

PROPOSED TARIFF

Filed with the Copyright Board by SOCAN on 2021-10-15 pursuant to subsection 67(1) of the *Copyright Act*

Proposed Tariff Title: *SOCAN Tariff 26, Pay Audio and Ancillary Services (2023-2025)*

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

Effective Period: 2023-01-01 – 2025-12-31

SOCAN TARIFF 26, PAY AUDIO AND ANCILLARY SERVICES (2023-2025)

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 term “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 herein. SOCAN shall have the right at any time to terminate a licence for breach of terms or conditions upon 30 days’ notice in writing.

Short Title

1. This tariff may be cited as the *SOCAN Tariff 26, Pay Audio and Ancillary Services, 2023-2025*.

Definitions

2. In this tariff,

“affiliation payments” means the total amounts payable by or for a distribution undertaking to a programming undertaking for the distribution of a pay audio service intended for private or domestic use and, in the case where a programming undertaking provides programming and services in a bundle or package that includes a pay audio service, means the total amounts payable to the programming undertaking for the bundle or package; (« *paiements d’affiliation* »)

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

“file” means a digital file of a sound recording of a musical work or a part thereof; (« *fichier* »)

“non-interactive webcast service” a webcast service with programming provided by a programming undertaking, where the user does not exercise any control over either the content of the files or the timing of the transmission of the files; (« *service de webdiffusion non interactive* »)

“pay audio service” means any pay audio service licensed by the CRTC; (« *service sonore payant* »)

“payment period” means: (a) a calendar year, for a distribution undertaking that is a small cable transmission system; and (b) a calendar month, for a distribution undertaking that is not a small cable transmission system; (« *période de paiement* »)

“premises” has the meaning attributed to it in section 2 of the *Regulations*, which currently 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* »)

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

“semi-interactive webcast service” means a webcast service with programming provided by a programming undertaking, where the user exercises some level of control over the content of the files, or the timing of the transmission of the files, or both; (« *service de webdiffusion semi-interactive* »)

“service area” has the meaning attributed to it in section 2 of the *Regulations*, which currently 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 or audio 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* »)

“simulcast service” means a service that provides simultaneous, or nearly simultaneous, transmission over the Internet or another digital network of programming content that is identical to that of a pay audio service to which this tariff applies, where the user does not exercise any control over either the content of the files or the timing of the transmission of the files; and (« *service de transmission simultanée* »)

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

sons; 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 that 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 if it is 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* »)

Application

3. (1) This tariff sets the royalties to be paid, and the terms and conditions, for a licence to communicate to the public by telecommunication musical and dramatico-musical works in SOCAN’s repertoire, including, where applicable, 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, in the years 2023 to 2025, in connection with:

(a) a pay audio service;

(b) a simulcast service that is available to users only by virtue of their subscription with a distribution undertaking; and

(c) a semi-interactive webcast service and a non-interactive webcast service that are available to users only by virtue of their subscription with a distribution undertaking,

distributed by a distribution undertaking, either directly or indirectly through a programming undertaking, and intended for private or domestic use.

(2) This tariff does not apply to any communication to the public by telecommunication of musical and dramatico-musical works in SOCAN’s repertoire in connection with:

(a) a simulcast service, a semi-interactive webcast service, or a non-interactive webcast service that is not distributed by a distribution undertaking (whether directly or indirectly through a programming undertaking);

(b) any service that is not listed in subsection (1), even if that service, which may be subject to

another SOCAN tariff, is distributed, provided, or sold together with one or more of the services listed in subsection (1); or

(c) any service that is provided to commercial subscribers, including a background music supply service.

Royalties

4. (1) Subject to subsections (2) and (3), the royalties payable to SOCAN for a pay audio service and any simulcast service listed in paragraph 3(1)(b) for a payment period are 12.45 per cent of the affiliation payments for that payment period.

(2) Subject to subsection (3), where a pay audio service is provided in a bundle or package that contains other service(s), the royalties payable to SOCAN for a payment period are:

(a) where the bundle or package includes the service(s) listed in paragraph 3(1)(c) but no other service:

(i) for the pay audio service and any simulcast service listed in paragraph 3(1)(b):

12.45 per cent x 0.75 x the affiliation payments for that payment period, plus

(ii) for the service(s) listed in paragraph 3(1)(c):

5.3 per cent x 0.25 x the affiliation payments for the payment period; and

(b) where the bundle or package includes any service that is not listed in subsection 3(1):

(i) for the pay audio service and any simulcast service listed in paragraph 3(1)(b):

12.45 per cent x 0.75 x the affiliation payments for the payment period, plus

(ii) for the service(s) listed in paragraph 3(1)(c):

5.3 per cent x 0.10 x the affiliation payments for the payment period.

(3) The royalties payable to SOCAN for a payment period in respect of a distribution undertaking that is a small cable transmission system are calculated in accordance with the applicable formula set out in subsections (1) and (2) but at half the percentage rate specified.

Dates of Payments

5. Royalties payable pursuant to section 4 shall be due on the last day of the month following the end of the payment period for which the royalties are being paid.

Reporting Requirements

6. (1) A royalty payment under this tariff for a payment period shall, in respect of each distribution undertaking for which the payment is made, be accompanied by the following information:

- (a) the name of the distribution undertaking;
- (b) the name of the programming undertaking that provided the services listed in subsection 3(1);
- (c) if applicable, the other services in the bundle or package that included the pay audio service;
- (d) the list of pay audio signals the programming undertaking supplied to the distribution undertaking and intended for private and domestic use during the payment period; and
- (e) the affiliation payments for the payment period.

(2) In respect of each distribution undertaking that is a small cable transmission system, the following information shall also accompany the royalty payment:

- (a) the number of premises served in the system on the last day of each month of the payment period;
- (b) 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 not more than 2,000 premises in its service area; and
- (c) 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.

(3) Whether or not it makes a royalty payment under this tariff, a programming undertaking shall provide to SOCAN, by no later than January 31 of each year, the name of each distribution undertaking to which it provided a pay audio service, a simulcast service, a semi-interactive webcast service, or a non-interactive webcast service for distribution intended for private or do-

mestic use in the previous year. The programming undertaking shall also indicate who (the programming undertaking or the distribution undertaking) is responsible for paying royalties under this tariff for each distribution undertaking listed.

Music Use Information

7. (1) Whether or not it makes a royalty payment under this tariff, a programming undertaking shall provide to SOCAN, by no later than 30 days after the end of each calendar month, the following information in respect of each distribution undertaking to which it supplied a pay audio signal:

(a) the list of pay audio signals the programming undertaking supplied to each distribution undertaking and intended for private and domestic use during the month; and

(b) the sequential list of all sound recordings played on each pay audio signal on each day of the month, where each list entry shall include the following information:

(i) the pay audio signal ID (e.g., Station ID);

(ii) the date and time of the broadcast;

(iii) the title of the musical work;

(iv) the name(s) of the author(s) or composer(s) of the work;

(v) the name of the music publisher associated with the work;

(vi) the name of the sound recording;

(vii) any alternative title used to designate the musical work or sound recording;

(viii) the International Standard Musical Word Code (ISWC) assigned to the work;

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

(x) the name(s) of the performers or of the performing group;

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

(xii) the record label;

(xiii) the duration of the sound recording broadcast, in minutes and seconds; and

(xiv) the duration of the sound recording as listed on the album, in minutes and seconds.

(2) Whether or not it makes a royalty payment under this tariff, a programming undertaking shall provide to SOCAN, by no later than 30 days after the end of each calendar month, the following information in respect of each distribution undertaking to which it provided the services listed in paragraph 3(1)(c):

(a) for each file transmitted on the services during the month:

(i) its identifier;

(ii) the information set out in each of subparagraphs (1)(b)(iii) to (1)(b)(xi);

(iii) the name of the person who released the sound recording;

(iv) the Global Release Identifier (GRid) assigned to the file and, if applicable, the GRid of the album in which the file was released;

(v) the running time of the file, in minutes and seconds; and

(vi) the number of plays of the file during the month; and

(b) the total number of plays of all files transmitted on the services during the month.

(3) The information set out in subsections (1) and (2) shall be provided electronically in a format agreed upon by SOCAN and the programming undertaking.

Records and Audits

8. (1) A programming undertaking 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 section 7 can be readily ascertained.

(2) Both the distribution undertaking and the programming undertaking shall keep and preserve, for a period of six years after the end of the year to which they relate, records from which the affiliation payments, the royalties payable pursuant to section 4 and the information set out in section 6 can be readily ascertained.

(3) SOCAN may audit these records at any time during the period set out in subsection (1) or (2), on reasonable notice and during normal business hours.

(4) SOCAN shall, upon receipt, supply a copy of the report of the audit to the undertaking that was the object of the audit and to any other Canadian collective society with a tariff that applies

to pay audio services.

(5) If an audit discloses that royalties due to SOCAN have been understated for any payment period by more than 10 per cent, the undertaking that was the object of the audit shall pay the reasonable costs of the audit within 30 days of the demand for such payment. The amount of any understatement (whether by more or less than 10 per cent) shall be paid within 30 days of the demand for such payment.

Confidentiality

9. (1) Subject to subsections (2) to (4), information received from an undertaking 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 received from an undertaking pursuant to this tariff may be shared:

- (a) with any other Canadian collective society with a tariff that applies to pay audio services;
- (b) with SOCAN's agents and service providers to the extent required by the service providers for the service they are contracted to provide;
- (c) with the Copyright Board;
- (d) in connection with proceedings before the Copyright Board, if it is protected by a confidentiality order;
- (e) to the extent required to effect the distribution of royalties; or
- (f) if required by law.

(3) Where confidential information is shared with a service provider pursuant to paragraph (2)(b), that service provider shall sign a confidentiality agreement.

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

Adjustments

10. Adjustments in the amount of royalties owed, as a result of the discovery of an error or otherwise, shall be made on the date the next royalty payment is due. Adjustments in respect of excess payments are not subject to interest.

Interest on Late Payments

11. 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.

12. (1) Anything that an undertaking sends 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 the undertaking has been notified in writing.

(2) Anything that SOCAN sends to an undertaking 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

13. (1) A notice may be delivered by hand, by postage-paid mail, by email, by fax or by file transfer protocol (FTP). A payment may be made by credit card or delivered by hand, by postage-paid mail or by electronic bank transfer (EBT). Where a payment is delivered by EBT, the associated reporting shall be provided concurrently to SOCAN by email or by FTP.

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

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