-004 rev. 3] by limiting reliance on ambulatory references to other tariffs.
- 4) To comply with the Board's *Practice Notice on Filing of Proposed Tariffs* [PN 2019-004 rev. 3], the proposed tariff has been revised to remove references to licences and limit itself to royalty rates and any related terms and conditions.
- 5) The proposed tariff updates the audit clause that allows SOCAN to audit a user's records to confirm compliance with the terms of the tariff. The changes to this clause are intended to harmonize audit clauses across SOCAN tariffs.
- 6) The proposed tariff adds a clause concerning adjustments to royalty payments under the tariff. This clause provides that 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. This clause is consistent with adjustments clauses in other approved SOCAN tariffs.
- 7) The proposed tariff includes clauses concerning taxes on royalty payments. This clause is consistent with other approved SOCAN tariffs and were included in the "General Provisions" of the previously approved tariff.