

PROPOSED TARIFF

Filed with the Copyright Board by SOCAN on ~~2022-10-15~~2025-10-15 pursuant to subsection 67(1) of the *Copyright Act*

Proposed Tariff Title: *SOCAN Tariff 22.D.1.R, – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by a Service (2024-2026) Online Audiovisual Services and User-Generated Content Services (2027-2029)*

For the reproduction of musical works.

Proposed Short Title: SOCAN Tariff 22.D.1.R – Online Audiovisual Reproduction (2027-2029).

Effective Period: ~~2024-01-01 – 2026-12-31~~2027-01-01 – 2029-12-31

SOCAN TARIFF 22.D.1.R, – REPRODUCTION OF MUSICAL WORKS EMBEDDED IN AUDIOVISUAL WORKS FOR TRANSMISSION BY A SERVICE (2024-2026) ONLINE AUDIOVISUAL SERVICES AND USER-GENERATED CONTENT SERVICES (2027-2029)

~~Proposed statement of royalties to be collected by the Society of Composers, Authors and Music Publishers of Canada (SOCAN) in compensation for the right to reproduce, in Canada, musical works forming part of its repertoire.~~

Definitions

1. In this tariff,

~~“audiovisual work” means a movie, television program or other cinematographic work irrespective of its initial intended use, but excludes a music video; (« œuvre audiovisuelle »)~~

“audiovisual program” 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; (« programme audiovisuel »)

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

~~“cue sheet” means a report containing, at minimum, the following information: the title of the audiovisual workprogram, the title of each of the musical works embedded into the audiovisual workprogram, the name of the author of each of the musical works, the~~

duration of each of the musical works, and the total running time of the audiovisual ~~work~~program; (« *rapport de contenu musical* »)

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

“file,” except in the definition of “bundle,” means a digital file of an audiovisual ~~work embedding one or more musical works~~program; (« *fichier* »)

“free ~~on-demand~~ stream” excludes ~~an on-demand~~any stream provided to a subscriber; (« *transmission sur demande gratuite* »)

“free subscription” means the provision of free access to limited downloads or ~~on-demand~~ streams to a subscriber; (« *abonnement gratuit* »)

“gross revenue” means the aggregate of (a) all revenues payable by or on behalf of ~~end users~~send users for access to streams or downloads ~~delivered~~offered by a service or its authorized distributors, including membership, subscription and other access fees; (b) all other revenues payable to a service or its authorized distributors in respect of the 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 a service or its authorized distributors pursuant to any contra and barter agreements related to the operation of the service; (« *revenus bruts* »)

~~“identifier” means the unique identifier a service assigns to a file or bundle; (« identificateur »)~~

“limited download” means a download that uses technology that causes the file to become unusable upon the happening of a certain event, including such a download made by an end user, with the authorization of a service, to permit offline viewing of a file offered by the service as a stream; (« *téléchargement limité* »)

“music video” means an audiovisual ~~representation of one or more musical works~~program, including a concert; (« *vidéo de musique* ») video.

(a) for which the visual content was produced to feature, accompany, depict, portray, or represent one or more sound recordings or performances of one or more musical works;

(b) where the musical work(s) are in the foreground of the audiovisual program; and

(c) where the making of the audiovisual program was authorized by the owner of copyright in each musical work it contains, or the owner’s agent, licensee, or other

representative; (« vidéo musicale »)

“non-subscriber” means an ~~end-user~~end user other than a subscriber, and includes an ~~end-user~~end user who receives limited downloads or ~~on-demand~~ streams from a service subject to the requirement that advertising be viewed or listened to; (« *non-abonné* »)

~~“on-demand stream” means a stream selected by the end-user and received at a place and time individually chosen by that end-user; (« *transmission sur demande* »)~~

“online music video service” means a service that predominantly offers music videos and is not a user-generated content service; (« *service de vidéo musicale* »)

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

“play” means the single ~~performance~~delivery of a stream or performance of a limited download; (« *écoute* »)

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

“repertoire” means the musical works for which SOCAN is entitled to grant a licence pursuant to section 2; (« *répertoire* »)

~~“semester” means from January 1 to June 30 and from July 1 to December 31; (« *semestre* »)~~

“service” means a ~~service that delivers on-demand~~person or entity that offers streams, limited downloads ~~and/or~~ permanent downloads of ~~an~~ audiovisual ~~work to end users, by any means whatsoever~~programs to end users by means of digital transmission, including the Internet, and includes, for greater certainty, a user-generated content service; (« *service* »)

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

“subscriber” means an ~~end-user~~end user with whom a 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, or for other consideration, including pursuant to a free subscription; (« *abonné* »)

“unique visitor” means each ~~end-user~~end user, excluding a subscriber, who receives a free ~~on-demand~~ stream from a service in a month. (« *visiteur unique* »)

“user-generated content” means audiovisual content posted to a website, software application or platform by a person other than the operator of the website, software application or platform and available for free viewing by end users; (« contenu généré par les utilisateurs »)

“user-generated content service” means a service that predominantly transmits user-generated content; (« service de contenu généré par les utilisateurs »)

Application

2. This tariff entitles a service that complies with this tariff, and its authorized distributors,
 - (a) to reproduce all or part of a musical work in the repertoire ~~already, solely as~~ embedded in an existing audiovisual ~~work~~program, solely for the ~~purposes~~purpose of transmitting ~~it~~that audiovisual program in a file to ~~end-users~~send users in Canada ~~by any means whatsoever~~ as streams, downloads, or both, by means of digital transmission, including the Internet;
 - (b) to authorize a third party to reproduce the musical work ~~already, solely as~~ embedded in ~~an~~that existing audiovisual ~~work~~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, to authorize ~~end-users~~send users in Canada to further reproduce the musical work ~~already, solely as~~ embedded in the audiovisual ~~work~~program transmitted pursuant to paragraph (a), for their own private use, all solely in connection with the operation of the service.

Restrictions

3. (1) This tariff only authorizes the reproduction of a musical work in association with the same images with which the musical work was embedded in the audiovisual ~~work~~program.
(2) ~~For greater certainty, this~~This tariff does not apply to activities subject to SOCAN Tariff No. 2.A.R (Commercial Television Reproduction).
(3) This tariff does not apply to an online music video service.
(34) This tariff does not authorize the production of an audiovisual ~~work~~program or the synchronization of a musical work in an audiovisual ~~work~~work. It ~~authorizes only the transmission by any means whatsoever of an existing audiovisual work in which a musical work is already embedded.~~program.
(5) This tariff does not authorize the use of any works in the repertoire in connection with

the training of, or the generation of any output by, any artificial intelligence system.

Royalties

Permanent Downloads

4. (1) ~~Subject to paragraph (6)(a), the~~^{The} royalties payable in a month by a service ~~that offers for~~ permanent downloads ~~requiring a SOCAN licence~~ shall be 6.11 ~~per cent of the amount paid by an end user for the download~~^{% of the amounts paid by end users for permanent downloads}, subject to a minimum of ~~6.79¢ per permanent download in a bundle that contains 12 or more files and~~^{81.43¢ per permanent download} ~~in all other cases.~~

Limited Downloads

(2) The royalties payable in a month by a service that offers limited downloads ~~requiring a SOCAN licence~~ shall be:

~~(a) subject to paragraph (6)(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~~

(a) for limited downloads offered on a transactional basis, 6.11% of the amounts paid by end users for those limited downloads, subject to a minimum of 52.28¢ per limited download; and

~~(b) subject to paragraph (6)(b), where for limited downloads are offered with a subscription, with or without on-demand streams,~~

A x B

C

where

~~(A) is 6.11 ~~per cent~~[%] of the service's 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 requiring a SOCAN licence during the month, and~~

~~(C) is the total 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 ~~requiring a SOCAN licence~~.

Where a service does not report to SOCAN the number of plays of files as limited

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

On-Demand Streams

(3) The royalties payable in a month by a service that offers ~~on-demand~~ streams but does not offer limited downloads (including to permit offline viewing) shall be, ~~subject to paragraph 6(b),~~

$$\frac{A \times B}{C}$$

where

(A) ~~is 1.49 per cent%~~ of the service's gross revenue ~~from the service~~ for the month, excluding amounts paid by ~~end users~~end users for permanent downloads,

(B) ~~is the number of plays of files requiring a SOCAN licence during the month, and~~

(C) ~~is the number of plays of all files during the month,~~

subject to a minimum equal to the greater of 7.95¢ per subscriber, and 0.054¢ for each play of a file ~~requiring a SOCAN licence~~.

For ~~clarity~~greater certainty, if the service permits an ~~end user to copy files onto a local storage medium or device for later access~~end user to obtain a limited download of a file offered by the service as a stream to permit offline viewing of that file, the service shall pay royalties pursuant to ~~subparagraph~~paragraph (2)(ab), and not pursuant to this subsection.

Free On-Demand Streams

(4) ~~Subject to paragraph (6)(a), the~~The royalties payable for free ~~on-demand~~ streams shall be the ~~lesser~~greater of 7.95¢ per unique visitor per month and 0.054¢ per free ~~on-demand~~ stream ~~requiring a SOCAN licence~~ received by that unique visitor in that month.

Additional Files Delivered to End Users

(5) ~~Subject to paragraph (6)(a), where~~Where a service that is required to pay royalties under any of subsections (2) to (4) also offers permanent downloads, the service is also required to pay royalties under subsection (1).

(6) Where a service that is required to pay royalties under paragraph (2)(b) or under subsection (3) also offers subscribers limited downloads or streams on a transactional basis, not as part of their subscriptions, such as in the case of a “rental” of an audiovisual program, the service shall pay, in addition to royalties payable pursuant to paragraph (2)(b) or subsection (3),

(a) for those limited downloads, and for those streams for which the subscriber is offered the ability to obtain a limited download (for example, to permit offline viewing), 6.11% of the fees paid by the subscribers for those limited downloads and for those streams, subject to a minimum of 52.28¢ per each limited download and each stream; and

Adjustments

(6) Where SOCAN does not hold all the rights in a musical work,

(a) for the purposes of subsection (1), paragraph (2)(a) and subsection (4), the applicable royalty shall be the relevant rate multiplied by SOCAN’s share in the musical work; and

(b) for the purposes of paragraph (2)(b) and subsection (3), only the share that SOCAN holds shall be included in (B). those streams for which the subscriber is not offered the ability to obtain a limited download, 1.49% of the fees paid by the subscribers for those streams, subject to a minimum of 0.054¢ per play of those streams.

(7) For the purpose of calculating the minimum payable pursuant to paragraph (2)(b) and subsection (3), the number of subscribers shall be determined as at the end of the month in respect of which the royalties are payable.

(8) 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.

ADMINISTRATIVE PROVISIONS

Reporting Requirements

Service Identification

5. No later than the earlier of 20 days after the end of the first month during which a service reproduces a file requiring a SOCAN licence and the day before the service first makes such a file available to the public, the service shall provide to SOCAN the following information:

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

- (i) ~~the name of the~~if a corporation, its name and its jurisdiction of incorporation,
- (ii) if a sole proprietorship, the name of the proprietor ~~of an individual proprietorship~~,
- (iii) if a partnership, the name of each partner ~~of a partnership, or and~~
- (iv) in any event, the names of the principal officers or operators of the service or 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 address of the persons to be contacted for the purposes of notice, for the exchange of data and for the purposes of invoicing and payment of royalties;

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

(e) the Uniform Resource Locator (URL) of each website and the name of each application or platform at or through which the service is or will be offered, as applicable.

Sales Reports and Music Use Reporting

6. (1) In this section, “required information” means, in respect of a file,

- (a) the title of the audiovisual ~~works~~program in the languages in which the service offers ~~them~~it and, if applicable, the title in the original language;
- (b) the cue sheet;
- (c) its identifier (Universal Product Code, product number, ISBN); and
- (d) the ~~reference number attributed~~unique identifier assigned by the service to ~~each~~the file.

Permanent and Transactional Limited Downloads

(2) No later than 20 days after the end of each ~~semester~~month, any service that is required to pay royalties pursuant to subsection 4(1)~~-or~~, paragraph 4(2)(a) or paragraph 4(6)(a) shall provide to SOCAN a report setting out, for that ~~semester, allocated by~~month,

~~(a)~~ in relation to each file that was delivered as a permanent ~~or~~download or a

transactional limited download, the following information:

- (i) the required information;
- (ii) the number of times the file was downloaded as part of a bundle, the unique identifier assigned by the service to each such bundle, the number of files included in each such bundle, the amount paid by end-users end users for each such bundle, the share of that amount assigned by the service to the file, and a description of the manner in which that share was assigned; and
- (iii) separately, the number of permanent downloads and transactional limited downloads for each the file, the amounts paid by end-users end users for the file, including, if the file is offered as a permanent download or transactional limited download at different prices from time to time, the number of permanent downloads and transactional limited downloads delivered at each different price.

Subscription-Based Limited Downloads and On-Demand Streams

(3) No later than 20 days after the end of each semester month, any service that is required to pay royalties pursuant to paragraph 4(2)(b) and subsection 4(3), or paragraph 4(6)(b) shall provide to SOCAN a report setting out, for that semester, allocated by month,

- (a) in relation to each file that was delivered as limited downloads or as on-demand streams to an end-user, the required information;
- (b) the total number of plays of each file as limited downloads and, separately, as on-demand streams;
- (c) the number of subscribers to the service during at the semester end of the month and the total amounts paid by them during that semester month;
- (d) the number of plays by non-subscribers (including plays of streams delivered on a transactional basis as referred to in paragraph 4(6)(b)) and the total amounts paid by them during that semester the month;
- (e) the service's gross revenue from the service for the semester month;
- (f) if the service or any authorized distributor has engaged in any promotional programs during the month pursuant to which limited downloads and on-demand streams have been provided to end-users end users free of charge, details of those programs; and
- (g) the number of subscribers provided with free subscriptions, the total number of limited downloads and on-demand streams provided to such subscribers, and the total

number of plays of all files by such subscribers as limited downloads and, separately, as ~~on-demand~~ streams.

Free ~~On-Demand~~ Streams

(4) No later than 20 days after the end of each ~~semester~~month, a service that is required to pay royalties pursuant to subsection 4(4) shall provide to SOCAN a report setting out, for that ~~semester, allocated by~~ month,

- (a) in relation to each file that was delivered as a free ~~on-demand~~ stream, the required information;
- (b) the total number of plays of all files as free ~~on-demand~~ streams;
- (c) the number of unique visitors;
- (d) a description of the manner in which each unique visitor is identified; and
- (e) the number of free ~~on-demand~~ streams provided to each unique visitor.

(5) A service that is required to pay royalties pursuant to more than one subsection of section 4 shall file a separate report pursuant to each subsection of this section.

(6) Whenever a 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.

~~(7) Using the information received pursuant to subsections (1) to (4) and any other information at its disposal, SOCAN shall make reasonable efforts to determine the information required to calculate and distribute the royalties payable pursuant to section 4.~~

~~(8)~~7) A service that does not supply a ~~musical~~ cue sheet pursuant to paragraph (1)(b) shall collaborate with SOCAN if SOCAN attempts to secure the cue sheet from anyone, including the producer of the audiovisual ~~work~~program. If SOCAN does not receive the cue sheet despite such collaboration, the service shall provide to SOCAN, if available,

- (a) the title or titles under which the audiovisual ~~work~~program is offered by the service;
- (b) the original title;
- (c) if the audiovisual ~~work~~program is part of a series, the number or title of the episode;
- (d) the International Standard Audiovisual Number (ISAN) code;

(e) the name of the producer or, if not known, the name of the person from whom the service secured the distribution rights;

(f) the title of each musical work embedded into the audiovisual ~~work~~program;

(g) the name of the author and composer of each musical work; and

(h) the duration of each musical work.

(98) A service shall provide the information set out in subsection (1) or (87) with respect to each otherwise identical audiovisual ~~work~~program if the musical content in each such ~~work~~program is different.

(109) If the information supplied pursuant to subsection (1), (87) or (98) does not allow SOCAN to reasonably proceed to the distribution of royalties, SOCAN, after first conducting its own reasonable search, may further inquire with the service, which will make reasonable efforts to supply any further, relevant information to assist SOCAN in its royalty distribution, including

(a) any alternate title, whether in the original language or not;

(b) the country, year and type of production;

(c) the theatrical or other release date; and

(d) the name of the director.

Payment of Royalties

7. (1) ~~As soon as possible after receiving the information set out in section 6, SOCAN shall notify the service of those audiovisual works that include a work for which a SOCAN licence is required. With respect to such works, SOCAN shall also provide to the service a report setting out~~

~~(a) each musical work embedded in the audiovisual work;~~

~~(b) the duration of each musical work;~~

~~(c) for each musical work requiring a SOCAN licence, an indication to that effect;~~

~~(d) if SOCAN administers only part of the rights in a musical work, the fraction of rights SOCAN administers; and~~

~~(e) the amount of royalties payable to SOCAN for each file of the audiovisual work transmitted to end-users.~~

~~(2) At least once each semester, SOCAN shall provide a new report with respect to audiovisual works for which the information set out in paragraph (1)(c) or (d) has changed.~~

~~87. (1) Royalties payable pursuant to section 4 are due no later than six months after the semester. If SOCAN does not provide the report under section 7 prior to the date where the payment is due, the payment of royalties for that semester is deferred to the next semester 20 days after the end of each month.~~

(2) All amounts payable under this tariff are exclusive of any bank fees and any federal, provincial or other governmental taxes or levies of any kind.

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

~~Repertoire Disputes~~

~~9. (1) A service that disputes the indication in a report received pursuant to section 7 that a file contains a musical work requiring a SOCAN licence shall provide to SOCAN the information on which the service relies to conclude that the licence is not required, unless the information was provided earlier.~~

~~(2) A service that disputes the indication more than 20 days after receiving a report pursuant to section 7 is not entitled to interest on the amounts owed to it.~~

Records and Audits

~~108. (1) A service and SOCAN shall keep and preserve, for a period of six years after the end of the semester month to which they relate, records from which the information set out in sections section 6 and 7 can be readily ascertained.~~

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

(3) Subject to subsection (4), if an audit discloses that royalties due have been understated in any semester quarter by more than 10 per cent%, the service shall pay the reasonable costs of the audit within 30 days of the demand for such payment.

(4) For the purposes of subsection (3), any amount owing as a result of an error or omission on the part of SOCAN shall not be taken into account.

Confidentiality

~~119. (1) Subject to subsections (2) and (3), SOCAN, the a service and its authorized distributors shall treat in confidence information received pursuant to this tariff, unless the disclosing party consents in writing to the information being treated otherwise.~~

(2) Information referred to in subsection (1) may be shared

- (a) between the service and its authorized distributors in Canada;
- (b) with the Copyright Board;
- (c) in connection with proceedings before the Copyright Board, once the disclosing party has had a reasonable opportunity to request a confidentiality order;
- (d) with any person who knows or is presumed to know the information;
- (e) to the extent required to effect the distribution of royalties;
- (f) with SOCAN's agents and service providers to the extent required by the service providers for the service they are contracted to provide; and
- (g) if required by law.

(3) Subsection (1) does not apply to information that must be provided pursuant to the *Copyright Act*, to information that is publicly available, to aggregated information, or to information obtained from someone other than the service or its authorized distributors who is not under an apparent duty of confidentiality with respect to the supplied information.

Adjustments

10. If, as a result of the discovery of an error or otherwise, the amount of the royalties paid or payable, including excess payments, requires an adjustment, then SOCAN or the service shall immediately notify the other party, provide an explanation for the claimed adjustment, and propose an adjustment solution, such solution subject to the other party's consent (not to be unreasonably withheld). Adjustments shall not be made in respect of any other royalties or fees owed to SOCAN by the service under another tariff or agreement without SOCAN's consent. No adjustment may be made to royalties paid more than six years previously. For greater certainty, this provision does not apply to any adjustments pursuant to an audit conducted under this tariff.

~~12. (1) Adjustments to any information provided pursuant to sections 4 and 5 shall be provided with the next report dealing with such information.~~

~~(2) 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.~~

Interests on Late Payments

~~1311.~~ (1) ~~Subject to subsection (4), any~~Any amount not received by the due date shall bear interest from that date until the date the amount is received.

~~(2) Any overpayment resulting from an error or omission on the part of SOCAN shall bear interest from the date of the overpayment until the overpayment is refunded.~~

~~(3) For the purposes of this section, a report provided pursuant to section 7 following the late reception of a report provided pursuant to section 6 is deemed to have been received within the time set out in section 7, as long as SOCAN provides the report no more than 20 days after receiving the late report.~~

~~(4) Any amount owing by a service as a result of an error or omission on the part of SOCAN shall not bear interest until 30 days after SOCAN has corrected the error or omission.~~

~~(52) Interest shall be calculated daily, at a rate equal to ~~one per cent~~1% above the Bank Rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.~~

Delivery of Address for Notices and Payments

~~1412.~~ (1) Anything addressed to SOCAN shall be sent to 41 Valleybrook Drive, Toronto, Ontario M3B 2S6, email: licence@socan.com, ~~fax number: 416 445 7108~~, or to any other address, or email address ~~or fax number~~ of which ~~the~~a service has been notified in writing.

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

Delivery of Notices and Payments

~~1513.~~ (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).

(2) To the extent possible, information that a service provides pursuant to section 6 shall be delivered electronically, in Excel format or in any other format agreed upon by SOCAN and the service. Each type of information shall be provided in a separate field.

(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.