

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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PROPOSED TARIFF

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

2020-10-15

SOCAN

Tariff 17

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

2022-01-01 – 2024-12-31

Proposed citation:

*SOCAN Tariff 17, Transmission of Pay, Specialty and Other Television Services
by Distribution Undertakings (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

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 terms “licence” and “licence to communicate to the public by telecommunication” mean 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. 17

TRANSMISSION OF PAY, SPECIALTY AND OTHER TELEVISION SERVICES BY DISTRIBUTION UNDERTAKINGS

Definitions

1. In this tariff,

“affiliation payment” means the amount payable by a distribution undertaking to a programming undertaking for the right to carry the signal of the programming undertaking. (« *paiement d’affiliation* »)

“ambient music” means music unavoidably picked up in the background when an event is videotaped or broadcasted. (« *musique ambiante* »)

“cleared music” means any music, other than ambient music or production music, in respect of which a licence from SOCAN is not required. (« *musique affranchie* »)

“cleared program” means a program produced by a Canadian programming undertaking and containing no music other than cleared music, ambient music or production music. (« *émission affranchie* »)

“distribution undertaking” means a distribution undertaking as defined in the *Broadcasting Act*, S.C. 1991, c. 11. (« *entreprise de distribution* »)

“gross income” means the gross amount paid by any person for the use of one or more broadcasting services or facilities provided by a programming undertaking, excluding the following:

(a) income accruing from investments, rents or any other business unrelated to the broadcasting activities of the programming undertaking. However, income accruing from any allied or subsidiary business that is a necessary adjunct to the broadcasting services and facilities of the programming undertaking or which results in their being used shall be included in the “gross income”;

(b) amounts received for the production of a program that is commissioned by someone other than the programming undertaking 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 programming undertaking can establish that it was also paid normal fees for its time and facilities. SOCAN may require the production of the contract granting these rights together with the billing or correspondence relating to the use of these rights by other parties;

(d) amounts received by an originating programming undertaking acting on behalf of a group of programming undertakings, which do not constitute a permanent network and which broadcast a single event, simultaneously or on a delayed basis, that the originating undertaking pays out to the other programming undertakings participating in the broadcast. These amounts paid to each participating undertaking are part of that undertaking’s “gross income”; and

(e) affiliation payments. (« *revenus bruts* »)

“premises” has the meaning attributed to it in section 2 of the *Regulations*, which reads:

“‘premises’ means

(a) a dwelling, including a single-unit residence or a single unit within a multiple-unit residence; or

(b) a room in a commercial or institutional building.” (« *local* »)

“production music” means music contained in interstitial programming such as commercials, public service announcements and jingles. (« *musique de production* »)

“programming undertaking” means a programming undertaking as defined in the *Broadcasting Act*. (« *entreprise de programmation* »)

“*Regulations*” means the *Definition of “Small Cable Transmission System” Regulations*, SOR/94-755 (*Canada Gazette*, Part II, Vol. 128, page 4096), amended by SOR/2005-148 (*Canada Gazette*, Part II, Vol. 139, page 1195). (« *Règlement* »)

“relevant month” means the month for which the royalties are payable. (« *mois pertinent* »)

“service area” has the meaning attributed to it in section 2 of the *Regulations*, which reads:

“‘service area’ means an area in which premises served in accordance with the laws and regulations of Canada by a cable transmission system are located.” (« *zone de service* »)

“signal” means a television signal, other than a signal within the meaning of subsection 31(1) of the *Copyright Act* retransmitted in accordance with subsection 31(2) of the *Copyright Act*. “Signal” includes the signals of Canadian pay and specialty services, non-Canadian specialty services, community channels, and other programming and non-programming services. (« *signal* »)

“small cable transmission system” has the meaning attributed to it in sections 3 and 4 of the *Regulations*, which read:

“3. (1) Subject to subsections (2) to (4) and section 4, ‘small cable transmission system’ means a cable transmission system that transmits a signal, with or without a fee, to not more than 2 000 premises in the same service area.

(2) For the purpose of subsection (1), where a cable transmission system is included in the same unit as one or more other cable transmission systems, the number of premises to which the cable transmission system transmits a signal is deemed to be equal to the total number of premises to which all cable transmission systems included in that unit transmit a signal.

(3) For the purpose of subsection (2), a cable transmission system is included in the same unit as one or more other cable transmission systems where

(a) they are owned or directly or indirectly controlled by the same person or group of persons; and

(b) their service areas are each less than 5 km distant, at some point, from at least one other among them, and those service areas would constitute a series of contiguous service areas, in a linear or non-linear configuration, were it not for the distance.

(4) Subsection (2) does not apply to a cable transmission system that was included in a unit on December 31, 1993.

4. The definition set out in subsection 3(1) does not include a cable transmission system that is a master antenna system located within the service area of another cable transmission system that transmits a signal, with or without a fee, to more than 2 000 premises in that service area.” (« *petit système de transmission par fil* »)

“TVRO” means a Television Receive Only Earth Station designed for the reception of signals transmitted by satellite. (« *TVRO* »)

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

2. For the purposes of this tariff, a cable transmission system shall be deemed to be a small cable transmission system in a given year if

(a) it is a small cable transmission system on the later of December 31 of the preceding year or the last day of the month in which it first transmits a signal in the year; or

(b) the average number of premises, determined in accordance with the *Regulations*, the sys-

tem served or was deemed to serve on the last day of each month during the preceding year was no more than 2 000.

Application

3. (1) This tariff applies to licences for the communication to the public by telecommunication, as often as desired in the years 2022-2024, of any or all of the works in SOCAN's repertoire, in connection with the transmission of a signal for private or domestic use.

(2) This tariff does not apply to any use of music subject to Tariff 2, 16 or 22.

Small Cable Transmission Systems and Unscrambled Low Power Television Stations

4. (1) The total royalty payable in connection with the transmission of all signals shall be \$10 a year where the distribution undertaking is

(a) a small cable transmission system;

(b) an unscrambled Low Power Television Station or Very Low Power Television Station (as defined in Sections E and G of Part IV of the *Broadcasting Procedures and Rules of Industry Canada* effective April 1997); or

(c) a terrestrial system that performs a function comparable to that of a cable transmission system, that uses Hertzian waves to transmit the signals and that otherwise meets the definition of "small cable transmission system."

(2) The royalty payable pursuant to subsection (1) is due on the later of January 31 of the relevant year or the last day of the month after the month in which the system first transmits a signal in the relevant year.

(3) The following information shall be provided in respect of a system for which royalties are being paid pursuant to subsection (1):

(a) the number of premises served on the later of December 31 of the preceding year or the last day of the month in which the system first transmitted a signal in the relevant year;

(b) if the small cable transmission system qualifies as such by virtue of paragraph 3(b) of the *Regulations*, the number of premises, determined in accordance with the *Regulations*, the system served or was deemed to serve on the last day of each month during the preceding year;

(c) if the system is a master antenna system and is located within the service area of another cable transmission system, the name of that other system and a statement to the effect that the other system transmits a signal, with or without a fee, to no more than 2 000 premises in its licensed area; and

(d) if the system is included in a unit within the meaning of the *Regulations*,

(i) the date the system was included in the unit,

(ii) the names of all the systems included in the unit,

(iii) the names of the person or group of persons who own or who directly or indirectly control the systems included in the unit, and

(iv) the nature of the control exercised by these persons.

Other Distribution Undertakings

5. (1) Sections 6 to 15 apply to distribution undertakings that are not subject to section 4.

(2) Unless otherwise provided, for the purposes of sections 6 to 15, any reference to a distribution undertaking, to affiliation payments or to premises served excludes systems subject to section 4 or payments made or premises served by such systems.

Community and Non-Programming Services

6. The total royalty payable in any month in respect of all community channels, non-programming services and other services generating neither affiliation payments nor gross income that are transmitted by a distribution undertaking shall be 0.14 ¢ per premise or TVRO served by the distribution undertaking on the last day of the relevant month.

Election of Licence

7. (1) A programming undertaking other than a service that is subject to section 6 can elect for the standard or modified blanket licence.

(2) An election must be in writing, and must be received by SOCAN at least 30 days before the first day of the month for which the election is to take effect.

(3) An election remains valid until a further election is made.

(4) A programming undertaking can make no more than two elections in a year.

(5) A programming undertaking that has never made an election is deemed to have elected for the standard blanket licence.

Standard Blanket Licence

8. (1) Subject to subsection (2), the monthly royalty payable for the transmission of the signal of a programming undertaking that has elected for the standard blanket licence is

(a) 2.1 per cent of affiliation payments payable in the relevant month by a distribution undertaking to the programming undertaking; plus

(b) $\frac{X \times Y \times 2.1 \text{ per cent}}{Z}$

where

X is the gross income of the programming undertaking during the relevant month

Y is the number of premises or TVROs served by the distribution undertaking and lawfully re-

ceiving the signal of the programming undertaking on the last day of the relevant month

Z is the total number of premises or TVROs (including those served by systems subject to section 4) lawfully receiving the signal of the programming undertaking on the last day of the relevant month.

(2) Notwithstanding subsection (1),

(a) paragraph (1)(b) does not apply to non-Canadian specialty services; and

(b) the royalty rate is 0.8 per cent if a programming undertaking communicates works for which it requires a licence from SOCAN, excluding production music and cleared music, for less than 20 per cent of the programming undertaking's total air time and keeps and makes available to SOCAN complete recordings of its last 90 broadcast days.

(3) The royalty payable pursuant to subsection (1) is calculated in accordance with Form A if the royalties are being paid by the distribution undertaking, and in accordance with Form B if the royalties are being paid by the programming undertaking.

Modified Blanket Licence (MBL)

9. (1) Subject to subsection (2), the monthly royalty payable for the transmission of the signal of a programming undertaking that has elected for the modified blanket licence is calculated in accordance with Form C.

(2) Notwithstanding subsection (1),

(a) no account is taken of gross income in calculating the royalty payable in respect of a non-Canadian specialty service; and

(b) the royalty rate is 0.8 per cent if a programming undertaking

(i) communicates works for which it requires a licence from SOCAN, excluding production music and cleared music, for less than 20 per cent of the programming undertaking's total air time, excluding the air time of cleared programs, and

(ii) keeps and makes available to SOCAN complete recordings of its last 90 broadcast days.

Due Date for Royalties

10. Royalties shall be due on the last day of the third month following the relevant month.

Reporting Requirements

11. No later than the last day of the month following the relevant month, a distribution undertaking shall provide to SOCAN and to each programming undertaking whose signal it transmitted during the relevant month

(a) the number of premises or TVROs served by the distribution undertaking and lawfully receiving the signal on the last day of the relevant month; and

(b) the amount of the distribution undertaking's affiliation payment for that signal for the relevant month.

12. (1) No later than the last day of the second month following the relevant month, a programming undertaking that does not intend to pay the royalty owed in respect of its signal for the relevant month shall provide to SOCAN and to each distribution undertaking that transmitted its signal during the relevant month

(a) the number obtained by dividing its gross income for the relevant month by the total number of premises or TVROs (including those served by systems subject to section 4) lawfully receiving its signal on the last day of the relevant month;

(b) if the programming undertaking has elected for the modified blanket licence, the percentage of its gross income that was generated by cleared programs in the relevant month and the percentage of total air time of cleared programs during that month; and

(c) if the programming undertaking claims that it complies with paragraph 8(2)(b) or 9(2)(b), a notice to that effect.

(2) A programming undertaking referred to in subsection (1) shall also provide to SOCAN by the date mentioned in subsection (1),

(a) its gross income during the relevant month;

(b) the total number of premises or TVROs (including those served by systems subject to section 4) lawfully receiving the signal of the programming undertaking on the last day of the relevant month; and

(c) the total number of premises or TVROs (excluding those served by systems subject to section 4) lawfully receiving the signal of the programming undertaking on the last day of the relevant month.

13. No later than the last day of the second month following the relevant month, a programming undertaking that has elected for the modified blanket licence shall provide to SOCAN, using Form D, reports identifying, in respect of each cleared program, the music used in that program as well as any document supporting its claim that the music identified in Form D is cleared music, or a reference to that document, if the document was provided previously.

14. (1) A programming undertaking that makes a payment shall provide to SOCAN with its payment the total amount of affiliation payments payable to it for the relevant month and the calculation of the royalty for the relevant month, using the applicable form.

(2) A distribution undertaking that makes a payment shall provide to SOCAN with its payment, for the relevant month and in respect of each programming undertaking whose signal it transmitted during the relevant month,

(a) the name of the programming undertaking, the name of its signal and the affiliation payment;

- (b) the number of premises or TVROs served by the distribution undertaking and lawfully receiving the signal of the programming undertaking on the last day of the relevant month; and
- (c) the calculation of the royalty, using the applicable form.

MBL: Incorrect Cleared Program Claims

15. Amounts paid pursuant to lines B and C of Form C on account of a program that a programming undertaking incorrectly claimed as a cleared program are not refundable.

Audit

16. SOCAN shall have the right to audit the books and records of a programming undertaking or of a distribution undertaking, on reasonable notice and during normal business hours, to verify the statements rendered and the royalty payable.

Confidentiality

17. (1) Subject to subsections (2),(3) and (4), information received pursuant to this tariff shall be treated in confidence, unless the undertaking that supplied the information consents in writing to the information being treated otherwise.

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

- (a) with SOCAN's agents and service providers, to the extent required by the service providers for the service they are contracted to provide;
- (b) to comply with this tariff;
- (c) with the Copyright Board;
- (d) in connection with proceedings before the Copyright Board, if the collective society has first provided a reasonable opportunity for the undertaking providing the information to request a confidentiality order;
- (e) to the extent required to effect the distribution of royalties, with any other collective society or with any royalty claimant; or
- (f) if required by law or by a court of law.

(3) Where confidential information is shared with a service provider pursuant to paragraph (2)(a), that service provider 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 undertaking and who is not under an apparent duty of confidentiality to that undertaking.

Interest on Late Payments

18. 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.

Tariff No. 17

TRANSMISSION OF PAY, SPECIALTY AND OTHER TELEVISION SERVICES BY
DISTRIBUTION UNDERTAKINGS

FORM A

CALCULATION OF LICENCE FEE FOR A STANDARD BLANKET LICENCE FOR THE
MONTH OF _____

(Payment by the distribution undertaking)

Name of the distribution undertaking: _____

Name of the programming undertaking or signal on account of which the royalties are being paid
(please provide one form per programming undertaking or signal):

(A) $2.1\% \times$ amount payable by the distribution undertaking for the right to carry the signal for
the relevant month: _____

(B) $2.1\% \times$ number supplied by the programming undertaking pursuant to paragraph 12(1)(a) of
the tariff \times number of premises or TVROs served by the distribution undertaking and lawfully
receiving the signal of the programming undertaking on the last day of the relevant month:

(C) TOTAL LICENCE FEE FOR THE MONTH (A + B): _____

Please remit the amount set out in (C)

NOTE: If the programming undertaking claims that it complies with paragraph 8(2)(b) of the tar-
iff, the applicable royalty rate is 0.8%.

Tariff No. 17

TRANSMISSION OF PAY, SPECIALTY AND OTHER TELEVISION SERVICES BY
DISTRIBUTION UNDERTAKINGS

FORM B

CALCULATION OF LICENCE FEE FOR A STANDARD BLANKET LICENCE FOR THE
MONTH OF _____

(Payment by the distribution undertaking)

Name of the programming undertaking or signal:

List of the distribution undertakings on account of which royalties are being paid:

(A) $2.1\% \times$ total amount payable by the relevant distribution undertakings for the right to carry
the signal of the programming undertaking for the relevant month: _____

(B) $\frac{X \times Y \times 2.1\%}{Z}$: _____

where

X is the gross income of the programming undertaking during the relevant month

Y is the total number of premises or TVROs served by the distribution undertakings and lawfully
receiving the signal of the programming undertaking on the last day of the relevant month

Z is the total number of premises or TVROs (including those served by systems subject to sec-
tion 4 of the tariff) lawfully receiving the signal of the programming undertaking on the last day
of that month.

(C) TOTAL LICENCE FEE FOR THE MONTH (A + B): _____

Please remit the amount set out in (C)

NOTE: If the programming undertaking claims that it complies with paragraph 8(2)(b) of the tar-
riff, the applicable royalty rate is 0.8%.

Tariff No. 17

TRANSMISSION OF PAY, SPECIALTY AND OTHER TELEVISION SERVICES BY
DISTRIBUTION UNDERTAKINGS

FORM C

CALCULATION OF LICENCE FEE FOR A MODIFIED BLANKET LICENCE (MBL) FOR
THE MONTH OF _____

For the purposes of this form and for the month for which the royalties are being calculated

“Affiliation payments” does not include payments made by systems subject to section 4 of the tariff (small systems).

“Total affiliation payments” means

(a) if a distribution undertaking fills the form, the affiliation payment payable by the distribution undertaking to the relevant programming undertaking for that month;

(b) if a programming undertaking fills the form, the affiliation payments payable to the programming undertaking by all the distribution undertakings that carried its signal during that month.

“Affiliation payments from cleared programs” means the total affiliation payments multiplied by the percentage of total air time attributable to cleared programs in that month. (That figure is provided by the programming undertaking pursuant to paragraph 12(1)(b) of the tariff if a distribution undertaking fills the form.)

“Affiliation payments from programs other than cleared programs” means the difference between total affiliation payments and affiliation payments from cleared programs.

“Total gross income” means

(a) if a distribution undertaking fills the form, the number provided by the programming undertaking for that month pursuant to paragraph 12(1)(a) of the tariff multiplied by the number of premises or TVROs served by the distribution undertaking and lawfully receiving the signal of the programming undertaking on the last day of that month;

(b) if a programming undertaking fills the form, the undertaking’s gross income for that month multiplied by the ratio of the total number of premises or TVROs (excluding those served by systems subject to section 4 of the tariff) lawfully receiving its signal on the last day of that month over the total number of premises or TVROs (including those served by systems subject to section 4 of the tariff) lawfully receiving its signal on the last day of that month.

“Gross income from cleared programs” means the total gross income multiplied by the percentage of gross income from cleared programs. (That figure is provided by the programming undertaking pursuant to paragraph 12(1)(b) of the tariff if a distribution undertaking fills the form.)

“Gross income from programs other than cleared programs” means the difference between total gross income and gross income from cleared programs.

If the distribution undertaking fills the form, one form must be completed with respect to each programming undertaking that has elected for the MBL that the distribution undertaking transmits in the relevant month. If the programming undertaking fills the form, only one form needs to be completed.

Payment on account of cleared programs

— to account for additional expenses incurred by SOCAN because of the availability of the MBL: (A) _____
 $3\% \times 2.1\% \times (\text{total gross income} + \text{total affiliation payments})$

— to account for the use of ambient and production music in cleared programs: (B) _____
 $5\% \times 2.1\% \times (\text{gross income from cleared programs} + \text{affiliation payments from cleared programs})$

— to account for SOCAN’s general operating expenses: $22\% \times 95\% \times 2.1\% \times (\text{gross income from cleared programs} + \text{affiliation payments from cleared programs})$ (C) _____

— TOTAL of A + B + C (D) _____

Payment on account of all programs other than cleared programs

— $2.1\% \times (\text{gross income from programs other than cleared programs} + \text{affiliation payments from programs other than cleared programs})$ (E) _____

TOTAL LICENCE FEE FOR THE MONTH (D + E) (F) _____

Please remit the amount set out in (F)

NOTE: If the programming undertaking claims that it complies with paragraph 9(2)(b) of the tariff, the applicable royalty rate is 0.8%.

