

STATEMENT OF ROYALTIES TO BE COLLECTED BY THE SOCIETY OF COMPOSERS, AUTHORS AND MUSIC PUBLISHERS OF CANADA (SOCAN) FOR THE COMMUNICATION TO THE PUBLIC BY TELECOMMUNICATION, IN CANADA, OF MUSICAL OR DRAMATICO-MUSICAL WORKS FOR THE YEARS 2007 TO 2013

GENERAL PROVISIONS

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

As used in this tariff, the term “licence” means a licence to communicate to the public by telecommunication or to authorize the communication to the public by telecommunication, as the context may require.

Except where otherwise specified, fees payable for any licence granted by SOCAN shall be due and payable upon the grant of the licence. 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 above the bank rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.

Each licence shall subsist according to the terms set out therein. SOCAN shall have the right at any time to terminate a licence for breach of terms or conditions upon 30 days’ notice in writing.

Tariff No. 22.D.1

INTERNET – ONLINE AUDIOVISUAL SERVICES

Application

1. (1) This part of Tariff 22 sets the royalties to be paid for the communication to the public by telecommunication of works in SOCAN’s repertoire in connection with the operation of an online audiovisual service and its authorized distributors for the years 2007 to 2013.

(2) This part of the tariff does not apply to uses covered by other applicable tariffs, including

(a) SOCAN tariffs for Online Music Services (Tariff 22.A as Certified by the Board for the years 1996 to 2006 and Proposed by SOCAN for the years 2007 to 2013);

(b) Game Sites (SOCAN Tariff 22.G as Certified by the Board for the years 1996 to 2006 and Proposed by SOCAN for the years 2007-2008 (Proposed Tariff 22.6), 2009-2012 (Proposed Tariff 22.F) and 2013 (Proposed Tariff 22.H); and

(c) User-Generated Content (Tariff 22.D.2 as Certified by the Board for the years 2007-2013).

Definitions

2. In this part of the tariff,

“additional information” means, in respect of each musical work contained in an audiovisual file, the following information, if available:

(a) the musical work’s identifier;

(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 the sound recording is credited;

(e) the name of the person who released any sound recording contained in the audiovisual file;

(f) the International Standard Recording Code (ISRC) assigned to the sound recording;

(g) if the sound recording has been released in physical format as part of an album: the name, identifier, product catalogue number and the Universal Product Code (UPC) assigned to the album, together with the associated disc and track numbers;

(h) the name of the music publisher associated with the musical work;

(i) the International Standard Musical Work Code (ISWC) assigned to the musical work;

(j) the Global Release Identifier (GRID) assigned to the musical work and, if applicable, the GRID of the album in which the musical work was released;

(k) the running time of the musical work, in minutes and seconds; and

(l) any alternative title used to designate the musical work or sound recording; (« *renseignements additionnels* »)

“audiovisual page impression” means a page impression that allows a person to hear an audiovisual work; (« *consultation de page audiovisuelle* »)

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

“file” means a digital file of an audiovisual work; (« *fichier* »)

“identifier” means the unique identifier an online audiovisual service assigns to a file; (« *identificateur* »)

“Internet-related revenues” means all revenues generated by Internet-related activities, including membership, subscription and other access fees, advertising, product placement, promotion, 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 user; and
- (e) network usage and other connectivity access fees; (« *recettes d’Internet* »)

“page impression” means a request to load a single page from a site. To the extent a service displays content and measures user “impressions” of such content in units other than single Internet Web pages, it shall be acceptable to treat impressions of such units as “page impressions” as long as the same unit measure is used in the numerator and denominator of part “B” of the royalty formula in paragraph 3(c); (« *consultation de page* »)

~~“limited download” means a download that uses technology that causes the file to become unusable when a subscription or other authorized usage period ends; (« *téléchargement limité* »)~~

“on-demand stream” means a stream selected by its recipient; (« *transmission sur demande* »)

“online audiovisual service” means a service that delivers streams ~~or downloads~~ of audiovisual works to end users, other than a service that offers only streams in which the file is selected by the service and can only be listened to at a time chosen by the service and for which no advance play list is published; (« *service audiovisuel en ligne* »)

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

“play” means the single performance of an on-demand stream; (« *écoute* »)

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

“site” means a collection of pages accessible via a common root URL; (« *site* »)

“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 the file at substantially the same time as when the file is transmitted; (« *transmission* »)

“subscriber” means an end user with whom an online audiovisual service or its authorized distributor has entered into a contract for service, other than on a transactional ~~per-download or~~ 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. The royalty payable for the communication of an audiovisual program containing one or more musical works requiring a SOCAN licence shall be as follows:

- (a) For a service that charges per-program fees to end users: 1.7% for the years 2007-2010, and 1.9% for the years 2011-2013, of the amounts paid by end users, subject to a minimum of 1.3¢ per program communicated;
- (b) For a service that offers subscriptions to end users: 1.7% for the years 2007-2010, and 1.9% for the years 2011-2013, of the amounts paid by subscribers. In the case of free trials, a minimum monthly fee of 6.8¢ for the years 2007-2010 and 7.5¢ for the years 2011-2013 per free trial subscriber shall apply;
- (c) For a service that receives Internet-related revenues in connection with its communication of audiovisual works, the royalty calculation shall be as follows:

1.7% for 2007-2010 and 1.9% for 2011-2013 $\times A \times B \times (1 - C)$,

where:

“A” is the service’s Internet-related revenues,

“B” is

- (i) the ratio of audiovisual page impressions to all page impressions, if available, and
- (ii) if not, 0.95 for a music video service, and 0.75 for any other service;

“C” is

- (i) 0 for a Canadian service,
- (ii) for any other service, the ratio of non-Canadian page impressions to all page impressions, if that ratio is available, and 0.9 if not;

(d) A service with revenues from more than one of the categories in paragraphs (a), (b) and (c) shall pay royalties in accordance with each applicable paragraph, but the calculation in paragraph (c) shall exclude any fees charged to end users pursuant to paragraphs (a) and (b), and the related page impressions; and

(e) A service with no revenue shall pay an annual fee of \$15.00.

ADMINISTRATIVE PROVISIONS

Reporting Requirements

Service Identification

4. (1) No later than the earlier of 20 days after the end of the first month during which an online audiovisual service communicates an audiovisual 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 a corporation and a mention of its jurisdiction of incorporation,
 - (ii) the name of the proprietor of an individual proprietorship, or
 - (iii) the names of the principal officers of 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, mailing 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 payments;
- (d) the name and address of any authorized distributor; and
- (e) the Uniform Resource Locator (URL) of each Internet website at or through which the service is or will be offered.

Sales Reports

On-Demand Streams

(2) No later than 20 days after the end of each month, any online audiovisual service that provides on-demand streams shall provide to SOCAN a report setting out for that month, in relation to each audiovisual file that was delivered as an on-demand stream, the following information, if available:

- (a) the title of the program and/or series, episode name, number and season;
- (b) the number of plays of each file;
- (c) the number of plays of all files;
- (d) the International Standard Audiovisual Number (ISAN) assigned to the file;
- (e) in the case of a translated program, the title in the language of its original production; and
- (f) the additional information as defined in section 2.

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

- (a) the number of subscribers to the service at the end of the month and the total amounts paid by them during that month; and
- (b) the number of subscribers provided with free trial subscriptions and the total number of plays of all audiovisual files provided to such subscribers as on-demand streams.

(4) If the online audiovisual service claims that a SOCAN licence is not required for a file, the service shall provide information to SOCAN that establishes why the licence is not required.

Limited Downloads

~~(5) No later than 20 days after the end of each month, any online audiovisual service that provides limited downloads of audiovisual files shall provide to SOCAN a report setting out, for that month:~~

- ~~(a) the number of limited downloads of each file and the amounts paid by end users for the file, including, if the file is offered as a limited download at different prices from time to time, the number of limited downloads at each different price;~~
- ~~(b) the total number of limited downloads supplied;~~
- ~~(c) the total amount paid by end users for limited downloads.~~

~~(6) No later than 20 days after the end of each month, any online audiovisual service that provides limited downloads shall provide to SOCAN a report setting out, for that month, in relation to each audiovisual file that was delivered as a limited download, the following information, if available:~~

- ~~(a) the title of the program and/or series, episode name and number, season and any other information that would assist SOCAN in identifying the file;~~
- ~~(b) the number of plays of each file;~~
- ~~(c) the number of plays of all files;~~
- ~~(d) the International Standard Audiovisual Number (ISAN) assigned to the file;~~
- ~~(e) in the case of a translated program, the title in the language of its original production; and~~
- ~~(f) the additional information as defined in section 2.~~

~~(7) If the online audiovisual service offers subscriptions in connection with its provision of limited downloads, the service shall pro-~~

vide the following information:

- ~~(a) the number of subscribers to the service at the end of the month and the total amounts paid by them during that month; and~~
- ~~(b) the number of subscribers provided with free trial subscriptions and the total number of downloads of all audiovisual files by such subscribers.~~

~~(8) If the online music service claims that a SOCAN licence is not required for a file, the service shall provide information to SOCAN that establishes why the licence is not required.~~

Permanent Downloads

~~(9) No later than 20 days after the end of each month, any online audiovisual service that provides permanent downloads of audiovisual files shall provide to SOCAN a report setting out for that month~~

- ~~(a) the number of permanent downloads of each file and the amounts paid by end users for each file, including, if the file is offered as a permanent download at different prices from time to time, the number of permanent downloads at each different price;~~
- ~~(b) the total number of permanent downloads supplied;~~
- ~~(c) the total amount paid by end users for permanent downloads.~~

~~(10) No later than 20 days after the end of each month, any online audiovisual service that provides permanent downloads shall provide to SOCAN a report setting out for that month, in relation to each audiovisual file that was delivered as a permanent download, the following information, if available:~~

- ~~(a) the title of the program and/or series, episode name and number, season and any other information that would assist SOCAN in identifying the file;~~
- ~~(b) the International Standard Audiovisual Number (ISAN) assigned to the file;~~
- ~~(c) in the case of a translated program, the title in the language of its original production; and~~
- ~~(d) the additional information as defined in section 2.~~

~~(11) If the online audiovisual service offers subscriptions in connection with its provision of permanent downloads, the service shall provide the following information:~~

- ~~(a) the number of subscribers to the service at the end of the month and the total amounts paid by them during that month; and~~
- ~~(b) the number of subscribers provided with free trial subscriptions and the total number of downloads of all audiovisual files by such subscribers.~~

~~(12) If the online audiovisual service claims that a SOCAN licence is not required for a file, the service shall provide information to SOCAN that establishes why the licence is not required.~~

~~(13) In the case of permanent downloads of audiovisual files, there shall be no additional payment to SOCAN in the case of "re-accessing", i.e., where an end user re-accesses a program previously purchased by that same end user, i.e., the same account (for which purchase the service accounts in its reports and payments to SOCAN) and for which no additional fee is paid to the service.~~

Page Impressions for Services With Internet-related Revenues

~~(145)~~ No later than 20 days after the end of each month, any online audiovisual service that is required to pay royalties pursuant to subsection 3(c) shall provide to SOCAN the following information:

- ~~(a) the service's Internet-related revenues;~~
- ~~(b) the ratio of audiovisual page impressions to all page impressions, if available;~~
- ~~(c) in the case of a non-Canadian service, the ratio of non-Canadian page impressions to all page impressions, if that ratio is available;~~
- ~~(d) whether the service is a music video service or any other service; and~~
- ~~(e) the information described in subsections 4(2) to 4(114), if applicable and on the same basis as described in those subsections (i.e. if available where so indicated).~~

~~(156)~~ An online audiovisual service that is required to pay royalties pursuant to more than one subsection of section 5 shall file a separate report pursuant to each subsection of this section.

Calculation and Payment of Royalties

5. Royalties shall be due no later than 20 days after the end of each month.

Adjustments

6. Adjustments to any information provided pursuant to sections 3 or 4 shall be provided with the next report dealing with such information.

7. (1) Subject to subsection (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.

(2) Any excess payment resulting from an online audiovisual service providing incorrect or incomplete information about a file shall be deducted from future amounts owed for the use of works owned by the same person as the work in that file.

Records and Audits

8. (1) An online audiovisual 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 year by more than 10 per cent, the online audiovisual 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, the online audiovisual 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 online audiovisual service and its authorized distributors in Canada;

(b) with the Copyright Board;

(c) in connection with proceedings before the Board, once the online audiovisual service 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, with royalty claimants; and

(f) if required by law.

(3) Subsection (1) does not apply to information that must be provided pursuant to section 70.11 of the *Copyright Act*.

Tariff No. 22.D.2

INTERNET – USER-GENERATED CONTENT

Application

1. (1) This part of Tariff 22 sets the royalties to be paid for the communication to the public by telecommunication of works in SOCAN's repertoire in connection with the operation of a user-generated content service for the years 2007 to 2013.

(2) This part of the tariff does not apply to uses covered by other applicable tariffs, including

(a) SOCAN tariffs for Online Music Services (Tariff 22.A as Certified by the Board for the years 1996 to 2010 and Proposed by SOCAN for the years 2011 to 2013), other than the transmission of music videos, which are covered by this Tariff;

(b) Game Sites (SOCAN Tariff 22.G as Certified by the Board for the years 1996 to 2006 and Proposed by SOCAN for the years 2007-2008 (Proposed Tariff 22.6), 2009-2012 (Proposed Tariff 22.F) and 2013 (Proposed Tariff 22.H)); and

(c) Online Audiovisual Services (SOCAN Tariff 22.D.1 as Certified by the Board for the years 2007-2013).

Definitions

2. In this part of the tariff, "additional information" means, in respect of each musical work contained in an audiovisual file, the following information, if available:

(a) the musical work's identifier;

(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 the sound recording is credited;

(e) the name of the person who released any sound recording contained in the audiovisual file;

(f) the International Standard Recording Code (ISRC) assigned to the sound recording;

(g) if the sound recording has been released in physical format as part of an album: the name, identifier, product catalogue number and the Universal Product Code (UPC) assigned to the album, together with the associated disc and track numbers;

(h) the name of the music publisher associated with the musical work;

(i) the International Standard Musical Work Code (ISWC) assigned to the musical work;

(j) the Global Release Identifier (GRID) assigned to the musical work and, if applicable, the GRID of the album in which the musical work was released;

(k) the running time of the musical work, in minutes and seconds; and

(l) any alternative title used to designate the musical work or sound recording; (« *renseignements additionnels* »)

“file” means a digital file of an audiovisual work; (« *fichier* »)

“identifier” means the unique identifier an online audiovisual service assigns to a file; (« *identificateur* »)

“online audiovisual service” means a service that delivers streams ~~or downloads~~ of audiovisual works to end users, other than a service that offers only streams in which the file is selected by the service and can only be listened to at a time chosen by the service and for which no advance play list is published; (« *service audiovisuel en ligne* »)

“other content” means content other than pay content; (« *autre contenu* »)

“pay content” means audiovisual works transmitted to end users for a fee or charge; (« *contenu payant* »)

“play” means the single performance, partial or otherwise, of an on-demand stream; (« *écoute* »)

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

“relevant revenues” means all revenues generated by all visits to watch pages on a site by end users having Canadian IP addresses, irrespective of whether the content that is subject to those visits contains any musical works or other audio content or any musical works in the repertoire of SOCAN, including membership, subscription and other access fees, advertising, product placement, promotion, sponsorship, net revenues from the sale of goods or services and commissions on third-party transactions, but excluding

(a) revenues generated from the transmission of pay content;

(b) revenues that are already included in calculating royalties pursuant to another SOCAN tariff;

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

(d) agency commissions;

(e) the fair market value of any advertising production services provided by the user; and

(f) network usage and other connectivity access fees. (« *recettes pertinentes* »)

“site” means a collection of pages accessible via a common root URL; (« *site* »)

“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 the file at substantially the same time as when the file is transmitted; (« *transmission* »)

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

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

“watch pages” means pages designed for viewing audiovisual content, including viewing of embedded pages accessed from another site; (« *pages à visionner* »)

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

Royalties

3. The royalty payable to SOCAN for the communication of audiovisual programs, including but not limited to music videos, by a user-generated content service shall be as follows: 1.7% for the years 2007-2010, and 1.9% for the years 2011-2013, of the service’s relevant revenues. A service with no revenue shall pay an annual fee of \$15.00.

ADMINISTRATIVE PROVISIONS

Reporting Requirements

Service Identification

4. (1) No later than the earlier of 20 days after the end of the first month during which a user-generated content service communicates user-generated content and the day before the service first makes such content 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 a corporation and a mention of its jurisdiction of incorporation,

(ii) the name of the proprietor of an individual proprietorship, or

(iii) the names of the principal officers of 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, mailing 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 payments;

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

(e) the Uniform Resource Locator (URL) of each Internet website at or through which the service is or will be offered.

Sales Reports

(2) No later than 20 days after the end of each month, the user-generated content service shall provide to SOCAN a report setting out for that month, in relation to each audiovisual file delivered, the following information, if available:

- (a) the title of the program and/or series, episode name and number, season and any other information that would assist SOCAN in identifying the file;
- (b) the number of plays of each file;
- (c) the number of plays of all files;
- (d) the International Standard Audiovisual Number (ISAN) assigned to the file;
- (e) in the case of a translated program, the title in the language of its original production; and
- (f) the additional information as defined in section 2.

Calculation and Payment of Royalties

5. Royalties shall be due no later than 20 days after the end of each month.

Adjustments

6. Adjustments to any information provided pursuant to sections 3 or 4 shall be provided with the next report dealing with such information.

7. (1) Subject to subsection (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.

(2) Any excess payment resulting from a user-generated content service providing incorrect or incomplete information about a file shall be deducted from future amounts owed for the use of works owned by the same person as the work in that file.

Records and Audits

8. (1) A user-generated content 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 per cent, the user-generated content 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 understated as a result of an error or omission on the part of SOCAN shall not be included in any calculation of any understatement of royalties.

Confidentiality

9. (1) Subject to subsections (2) and (3), SOCAN, the user-generated content 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 user-generated content service and its authorized distributors in Canada;
- (b) with the Copyright Board;
- (c) in connection with proceedings before the Board, once the user-generated content service 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, with royalty claimants; and
- (f) if required by law.

(3) Subsection (1) does not apply to information that must be provided pursuant to section 70.11 of the *Copyright Act*.