

NOTICE OF GROUNDS FOR PROPOSED TARIFF

Filed with the Copyright Board by SOCAN on 2025-10-22 pursuant to Rule 15 of *Copyright Board Rules of Practice and Procedure*

SOCAN Tariff 22.D.1.R – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by Online Audiovisual Services and User-Generated Content Services (2027-2029)

1. Description of Uses Covered by the Proposed Tariff

This tariff applies to the reproduction of musical works in SOCAN's repertoire by an online service (and its authorized distributors). It would entitle a user to:

- a) reproduce all or part of a musical work in SOCAN's repertoire, solely as embedded in an existing audiovisual program, solely for the purpose of transmitting that audiovisual program in a file to end users in Canada as streams, downloads, or both;
- b) authorize a third party to reproduce the musical work, solely as embedded in that existing audiovisual program, in order to deliver that file to the service that uses it for the purpose set out in paragraph (a); and
- c) for permanent and limited downloads, authorize end users in Canada to further reproduce the musical work, solely as embedded in the audiovisual program transmitted pursuant to paragraph (a), for their own private use,

all solely in connection with the operation of the service.

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

Users are online services (and their authorized distributors) that offer streams, limited downloads, or permanent downloads of audiovisual programs to end users by means of digital transmissions, including the Internet. They include user-generated content services, which are online services that predominantly transmit user-generated content. Importantly, it is the nature of the use, and not the nature of the user, that determines whether the tariff applies.

The proposed tariff does not apply to an online music video service, which is an online service that predominantly offers music videos. An online music video service falls within the scope of SOCAN Tariff 22.A.

3. Explanation of How Royalties are Determined

The proposed royalty for 2027-2029 is:

For services offering permanent downloads, 6.11% of the amounts paid by end users for permanent downloads, subject to a minimum of 81.43¢ per permanent download.

For services offering limited downloads, including copies made to facilitate offline viewing: (i) for limited downloads offered on a transactional basis, 6.11% of the amounts paid by end users for limited downloads, subject to a minimum of 52.28¢ per limited download, and (ii) for limited downloads offered with a subscription, 6.11% of the gross revenue of the service, subject to a minimum equal to the greater of 32.59¢ per subscriber and 0.097¢ for each play.

For services offering streams but not limited downloads (including copies made to facilitate offline viewing), 1.49% of the gross revenue of the service, subject to a minimum equal to the greater of 7.95¢ per subscriber and 0.054¢ for each play.

For free streams, the greater of 7.95¢ per unique visitor per month and 0.054¢ per free stream received by that unique visitor in that month.

It is anticipated that, in a proceeding to examine the proposed tariff, objectors will produce information and documents that will assist in establishing the value and monetization of music by online audiovisual services and user-generated content services during the relevant period. The anticipated information and documents are highly confidential and not otherwise available to SOCAN. It is expected that this relevant information and expert analysis will enable SOCAN to provide a detailed valuation analysis to assist the Copyright Board in setting fair and equitable royalty rates and fees for these services for 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.

4. Submissions on the Collection of Information

The proposed tariff requires each user to report certain information about files transmitted.

The proposed tariff also requires each user to report basic service-identification information.

The information collected under the proposed tariff is needed to identify users, calculate royalties, distribute those royalties to rights holders, and gain a better understanding of the market and industry during the tariff period.

5. Explanation of Changes from Previously Proposed Tariff

The proposed tariff includes the following changes from the previously proposed tariff, SOCAN Tariff 22.D.1.R – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by a Service (2024-2026):

- 1) The proposed tariff clarifies that, if a subscription-based service also offers subscribers limited downloads or streams on a transactional basis and not as part of their subscriptions, such as in the case of a rental of an audiovisual program, the service would pay royalties for each such download or stream in addition to the royalties for the subscription service.
- 2) For administrative reasons, the proposed tariff is not structured as a “per-work, per-share” tariff and provides blanket rates rather than per-transaction rates for permanent downloads and limited downloads offered on a transactional basis.
- 3) The proposed tariff applies in relation to the offering of all types of streams of audiovisual programs, not only on-demand streams, to better reflect the market.
- 4) Certain proposed minimum fees are calculated as the greater of a per-subscriber fee and a per-play fee, rather than the lesser of the two, to better reflect the value of the use of music by online audiovisual services.
- 5) The proposed tariff introduces changes to the frequencies with which services are required to report sales and music use information and to pay royalties, to monthly frequencies, to enable timely distribution of royalties.
- 6) Several of the definitions in the proposed tariff have been amended or added for clarity.
- 7) The proposed tariff introduces changes to the confidentiality provisions to allow sharing of reporting information with SOCAN’s agents and service providers. SOCAN relies on service providers to facilitate efficient processing of reporting data, among other things.
- 8) The proposed tariff includes changes to the adjustments clause 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.

9) In light of recent technological developments, the proposed tariff clarifies that it does not authorize the use of any works in SOCAN's repertoire in connection with the training of, or the generation of any output by, any artificial intelligence system. That has always been SOCAN's position and practice in interpreting the previously proposed tariff.