

## **NOTICE OF GROUNDS FOR PROPOSED TARIFF**

Filed with the Copyright Board by SOCAN on 2024-10-15 pursuant to Rule 15 of *Copyright Board Rules of Practice and Procedure*

### **SOCAN Tariff 26 – Pay Audio and Ancillary Services (2026-2028)**

#### **1. Description of Uses Covered by the Proposed Tariff**

This tariff applies to the communication to the public by telecommunication of musical works in SOCAN's repertoire in connection with pay audio services that are distributed directly or indirectly by distribution undertakings and webcast services offered in association with a subscription with a distribution undertaking to a pay audio service.

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

This tariff applies to programming undertakings and distribution undertakings (as those terms are defined in the *Broadcasting Act*) who program or distribute one or more pay audio services licensed by the CRTC. Stingray Group Inc. owns the only pay audio programming undertaking operating in Canada presently.

#### **3. Explanation of How Royalties are Determined**

The proposed royalty rates are based on the previously approved tariff. The base royalty rates in the proposed tariff are 12.45% for pay audio and simulcast services, and 5.3% for semi-interactive and non-interactive webcast services, in respect of a distribution undertaking that is not a small cable transmission system. In respect of a distribution undertaking that is a small cable transmission system, the proposed royalty rates are half the foregoing rates. These royalty rates are based on the rates approved by the Board for the year 2010 for pay audio and simulcast services and for the years 2007 to 2016 for semi-interactive webcast services.

The rate base in both cases and for both groups of services is the affiliation payments payable by or for a distribution undertaking to a programming undertaking for the distribution of a pay audio service or a package or bundle of services that includes a pay audio service.

In the case where a pay audio service is provided in a bundle or package that contains other service(s), which may include a semi-interactive or non-interactive webcast service, the base rates may be adjusted by a factor to reflect a concept similar to the rationale for the "pay audio affiliation multiplier" set out in the approved tariff. Different values for the adjustment factor are proposed in this tariff for different mixes of services in the bundle or package through which the pay audio service is made available to subscribers.

It is anticipated that in a proceeding to examine the proposed tariff, objectors will produce information and documents that will assist in establishing the monetization and business models associated with the distributions of pay audio services, simulcast services and related webcast services, and the value of the use of SOCAN's repertoire by these services, 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 fulsome valuation analysis to permit the Copyright Board to set equitable royalty rates for the relevant period.

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

#### **4. Submissions on the Collection of Information**

The proposed tariff contains the same reporting requirements as the previously approved tariff, with three changes. (1) The proposed tariff includes a new section (section 6(3)) requiring programming undertakings to report on each distribution undertaking to which it provided a service in the previous year, regardless of whether the programming undertaking paid royalties or not. This requirement provides data that facilitates tariff administration, given the fact that the tariff applies to both distribution undertakings and programming undertakings (2) The proposed tariff removes the “where available” qualifier from the music use reporting requirement, based on SOCAN’s understanding that programming undertakings are capable of tracking this information. (3) The proposed tariff adds the requirement for semi-interactive and non-interactive webcast services to provide music use information.

These changes are required for the proper administration of the tariff, including verifying royalty payments and effecting distributions of royalty amounts. In particular, music use data assists SOCAN in distributing royalties to its members.

#### **5. Explanation of Changes from Previously Approved Tariff**

- 1) The proposed tariff applies to non-interactive webcast activities.
- 2) The proposed tariff includes minor changes to the confidentiality provisions for consistency with other SOCAN tariffs.
- 3) The proposed tariff makes changes to the reporting requirements, as described above.
- 4) The proposed tariff includes changes to the Adjustments clause (clause 10) to clarify how SOCAN and tariff users may make adjustments as the result of the discovery of an error or otherwise. The adjustment clause in the proposed tariff is consistent with other SOCAN tariffs.
- 5) The proposed tariff includes a clarification that all amounts payable under the tariff are exclusive of any federal, provincial or other governmental taxes or levies of any kind. This language is consistent with other SOCAN tariffs.