

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/SODRAC

*Tariff 2.A.R*

For the reproduction of musical or works

2022-01-01 – 2024-12-31

Proposed citation:

*SOCAN/SODRAC Tariff No. 2.A.R, Commercial Television Tariff (2022-2024)*

PROPOSED STATEMENT OF ROYALTIES TO BE COLLECTED BY SOCAN/SODRAC FROM COMMERCIAL TELEVISION STATIONS FOR THE REPRODUCTION, IN CANADA, OF MUSICAL WORKS FOR THE YEARS 2022-2024

*Short Title*

1. This tariff may be cited as the *SOCAN/SODRAC Tariff No. 2.A.R, Commercial Television Tariff (2022-2024)*.

*Definitions*

2. The following definitions apply in this tariff.

“broadcasting” has the meaning ascribed to it in section 2 of the *Broadcasting Act*, S.C. 1991, c. 11, excluding any video-on-demand, any dissemination of programs via the Internet for a fee, and any podcasting of audiovisual content in which a work of the repertoire is already embedded, but including any simulcast. (« *radiodiffusion* »)

“cue sheet” means a report containing the following information: the title of the audiovisual work, the title of each of the musical works embedded into the audiovisual work, the name of the author and composer of each of the musical works, the duration of each of the musical works, the duration of the audiovisual work. (« *rapport de contenu musical* »)

“gross income” means the gross amounts paid for the use of one or more broadcasting services or facilities offered 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, the fair market value of any non-monetary consideration (e.g. barter or “contra”), and any income from simulcast, whether such amounts are paid to the station owner or operator or to other persons, but excluding the following:

(a) income accruing from investments, rents or any other business unrelated to 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 that 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 it 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, provided that the amounts so paid to each participating station are included in that station’s “gross income.” (« *revenus bruts* »)

“identifier” means the unique identifier assigned to a program, musical work, sound recording, or cue sheet, as the case may be. (« *identificateur* »)

“network” has the meaning ascribed to it in section 2 of the *Broadcasting Act*, S.C. 1991, c. 11. (« *réseau* »)

“program” means any combination of sounds and visual images that is intended to inform, enlighten, or entertain, excluding an advertisement. (« *émission* »)

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

“repertoire” means the musical works for which SOCAN/SODRAC is entitled to grant a licence pursuant to section 3. (« *répertoire* »)

“simulcast” means the simultaneous, unaltered, real-time streaming of the 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 computer network. (« *diffusion simultanée* »)

“SOCAN” means the Society of Composers, Authors and Music Publishers of Canada (“SOCAN”); and “SODRAC” means SODRAC 2003 Inc. and the Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) Inc.; (“SODRAC”), (collectively, “SOCAN/SODRAC”). (« *SOCAN/SODRAC* »)

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

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

### *Application*

3. (1) A station that complies with this tariff is authorized to reproduce a work of the repertoire already embedded in a program, in any material form and by any process now known or hereafter devised, solely in connection with the broadcasting of the program on the station, including any simulcast as well as any reproduction made by a third party for the benefit of the station other than that required for the delivery of the broadcast to the station.

(2) A station that complies with this tariff is also authorized to

(a) reproduce a work of the repertoire already embedded in a program, with or without the associated visual images, to produce an audiovisual montage of four minutes or less that consists of footage from that program, or of several episodes from the same series, for the purpose of promoting

(i) the broadcast of that program or series on that station only, or

(ii) the programming of the station on whose frequency the program is broadcast, if the work remains associated with footage from the program or series in which the work is included;

(b) reproduce a work of the repertoire already embedded in a program in making archival or backup copies of the station's programming; and

(c) authorize a third party to reproduce a work of the repertoire already embedded in a program for the purpose of delivering the program to the station so that the station may use it in one of the ways referred to in subsections (1) and (2).

(3) The reproductions referred to in subsection (1) and paragraphs (2)(b) and (c) shall be limited to the work of the repertoire already embedded in the program, including the associated visual images.

(4) This tariff does not authorize

(a) the reproduction of a work of the repertoire in synchronization or timed relation with visual images, with any other work, or with any sound recording or performer's performance;

(b) the use of a work of the repertoire in a montage or mashup, or in association with a product, service, cause or institution, other than as expressly authorized in paragraph (2)(a);

(c) the reproduction of a work of the repertoire by a third party, or the authorization of such reproduction by the station, other than as expressly authorized in paragraph (2)(c);

(d) the reproduction of a sound recording; or

(e) any use covered by any other tariff, including *SODRAC Tariff No. 6* or *SODRAC Tariff No. 7* and *SOCAN Tariff No. 22.A.R* or *SOCAN Tariff No. 22.D.1.R*.

(5) This tariff does not apply where there is an agreement between SOCAN/SODRAC and a person authorized to do the acts referred to therein, if the agreement is in effect during the period of the approved tariff.

### *Royalties*

4. (1) The royalties payable to SOCAN/SODRAC for a month shall be 0.66 per cent of the station's gross income for the reference month, adjusted in accordance with the use of SOCAN/SODRAC's repertoire, as a percentage of the music played.

(2) If a program contains at least one musical work and the station provides or has provided SOCAN/SODRAC with documentation establishing that the rights referred to in subsection 3(1) have been cleared with respect to all the musical works embedded into the program, the station is entitled, with respect to that program, to a discount of

$$\frac{A \times B}{C}$$

where

(A) represents the rate applicable to the station that broadcasts the relevant program,

(B) represents the program's acquisition cost, and

(C) represents the total acquisition costs for the programs containing one or more musical works broadcast by the station during the month.

5. Royalties owed in respect of part of a month shall be prorated according to the number of days the station engaged in broadcasting during that month.

6. All royalties are exclusive of any bank fees and any federal, provincial or other governmental taxes or levies of any kind.

*Reporting and Payment Requirements*

7. No later than the later of 30 days after the coming into force of this tariff and 20 days after the end of the first month during which a station reproduces a program that may require a SOCAN/SODRAC licence, the station shall provide to SOCAN/SODRAC the following information:

(a) the name of the station owner, including

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

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

(iii) if a partnership, the name of each partner, and

(iv) the names of the principal officers of any other service,

together with any other trade name under which the station carries on business;

(b) the address of its principal place of business;

(c) if the station is part of a network, the name of the network and, in relation to the network, the information set out in paragraphs (a) and (b); and

(d) the name, address, and email address of the person or persons to be contacted for the purposes of notice and, if different from that name, address, and email address for the payment of royalties, the provision of information pursuant to this tariff, and any inquiries related thereto.

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

(a) pay the royalties for that month;

(b) report to SOCAN/SODRAC its gross income for the reference month; and

(c) report to SOCAN/SODRAC separately, for the reference month, its gross income from any simulcast, as well as the number of viewers and viewing hours or, if that information is not available, any other available indication of the extent of viewers' use of simulcast.

9. (1) No later than the first day of each month, a station shall provide SOCAN/SODRAC with a cue sheet indicating, in relation to each program broadcast by the station for the first time during the reference month, the following information:

(a) its title, including any subtitle or alternate title or in the case of a translated program, its ti-

- tle in the original language, and any identifier assigned to the program;
- (b) its episode number or title, if applicable, and any identifier assigned to the episode;
- (c) its duration, in minutes and seconds;
- (d) the International Standard Audiovisual Number (ISAN) assigned to the program;
- (e) the cue sheet containing, in relation to each musical work embedded in the program,
  - (i) its title,
  - (ii) the name of its authors, composers, and music publishers and their respective shares of ownership in the copyright of the musical work,
  - (iii) the duration of the musical work as embedded in the program, in minutes and seconds, and
  - (iv) the way in which it was used (for example as background or foreground music); and
- (f) such other information as may be included in the cue sheet by the person who provided it to the station, including any identifier assigned to the cue sheet.

(2) A station shall provide a cue sheet for each program that is otherwise identical to another program if their musical content differs in any way contemplated by paragraph (1)(d) or otherwise.

(3) The cue sheet that a station shall provide is that which is received by the station from the person from whom the station acquires the right to broadcast the program. A station shall cooperate with SOCAN/SODRAC in any attempt by SOCAN/SODRAC to obtain cue sheets from third parties, regardless of whether such parties produced the programs.

10. No later than the first day of each month, a station shall provide SOCAN/SODRAC with a copy of its broadcast schedule for the reference month and a broadcast report indicating, in relation to each program broadcast during the reference month, the following information:

- (a) the date and time of the broadcast;
- (b) the duration of the program broadcast;
- (c) the original title, subtitle and alternate title;
- (d) the episode number or title;
- (e) whether the program was simulcast;
- (f) any other available information that would assist SOCAN/SODRAC in identifying the program and the musical works it contains.

11. At any time during the period set out in subsection 12(1), SOCAN/SODRAC 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 those rights by other

parties, and the station shall provide that information within 10 days after receiving a request in writing from SOCAN/SODRAC.

#### *Records and Audits*

12. (1) 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 information set out in sections 8, 9, 10, and 11, any other information that must be provided under this tariff, and the amounts owed under this tariff, can be readily ascertained.

(2) SOCAN/SODRAC may audit these records at any time during the period set out in subsection (1), during normal business hours and on notice of 10 business days.

(3) SOCAN/SODRAC shall, upon receipt of the audit report, supply a copy to the station.

(4) If an audit discloses that royalties due to SOCAN/SODRAC 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 a demand for such payment.

#### *Breach and Termination*

13. (1) A station that fails to provide any information required under this tariff within five business days of the date on which the information is required, or to pay royalties within five business days of the date on which the royalties are due, is not entitled to do any of the acts described in section 3 as of the first day of the month in relation to which the information should have been provided or the royalties should have been paid, as the case may be, and until the information is provided and the royalties and any accrued interest are paid.

(2) A station that fails to comply with any other provision of this tariff is not entitled to do any of the acts described in section 3 as of five business days after SOCAN/SODRAC has notified the station in writing of that failure and until the station remedies that failure.

(3) A station whose owner or operator becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of its creditors, files for protection under the *Companies' Creditors Arrangement Act* or other comparable legislation in another jurisdiction, winds up its affairs, ceases to carry on business, or has a receiver/manager appointed for it or for a substantial part of its property, is not entitled to do any of the acts described in section 3 as of the day immediately preceding the day of the relevant occurrence.

#### *Confidentiality*

14. (1) Subject to subsections (2), (3) and (4), SOCAN/SODRAC shall treat in confidence information received pursuant to this tariff, unless the station consents in writing to the information being treated otherwise.

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

(a) with SOCAN/SODRAC's agents and service providers, to the extent required by the service providers for the service they are contracted to provide;



(b) with any other collective in Canada that has secured a certified tariff applicable to commercial television stations;

(c) with the Copyright Board;

(d) in connection with proceedings before the Board, if the station has first been provided with a reasonable opportunity to request a confidentiality order;

(e) with any person who knows or is presumed to know the information;

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

(g) 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 station and who is not under a duty of confidentiality to the station.

#### *Adjustments*

15. 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*

16. (1) In the event that a station does not pay the amount owed under section 8 or provide the information required by sections 8, 9, and 10 by the due date, the station shall pay to SOCAN/SODRAC interest calculated on the amount owed from the due date until the date both the amount and the information are received by SOCAN/SODRAC. 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.

(2) In the event that a station does not provide the information required by sections 8, 9, and 10 by the due date, the station shall pay to SOCAN/SODRAC a late fee of \$50.00 per day from the due date until the date the information is received by SOCAN/SODRAC.

#### *Delivery of Notices and Payments*

17. (1) Anything that a service sends to SOCAN/SODRAC pursuant to sections 8 to 10 shall be sent by email to [licence@socan.com](mailto:licence@socan.com). Anything else that a distributor sends to SOCAN/SODRAC shall be sent to 41 Valleybrook Drive Toronto, Ontario M3B 2S6, Att.: General Counsel and Head of Legal Services, email: [licence@socan.com](mailto:licence@socan.com), fax: 416-442-3371, or to any other address of which the service has been notified in writing.

(2) Anything that SOCAN/SODRAC sends to a service shall be sent to the last address, fax number or email address of which SOCAN/SODRAC has been notified in writing.

18. (1) Subject to subsection (2), a notice may be delivered by hand, by postage-paid mail, by email, by fax, or by File Transfer Protocol (FTP). A payment must be delivered by hand, by postage-paid mail, or as otherwise agreed upon by SOCAN/SODRAC and the station.

(2) To the extent possible, information that a service provides pursuant to sections 8 to 10 shall be delivered electronically, in Excel format or in any other format agreed upon by SOCAN/SODRAC and the service. Each type of information shall be provided in a separate field.

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

(5) All amounts required to be reported or paid under this tariff shall be reported or paid in Canadian dollars.

*Term*

19. This tariff comes into force on January 1, 2022, and ends on December 31, 2024.