

PROPOSED TARIFF
COPYRIGHT BOARD

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Proposed Tariff Title: SOCAN Tariff 22.G – Internet – ~~Other Uses of Music~~ Game Sites (2007-2019) Services (2027-2029)

Citation: 2022 CB 7-T

See also: SOCAN Tariff 22.G (2007-2019), 2022 CB 7

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For the communication to the public by telecommunication of musical or dramatico-musical works.

Secretary General

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SOCAN TARIFF 22.G – INTERNET – ~~OTHER USES OF MUSIC~~ GAME SITES (2007-2019) SERVICES (2027-2029)

Application

1. (1) This tariff sets the royalties to be paid for the communication to the public by telecommunication of works in SOCAN's repertoire ~~by means of Internet transmissions or similar transmission facilities in connection with a service ordinarily accessed to download or play games, including gambling, in the years 2007 to 2019, including from November 7, 2012, onward making works which, where applicable, includes the making available of such works~~ to the public by telecommunication in a way that allows a member of the public to have access to them from a place and at a time individually chosen by that member of the public, in connection with an online service ordinarily accessed to play games, including gambling, in the years 2027-2029.

(2) This tariff does not apply to uses covered by other ~~applicable~~ tariffs, including SOCAN Tariffs 16 (Background Music Suppliers), 22.A (Internet – Online Music Services) ~~and 24 (Ringtones), 22.B (Internet – Commercial Radio), 22.C (Internet – Other Audio Services), 22.D.1 (Online Audiovisual Services), 22.D.2 (User-Generated Content Services), 22.D.3 (Allied Audiovisual Services), 22.E (Internet – Canadian Broadcasting Corporation), 25 (Satellite Radio Services) and 26 (Pay Audio and Ancillary Services).~~

(3) This tariff 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.

Definitions

2. In this tariff,

~~“audio page impression” means a page impression that allows a person to hear a sound. (« consultation de page audio »)~~

“additional information” means, in respect of each musical work contained in a file, the following information:

- (a) the unique identifier assigned by the service to the musical work;
- (b) the title of the musical work;
- (c) the name of each author of the musical work;
- (d) the name of each performer or group to whom each sound recording contained in the file is credited;
- (e) the name of the person who released each sound recording in the file;
- (f) the International Standard Recording Code (ISRC) assigned to each sound recording in the file;
- (g) the name of the music publisher associated with the musical work;
- (h) the International Standard Musical Work Code (ISWC) assigned to the musical work;
- (i) the running time of the musical work, in minutes and seconds; and
- (j) any alternative title used to designate the musical work or each sound recording in the file; (« renseignements additionnels »)

“Canadian Internet-related revenues” means all Internet-related revenues generated in connection with end users with Canadian IP addresses; (« recettes d’Internet provenant du Canada »)

“file” means a digital file of a game; (« fichier »)

“Internet-related revenues” means all revenues generated by Internet-related activities, including membership, subscription and other access fees, amounts paid for advertising, product placement, promotion, and sponsorship, net revenues from the sale of goods or services and commissions on third-party transactions, but excluding

- (a) revenues that are already included in calculating royalties pursuant to another

SOCAN tariff;

(b) revenues generated by an Internet-based activity that is subject to another SOCAN tariff;

(c) agency commissions;

(d) the fair market value of any advertising production services provided by the service;

(e) network usage and other connectivity access fees; and

(f) revenues received from the service's customers for their purchase of permanent copies of games that are delivered to them by digital download from the service onto their local storage device. (« *recettes d'Internet* »)

~~“page impression” means a request to load a single page from a service. (« *consultation de page* »)~~

“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* »)

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

“service” means a person or ~~corporation~~entity that communicates musical works in SOCAN's repertoire to the public ~~— including by (which, where applicable, includes~~ making ~~these~~such works available to be accessed by members of the public at a time and place of each member's choosing ~~—) by means of digital transmission, including the Internet,~~ through a website, software application or platform used to play games, including, for example,

(a) operators of websites that enable members of the public to play web-based games on browsers without first needing to download the entire game onto their local storage devices;

(b) providers and operators of game-streaming platforms, including virtual worlds, online metaverses, and virtual or augmented reality services and platforms;

(c) developers and publishers of game apps for mobile devices, TV sets, set-top boxes, and game consoles that allow for streaming of game content; and

(d) game publishers who authorize others to communicate musical works to the public by telecommunication in the course of distributing or hosting their game content. (« *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 with whom a service or its authorized distributor has entered into a contract for service other than on a transactional per-stream basis, whether for a fee, for other consideration or free of charge, including pursuant to a free subscription; (« *abonné* »)

“year” means a calendar year. (« *année* »)

Royalties

3. (1) The royalties payable ~~by a~~ in relation to an online service that is ordinarily accessed to ~~download or~~ play games, including gambling, are

$$A \times B \times [1 - (C \times D)]$$

where

(A) is ~~0.8 percent of the service’s Internet-related revenues~~ 3%,

if the service can determine its Canadian Internet-related revenues:

(B) is the ~~ratio of audio page impressions to all page impressions, if that ratio is provided to SOCAN~~ service’s Canadian Internet-related revenues, and ~~1 if not,~~

(C) is ~~0.95 for a Canadian service and 1 for any other service~~, and

if the service cannot determine its Canadian Internet-related revenues:

(B) is the service’s Internet-related revenues, and

~~(D)~~ C is 0.1,

~~(i) the ratio of non-Canadian page impressions to all page impressions, if that ratio is provided to SOCAN; and~~

~~(ii) if not, 0 for a Canadian service and 0.9 for any other service, subject to a minimum fee of \$15129.95 per year.~~

(2) Notwithstanding subsection (1), the royalties payable with respect to any game containing less than 20% music use for which a licence is required from SOCAN are 1.5% of the service’s Canadian Internet-related revenues generated by such a game, if the service provides to SOCAN the records necessary to determine the level of music use in question. If the service cannot determine such Canadian Internet-related revenues, then

the royalties payable are 1.5% of the service's Internet-related revenues generated by such a game multiplied by 0.1.

Reporting Requirements

Service Identification

~~4. (1) Subject to subsection (2), royalties payable pursuant to section 3 shall be calculated and paid yearly.~~

~~(2) As soon as the royalties payable for a year exceed \$350, payments for the rest of that year and for the following year shall be made on a quarterly basis.~~

~~54. (1) No later than 3020 days after the end of the year, a service subject to subsection 4(1) shall pay the royalties for that year and shall report thefirst month during which a service communicates a file requiring a SOCAN licence, the service shall provide to SOCAN the following information used to calculate the royalties.:~~

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

(i) if a corporation, its name and its jurisdiction of incorporation,

(ii) if a sole proprietorship, the name of the proprietor,

(iii) if a partnership, the names of each partner, 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 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 and Music Use Reporting

~~(2) No later than 3020 days after the end of the quarter, a service subject to subsection~~

~~4(2) shall pay the royalties for that quarter and shall report the~~ each month, any service that is required to pay royalties pursuant to this tariff shall provide to SOCAN a report setting out, for that month, the following information used to calculate the royalties:

(a) the service's Canadian Internet-related revenues or Internet-related revenues, as applicable, from each of the categories in subsections 3(1) and (2), as applicable;

(b) in relation to each game that was delivered as a stream:

~~6. (1) Upon receipt of a written request from SOCAN, a service shall provide, with respect to each musical work the service transmitted during the days listed in the request,~~

~~(a) the date and time of the transmission;~~

~~(b) the title of the work, the name of its author and composer, game and/or series, the year of release, the publisher of the game, and any other information that would assist SOCAN in identifying the game;~~

~~(c) where applicable, the title of the album, the name of the performers or performing groups and the record label; and~~

(i) the number of starts of the game by end users;

(ii) the number of hours end users played the game; and

(iii) the additional information; and

(c) if more than one game was delivered as a stream:

(i) the number of starts of all games by end users; and

~~(d) where available, the number of persons who listened to the work hours end users played all games.~~

~~(2) A service shall provide the information set out in subsection (1) in electronic format where possible, otherwise in writing, no later than 14 days after the end of the month to which it relates.~~

(3) If the service offers subscriptions in connection with its provision of streams, the service shall provide the following information:

(a) for each subscription offering, the number of subscribers to the service at the end of the month and the total amounts paid by them during that month;

(b) the number of subscribers to the service with free subscriptions as of the end of the month; and

(c) the number of end users provided with an initial free trial as of the end of the month, the total number of starts of all games by such end users during that month, and the total number of hours such end users played all games during that month.

(34) A service ~~that is not required to provide the information set out in subsection (1) with respect~~_{pay royalties pursuant} to more than ~~14 days in a year~~_{one subsection of section 3} shall file a separate report pursuant to each subsection of this section.

Audit Files Made Available

7. SOCAN shall have the right to audit the books and records of a service, on reasonable notice and during normal business hours, to verify the statements rendered and the royalties payable.

Terms and Conditions

5. Upon request, a service shall provide to SOCAN the information specified in subparagraph 4(2)(b)(i) for each game that was made available to members of the public for on-demand streaming at any time during the year, regardless of whether the game was transmitted to any end user. SOCAN shall not make such a request more frequently than twice per year.

Payment of Royalties and Interest on Late Payments

6. (1) Royalties shall be due no later than 20 days after the end of each month.

(2) All amounts payable under this tariff are exclusive of 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.

8.(4) Any amount not received by the due date shall bear interest from that date until the date the amount is received. 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.

9. All amounts payable under this tariff are exclusive of any federal, provincial or other governmental taxes or levies of any kind.

Adjustments

7. 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.

Records and Audits

8. (1) A service shall keep and preserve, for a period of six years after the end of the month to which they relate, records from which the information set out in sections 3 and 4 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 quarter by more than 10%, 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

9. (1) Subject to subsections (2) and (3), SOCAN, 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 and who is not under an apparent duty of confidentiality with respect to the supplied information.

Addresses for Notices

10. (1) Anything addressed to SOCAN shall be sent to 41 Valleybrook Drive, Toronto, Ontario M3B 2S6, email: licence@socan.com, or to any other address or email address of which 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 of which SOCAN has been notified in writing.

Delivery of Notices

11. (1) Subject to subsection (2), a notice may be delivered by hand, by postage-paid mail, by email or by File Transfer Protocol (FTP).

(2) Information provided pursuant to sections 4 and 5 shall be delivered electronically, by way of delimited text file or in any other format agreed upon by SOCAN and the service.

(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 email or by FTP shall be presumed to have been received the day it is transmitted.