

## **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.3 – Allied Audiovisual Services (2027-2029)

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

This tariff applies the communication to the public by telecommunication (including, where applicable, the making available) of works in SOCAN's repertoire by audiovisual services (and their authorized distributors) analogous to, and operated in conjunction with, by or in support of, the operations of an over the-air television station, a pay and specialty service, a community channel, a programming and non-programming service, or a broadcast distribution undertaking (BDU), that is subject to SOCAN Tariff 2.A or 17.

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

Users are allied audiovisual services and their authorized distributors. This includes audiovisual services associated with a particular BDU or a broadcast or specialty channel, for example. 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 for 2027-2029 is 3% of revenue from one or more of the following categories, depending on the business model of the allied audiovisual service:

- (a) Program fees charged to end users;
- (b) Amounts paid by subscribers; and
- (c) Revenue related to Canadian audiovisual usage (calculated according to the ratio defined in the tariff as "rate base"),

with a minimum fee of 17¢ per program in the case of (a), and 19.5¢ per subscriber in the case of (b).

For services with low music use (i.e., less than 20% of the overall time of the transmissions), the royalty rate is 1.5%.

Non-commercial services with no revenue pay an annual fee of \$129.95.

The proposed percentage of revenue royalty, minimum fees and annual fee for non-commercial services with no revenue are intended to reflect changes in the market, including increased efficiencies and expanded uses of music. 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 allied audiovisual 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 detailed valuation analysis to assist the Copyright Board in setting fair and equitable royalty rates and fees for allied audiovisual 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, on a monthly basis:

- the relevant revenue of the service, the number of plays of each file, and the total number of plays of all files;
- for allied audiovisual services that charge per-program fees to end users, the total amounts paid by Canadian end users for plays for which a SOCAN licence was required;
- for allied audiovisual services with subscribers, the number of subscribers, the amounts paid by subscribers, the number of subscribers provided with free subscriptions, and the total number of plays of all files by subscribers provided with free trial subscriptions; and
- information related to each file that was delivered as a stream, including information to assist in identifying the file, the number of plays of the file, and the total number of plays of all files.

Following the decision of the Supreme Court of Canada in *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30, which clarified the meaning of the making available provision (section 2.4(1.1)) of the *Copyright Act*, the proposed tariff introduces a new reporting requirement, namely that upon SOCAN's request, no more than twice per year, services would report certain information about all files made available for on-demand streaming.

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 Approved Tariff**

The proposed tariff includes the following changes from the previously approved tariff:

- 1) The proposed tariff introduces new royalty rates and minimum fees.
- 2) The proposed tariff adjusts the annual fee for non-commercial services from \$15.00 to \$129.95.
- 3) The proposed tariff introduces new reporting requirements, described above.
- 4) The proposed tariff clarifies that per-subscriber minimum fees are to be calculated based on the number of subscribers at the end of the month.
- 5) Several of the definitions in the proposed tariff have been amended or added for clarity.
- 6) 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.
- 7) 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.
- 8) The proposed tariff introduces standard provisions regarding address for and delivery of notices that are customary to and 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 applying the tariff.