

Copyright Board
Canada



Commission du droit d'auteur
Canada

October 30, 2020

In accordance with section 68.2 of the *Copyright Act*, the Copyright Board hereby publishes the following proposed tariffs:

- **SOCAN Tariff 1.A – Commercial Radio, 2022-2024**
- SOCAN Tariff 1.B – Non-commercial Radio Other than the CBC, 2022-2024
- SOCAN Tariff 2.A – Commercial Television Stations, 2022-2024
- SOCAN-SODRAC Tariff 2.A.R – Commercial Television, 2022-2024
- SOCAN Tariff 3.A – Cabarets, Cafes, Clubs, etc. – Live Music, 2022-2024
- SOCAN Tariff 4.A – Live Performances at Concert Halls, etc. – Popular Music Concerts, 2022-2024
- SOCAN Tariff 4.B – Live Performances at Concert Halls, etc. – Classical Music Concerts, 2022-2024
- SOCAN Tariff 5.A – Exhibitions and Fairs, 2022-2024
- SOCAN Tariff 5.B – Concerts at Exhibitions and Fairs, 2022-2024
- SOCAN Tariff 6 – Motion Picture Theatres, 2022-2024
- SOCAN Tariff 14 – Performance of an Individual Work, 2022-2024
- SOCAN Tariff 15.A – Background Music in Establishments not Covered by Tariff 16 – Background Music, 2022-2024
- SOCAN Tariff 15.B – Background Music in Establishments not Covered by Tariff 16 – Telephone Music on Hold, 2022-2024
- SOCAN Tariff 16 – Background Music Suppliers, 2022-2024
- SOCAN Tariff 17 – Transmission of Pay, Specialty and Other Television Services by Distribution Undertakings, 2022-2024
- SOCAN Tariff 23 – Hotel and Motel In-Room Services, 2022-2024

By that same section, the Copyright Board hereby gives notice to any person affected by these proposed tariffs that users or their representatives who wish to object to the above-mentioned proposed tariffs must file written objections with the Board, at the address indicated below, no later than the 30th day after the day on which the Board published the proposed tariffs, that is no later than **November 30, 2020**.

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Copyright Board Canada

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PROPOSED TARIFF

Filed with the Copyright Board pursuant to subsection 67(1) of the *Copyright Act*

2020-10-15

SOCAN

Tariff 1.A

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

2022-01-01 – 2024-12-31

Proposed citation:

Commercial Radio Tariff (SOCAN: 2022-2024)

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 communicate to the public by telecommunication, in Canada, musical or dramatico-musical works forming part of its repertoire, including the right to make such works available 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.

GENERAL PROVISIONS

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 including the right to make works available 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.

Except where otherwise specified, fees payable for any licence granted by SOCAN shall be due and payable upon grant of the licence.

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. 1

RADIO

A. Commercial Radio

Short Title

1. This tariff may be cited as the *Commercial Radio Tariff (SOCAN: 2022-2024)*.

Definitions

2. In this tariff,

“*Act*” means the *Copyright Act*; (« *Loi* »)

“gross income” means the gross amounts paid by any person for the use of one or more broadcasting services or facilities provided by a station’s operator, including the value of any goods or services provided by any person in exchange for the use of such services or facilities, and the fair market value of non-monetary consideration (e.g. barter or “contra”), but excluding the following:

(a) income accruing from investments, rents or any other business unrelated to the station’s broadcasting activities. However, income accruing to or from any allied or subsidiary business, income accruing to or from any business that is a necessary adjunct to the station’s broadcasting services or facilities, or income accruing to or from any other business that results in the use of such services or facilities, including the gross amounts received by a station

pursuant to turn-key contracts with advertisers, shall be included in the station's "gross income";

(b) amounts received for the production of a program that is commissioned by someone other than the station and which becomes the property of that person;

(c) the recovery of any amount paid to obtain the exclusive national or provincial broadcast rights to a sporting event, if the station can establish that the station was also paid normal fees for station time and facilities; and

(d) amounts received by an originating station acting on behalf of a group of stations, which do not constitute a permanent network and which broadcast a single event, simultaneously or on a delayed basis, that the originating station subsequently pays out to the other stations participating in the broadcast. These amounts paid to each participating station are part of that station's "gross income."

This definition is understood to include any income from simulcast; (« *revenus bruts* »)

"low-use station (works)" means a station that

(a) broadcasts works in the repertoire of SOCAN for less than 20 per cent of its total broadcast time (excluding production music) during the reference month; and

(b) keeps and makes available to SOCAN complete recordings of its last 90 broadcast days; (« *station utilisant peu d'œuvres* »)

"month" means a calendar month; (« *mois* »)

"production music" means music used in interstitial programming such as commercials, public service announcements and jingles; (« *musique de production* »)

"reference month" means the second month before the month for which royalties are being paid; (« *mois de référence* »)

"simulcast" means the simultaneous, unaltered, real-time streaming of the over-the-air broadcast signal of the station, or of another station that is part of the same network as the station, via the Internet or other similar digital network; (« *diffusion simultanée* »)

"year" means a calendar year. (« *année* »)

Application

3. (1) This tariff sets the royalties to be paid each month by commercial radio stations

(a) in connection with the over-the-air broadcasting operations of a station to communicate to the public by telecommunication in Canada musical or dramatico-musical works in the repertoire of SOCAN; and

(b) in connection with a simulcast, to communicate to the public by telecommunication in Canada musical or dramatico-musical works in the repertoire of SOCAN.

(2) This tariff also entitles a station to authorize a person to communicate to the public by telecommunication a musical work for the purpose of delivering it to the station, so that the station can use it as permitted in subsection (1).

(3) This tariff does not apply to a communication to the public by telecommunication that is subject to another tariff, including SOCAN Tariff 16, 22 or 25, the *Satellite Radio Services Tariff* or the *SOCAN-Re:Sound Pay Audio Services Tariff*.

4. This tariff is subject to the special royalty rates set out in paragraph 72(2)(a) of the *Act*.

Royalties

5. (1) A low-use station (works) shall pay, on its gross income for the reference month,

	SOCAN
on the first \$625,000 gross income in a year	1.5%
on the next \$625,000 gross income in a year	1.5%
on the rest	1.5%

6. (1) Except as provided in section 5, a station shall pay, on its gross income for the reference month,

	SOCAN
on the first \$625,000 gross income in a year	3.2%
on the next \$625,000 gross income in a year	3.2%
on the rest	4.4%

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

Administrative Provisions

8. (1) No later than the first day of each month, a station shall

(a) pay the royalties for that month;

(b) report the station's gross income for the reference month; and

(c) provide to SOCAN the sequential lists of all musical works, or parts thereof, broadcast during each day of the reference month. For greater clarity, sequential list reporting requires full music use reporting for each day of the month, for 365 days per year.

9. At any time during the period set out in subsection 11(2), SOCAN may require the production of any contract granting rights referred to in paragraph (c) of the definition of “gross income,” together with the billing or correspondence relating to the use of these rights by other parties.

Information on Repertoire Use

10. (1) Each entry provided under paragraph 8(1)(c) shall include the following information, where available:

- (a) the date of the broadcast;
- (b) the time of the broadcast;
- (c) the title of the sound recording;
- (d) the title of the musical work;
- (e) the title of the album;
- (f) the catalogue number of the album;
- (g) the track number on the album;
- (h) the record label;
- (i) the name of the author and composer;
- (j) the name of all performers or the performing group;
- (k) the duration of the sound recording broadcast, in minutes and seconds;
- (l) the duration of the sound recording as listed on the album, in minutes and seconds;
- (m) the Universal Product Code (UPC) of the album;
- (n) the International Standard Recording Code (ISRC) of the sound recording; and
- (o) the cue sheets for syndicated programming, with the relevant music use information inserted into the report.

(2) The information set out in subsection (1) shall be provided in electronic format (Excel format or any other format agreed upon by SOCAN and the station), where possible, with a separate field for each piece of information required in subsection (1) other than the cue sheets which are to be used to insert the relevant music use information into each field of the report.

(3) For certainty, the use of the expression “where available” in subsection (1) means that all the listed information in the station’s possession or control, regardless of the form or the way in which it was obtained, must mandatorily be provided to SOCAN.

Records and Audits

11. (1) A station shall keep and preserve, for a period of six months after the end of the month to

which they relate, records from which the information set out in subsection 10(1) can be readily ascertained.

(2) A station shall keep and preserve, for a period of six years after the end of the year to which they relate, records from which the station's gross income can be readily ascertained.

(3) A station shall keep and preserve, for a period of six months after the end of the period to which they relate, records from which the information set out in subsection 8(2) can be readily ascertained.

(4) SOCAN may audit the records referred to in subsections (1) and (2) at any time during the period set out therein, on reasonable notice and during normal business hours. SOCAN shall, upon receipt, supply a copy of the report of the audit to the station that was the object of the audit.

(5) If an audit discloses that royalties due have been understated in any month by more than 10 per cent, the station shall pay the reasonable costs of the audit within 30 days of the demand for such payment.

Confidentiality

12. (1) Subject to subsections (2), (3) and (4), information received from a station pursuant to this tariff shall be treated in confidence, unless the station that supplied the information consents in writing and in advance to each proposed disclosure of the information.

(2) SOCAN may share information referred to in subsection (1)

(a) amongst other collective societies which have a certified tariff that applies to the station, along with SOCAN's or the other collective societies' service providers (to the extent required by the service providers for the service they are contracted to provide);

(b) with the Copyright Board;

(c) in connection with proceedings before the Board, if the station had the opportunity to request that it be protected by a confidentiality order;

(d) to the extent required to effect the distribution of royalties, with any other collective society or with any royalty claimants; or

(e) if required by law or by a court of law.

(3) Where confidential information is shared with service providers as per paragraph (2)(a), those service providers shall sign a confidentiality agreement.

(4) Subsection (1) does not apply to information that is publicly available, or to information obtained from someone other than the station that supplied the information and who is not under an apparent duty of confidentiality to that station with respect to the supplied information.

Adjustments

13. 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.

Interest on Late Payments

14. 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.

Addresses for Notices, etc.

15. (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, email address or fax number of which a station has been notified in writing.

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

Delivery of Notices and Payments

16. (1) A notice may be delivered by file transfer protocol (FTP), by hand, by postage-paid mail, by email or by fax. A payment must be delivered by hand, by postage-paid mail, or by electronic bank transfer (EBT), provided that the associated reporting is provided concurrently to SOCAN by email.

(2) Information set out in sections 8 and 10 shall be sent by email.

(3) Anything mailed in Canada shall be presumed to have been received four business days after the day it was mailed.

(4) Anything sent by fax, email, FTP or EBT shall be presumed to have been received the day it was transmitted.