

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 13.A – Public Conveyances - Aircraft (2026-2028)

1. Description of Uses Covered by the Proposed Tariff

This tariff applies to both on-ground and in-flight public performances and communications to the public by telecommunication of any or all of the musical works in SOCAN's repertoire in an aircraft by means of recorded music (including music in audiovisual programming).

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

Users are airlines. 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 2026-2028 is composed of two fees: (1) for music played while the aircraft is on the ground, a fee of \$3.30 per seat in each aircraft in service, and (2) for music played in flight, a fee of \$7.80 per seat in each aircraft in service

The proposed royalties are based on the previously approved tariff. The proposed royalty rates have been increased since the previously approved tariff, which was approved in 2023 for the years 2023 to 2025 (2023 CB 7-T). This proposed increase accounts for inflation according to the Board's established CPI-adjustment formula and the Board's default methodology as published by the Board in its *Inflation Adjustment to Royalty Rates – Default Methodology*. The inflation calculation commences in January 2022. SOCAN has estimated the appropriate inflationary increase based on projected CPI for years that full CPI data is not available. According to the Board's adjustment formula, this figure will likely change once actual CPI data is available. Notwithstanding the proposed royalty rates, SOCAN requests that the Board certify the maximum inflationary increase that SOCAN is entitled to under the Board's adjustment formula at the time of approval of the tariff and that such inflation calculation commence as of the last inflationary increase to the royalty rates.

4. Submissions on the Collection of Information

The proposed tariff requires each user to report its estimated fee for the year in advance and report on the number of aircraft operated by the user during the preceding year, as well as, for each aircraft, its seating capacity in the previous year. If an aircraft was out of service for a period of 15 consecutive days or more, the user must report the dates which the aircraft was out of service. This information allows SOCAN to calculate and verify the royalty payable. This tariff is an annual fee tariff, which is paid in advance, based on estimated data; the report made in January of the following year allows SOCAN to verify the fees paid for the previous year and adjust as necessary.

In the proposed tariff for 2026-2028, SOCAN has proposed the addition of a requirement to report on music use data, if such data is available. Music use data assists SOCAN in distributing royalties to its members.

5. Explanation of Changes from Previously Approved Tariff

1) The explanation for the proposed rates for 2026-2028 is found above.

2) The proposed tariff adds basic music use reporting requirements. Section 68.1(1)(b) of the *Copyright Act* permits SOCAN to propose tariffs that set out both proposed royalty rates as well as any related terms and conditions. The terms and conditions in this proposed tariff include new music use reporting requirements. SOCAN has proposed these reporting requirements because the data provided in accordance with these requirements enables accurate distribution of royalties. These provisions require airlines to provide SOCAN with basic music usage data, only if that data is available. This music use data is typically tracked by the digital content management systems employed by airlines to deliver audio and audiovisual entertainment to passengers.

For example, Porter Airlines' in-flight entertainment platform is provided by West Entertainment.¹ Air Canada's in-flight entertainment platform is provided by a number of different service providers.² WestJet's in-flight entertainment system is branded WestJet Connect.³ For those airlines that use a third-party provider for their inflight entertainment systems, SOCAN expects that music use data will be readily available from that third-party provider. For airlines that operate proprietary in-flight entertainment systems, SOCAN can only gather information about what data these systems track through the interrogatory process or other evidence-gathering tools available through the Board's process. Likewise, for the airlines listed here, SOCAN will require evidence-gathering tools to obtain information about their in-flight entertainment systems.

Perhaps most importantly, the proposed tariff stipulates that this data need only be provided if it is available to the airline. Those airlines that do not have access to this music use data are not required to provide it to SOCAN under the proposed tariff. SOCAN will use this music use reporting data to determine which works in its repertoire are used by airlines under this tariff. Depending on the amount of airlines which have access to music use information, and the granularity of such information, SOCAN will be in a position to assess any changes to its distribution rules in order to effect a distribution of the royalties collected under this tariff to those rightsholders whose works are used by airlines pursuant to this tariff.

SOCAN notes that the Board previously rejected the inclusion of music use information in the last approved Tariff 13.A (2023-2025). Despite the fact that no users objected to the 2023-2025 proposed tariff, and without receiving any submissions from any Tariff 13.A user, the Board was of the view that reporting requirements could be costly and time-consuming. However, it is important to note that Air Canada does already provide music use information to SOCAN, and Air Transat previously did so. The fact that users already provide or have previously provided this information to SOCAN demonstrates that the proposed reporting requirements are not as onerous as the Board seemed to have suggested in its previous Tariff 13.A decision.

The Board also stated in its last Tariff 13.A decision that the proposed music use reporting requirements were a "peripheral issue". However, the distribution of royalties is not a "peripheral issue" to SOCAN. Distribution of royalties is at the core of SOCAN's operations. To the extent possible, SOCAN seeks to effect distributions based on actual music usage. The music use information sought in this proposed tariff will not only allow SOCAN to more accurately distribute current Tariff 13.A royalties, but also assist SOCAN in determining whether it is practical and feasible to modify its distribution rules for this tariff. The Board is required by section 66.501 to fix royalty rates and related terms and conditions which are

¹ <https://westent.com/>

² <https://www.prnewswire.com/news-releases/panasonic-avionics-astrova-selected-by-air-canada-for-over-80-narrowbody-and-widebody-aircraft-302157719.html>

<https://www.anuvu.com/our-company/press-releases/detail/315/anuvu-signs-inflight-entertainment-content-agreement-with-air-canada>

³ <https://www.westjet.com/en-ca/inflight/entertainment>

fair and equitable. Ensuring that distribution of royalties can be made based on actual usage of musical works is clearly fair and equitable for SOCAN and its members.

At this stage of the tariff proposal process, it is not feasible or possible for SOCAN to advance all of the evidence related to the inclusion of music use reporting, if available, under this proposed tariff. In particular, it may be necessary for SOCAN to rely on evidence that is not in its possession or publicly available. In which case, SOCAN will need to access this evidence through the interrogatory process or through other evidence-gathering tools available through the Board's process. Upon the Board's consideration of this proposed tariff, it may be that the Board determines that additional evidence is required to establish the music use reporting information available to airlines in support SOCAN's proposal to include a music use reporting element in the proposed tariff. As a matter of procedural fairness, in the event that the Board determines it requires further evidence, SOCAN requests that the Board identify the nature of that additional evidence and grant SOCAN the opportunity and procedural tools (if required) to advance additional evidence prior to the Board's decision on this proposed tariff.