

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date	2018-07-06
Citation	CB-CDA 2018-145
Regime	Collective Administration of Performing and of Communication Rights <i>Copyright Act</i> , subsection 68(3)
Members	The Honourable Robert A. Blair Mr. Claude Majeau Mr. J. Nelson Landry
Proposed Tariffs Considered	Re:Sound Tariff 1.B – Non-Commercial Radio Other than the Canadian Broadcasting Corporation (1998-2021)

Statement of Royalties to be collected for the communication to the public by telecommunication, in Canada, of published sound recordings embodying musical works and performers' performances of such works

Reasons for decision

I. BACKGROUND

[1] On December 21, 2017, the Board issued Notice 2017-170 indicating that it intended to consider in a single proceeding the proposed tariffs applicable to the public performance and reproduction of musical works and sound recordings by non-commercial radio stations, excluding CBC, by over-the-air broadcasting and transmissions via the internet, and commence such proceeding forthwith.

[2] The proposed tariffs targeted in the Notice were Artisti – Online Music Services (2016-2018) [only reproductions made by non-commercial radio stations], CMRRA Tariff 3 – Non-Commercial Radio Stations (2003-2010), CSI – Non-Commercial Radio Stations (2011-2018), CSI – Online Music Services (2014-2018) [only reproductions made by non-commercial radio stations], and Re:Sound Tariff 1.B – Non-Commercial Radio Other than the Canadian Broadcasting Corporation (1998-2021). The Board sought comments on the proposed consolidation.

[3] On January 11, 2018, Re:Sound expressed the view that the Board should not consider its proposed Tariff 1.B for the following reason:

Pursuant to section 68.1(1)(b) of the *Act*, community systems (i.e. non-commercial radio stations) are required to pay Re:Sound annual royalties of \$100, notwithstanding the tariffs approved by the Board under subsection 68(3) [...] Therefore, any tariff certified by the Board applicable to the terrestrial radio broadcasts of non-commercial radio stations would be superseded by section 68.1(1)(b) of the *Act*, making the exercise of valuing the rights in question an unnecessary waste of resources.

[4] Re:Sound further explained that, despite the fact that the *Copyright Act*¹ (the “*Act*”) provides for the royalties to be paid by community systems, it continues to file proposed tariffs in respect of Tariff 1.B in order to preserve its rights in the event of a change to the *Act* in respect of the special rate to be paid by community systems. However, since section 68.1(1)(b) as it now stands provides for that rate, the proceeding in respect of Tariff 1.B would be useless. Instead, Re:Sound proposed that the proceeding be adjourned *sine die*.

[5] On February 21, 2018, the Board issued Notice 2018-023 in which it dismissed the proposal to adjourn *sine die* the consideration of Re:Sound Tariff 1.B, for the following reasons.

[6] The Board indicated that Re:Sound’s proposal for adjournment did not establish the condition under which the suspension would end, and was based on the highly unlikely event that the *Act* would be retroactively amended. In the Board’s view, it was preferable, in order to bring closure to the matter, to certify a tariff that provides for an annual royalty of \$100 to be paid by non-commercial radio stations other than CBC in respect of the communication to the public by telecommunication of published sound recordings by over-the-air broadcasting for the years 1998 to 2021. Re:Sound Tariff 1.B would therefore be taken out of the consolidation described above and proceed on its own.

[7] On March 14, 2018, Re:Sound indicated that it agreed with the Board’s proposal to certify a tariff at a rate of \$100 per year. However, it wanted to ensure that such rate could not be interpreted as reflecting the value of music nor create a precedent. On March 16, 2018, CSI and CMRRA expressed support for Re:Sound’s position. To address those concerns, Re:Sound asked that the Board explicitly mention in its decision that the rate is based solely on the current exemption in the *Act* and does not reflect the value of music.

[8] Re:Sound also asked that the Board certify Tariff 1.B up to 2017, to ensure that it is tied to the current state of the *Act*. This way, should the exemption remain unchanged, the parties could simply request certification of the tariff on the same terms following the end of each year. On the

¹ *Copyright Act*, R.S.C., 1985, c. C-42.

other hand, should the *Act* be modified, Re:Sound would simply file a tariff proposal different from those filed under the former regime to align with such modifications.

[9] The non-commercial radio associations (National Campus and Community Radio Association, *Association des radiodiffuseurs communautaires du Québec*, and *Alliance des radios communautaires du Canada*, hereafter the “Associations”) oppose Re:Sound’s request. They contend that requesting certification of the tariff every year would be unnecessarily onerous given that they operate with minimal staff and limited resources. Instead, they ask that the tariff be certified until 2021. Should the *Act* be amended, Re:Sound could exercise any of its rights accordingly as they stand following such statutory amendment.

[10] The Board agrees with the Associations. Certifying Tariff 1.B until 2021 alleviates the burden on the Associations, which operate on a non-profit basis, as well as on the Board and Re:Sound in that respect.

II. DECISION

[11] Section 68.1(1)(b) of the *Act* refers to community systems. However, Re:Sound confirmed that it uses the terms community systems and non-commercial radio stations indistinctively,² and collects annual royalties of \$100 from all non-commercial radio stations. As such, for all non-commercial radio stations, we certify a tariff of \$100 per year from 1998 to 2021 for the communication to the public by telecommunication of published sound recordings embodying musical works and performers’ performances of such works, by over-the-air radio broadcasting.

[12] The rate we certify is based solely on section 68.1(1)(b) of the *Act*; it does not necessarily reflect the value of music to Re:Sound or to non-commercial radio stations nor does it constitute an appropriate benchmark in respect to the valuation of music for such use.

III. TARIFF WORDING

[13] Given that the tariff we certify restates the payment provided for in section 68.1(1)(b) of the *Act*, the reporting obligations as well as the audit provisions are rendered unnecessary, and therefore not included in the tariff.

[14] In addition, the proposed tariff would allow non-commercial radio stations to communicate to the public by telecommunication published sound recordings “for private or domestic use,” in connection with their over-the-air broadcasting operations. For the reasons mentioned in the

² See e.g., Re:Sound’s letter of January 11, 2018.

Board's most recent decision in respect of commercial radio,³ we do not include such a restriction in the tariff.

A handwritten signature in black ink, appearing to read 'Gilles McDougall', written in a cursive style.

Gilles McDougall
Secretary General

³ *Commercial Radio Tariff (SOCAN: 2011-2013; Re:Sound: 2012-2014; CSI: 2012- 2013; Connect/SOPROQ: 2012-2017; Artisti: 2012-2014)* (21 April 2016) Copyright Board Decision at paras 279-285.