

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2025-08-22
Citation Re:Sound Tariff 6.C – Adult Entertainment (2024-2028), 2025 CB 10
Member Drew Olsen
Proceeding Number PT25-01
Proposed Tariff Considered Re:Sound Tariff 6.C – Use of Recorded Music to Accompany Adult Entertainment (2024-2028)

Approval of Proposed Tariff

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Re:Sound Tariff 6.C – Use of Recorded Music to Accompany Adult Entertainment (2024-2028)

Reasons for Decision

I. Overview

[1] These reasons for decision relate to proposed Re:Sound *Tariff 6.C - Use of Recorded Music to Accompany Adult Entertainment* for the years 2024 through 2028 (the "Proposed Tariff") filed on October 13, 2022.

[2] The Proposed Tariff covers the performance in public or the communication to the public by telecommunication, in Canada, of published sound recordings embodying musical works and performers' performances of such works to accompany adult entertainment.

[3] Re:Sound subsequently filed a text modifying some elements of the Proposed Tariff on March 19, 2025, which, except for rates adjusted for inflation and minor wording changes, is based on Re:Sound Tariff 6.C as approved by the Board on February 27, 2021, for 2019-2023 (the "Last-Approved Tariff").

[4] After reviewing the record, I find that a tariff based on the Proposed Tariff with Re:Sound's text modifications is fair and equitable, and approve it.

[5] I fix a royalty rate of 6.18 cents per day per seating and standing capacity for 2024 and a royalty rate of 6.29 cents per day per seating and standing capacity for 2025-2028.

II. Background

[6] The Proposed Tariff was duly published and users were provided with an opportunity to file objections.

[7] No objections were filed.

[8] The Last-Approved Tariff for the years 2019 to 2023 fixed the royalty rate at 2.70 cents per day for 2019, 3.88 cents per day in 2020 and 5.06 cents per day in 2021-2023, in all cases multiplied by the seating and standing capacity authorized under the establishment's liquor licence or other document from a competent authority. Users were required to file annual reports on their authorized capacity and the number of days in operation.

[9] The Proposed Tariff includes a royalty rate of 10.1 cents per day multiplied by the authorized seating and standing capacity.

[10] On March 19, 2025, Re:Sound filed a request for approval (RFA), which includes text modifying the Proposed Tariff that is largely based on the Last-Approved Tariff. It adjusted the proposed royalty rates in accordance with the Board's *Inflation Adjustments to Royalty Rates: Default Methodology* (the "Default Methodology"). Specifically, the 2024 rate was adjusted for inflation from January 2017 (CPI: 129.5) to December 2023 (CPI: 158.3), while the 2025-2028 rate was adjusted for inflation from January 2024 (CPI:158.3) to December 2024 (CPI:161.2).

[11] The RFA proposed rates of 6.18 cents per day per seating and standing capacity for 2024 and of 6.29 cents per day per seating and standing capacity for 2025-2028 after applying the inflation calculation method under the Default Methodology. The inflation calculation yields an inflation increase of 22.2% for the 2024 rate and 1.8% for the 2025-2028 rate.

[12] Compared to the Last-Approved royalties, the RFA proposed rates represent an increase of 1.12 cents per day per capacity in 2024 and 1.23 cents per day per capacity from 2025-2028.

[13] Like the Last-Approved tariff, the Proposed Tariff includes the requirement to submit annual reports on authorized capacity and the number of days in operation. Re:Sound submits that this information is necessary to calculate royalties.

[14] Furthermore, Re:Sound is seeking two minor changes to the administrative provisions:

- a. Minor language revisions to the confidentiality clause (section 7) for consistency with more recently approved Re:Sound tariffs; and
- b. Updating Re:Sound's address and removing references to service by fax in sections 10 and 11 as Re:Sound's offices have moved, and it no longer uses fax as a means of communication.

III. Issues:

[15] In reviewing the record, I considered the following issues:

- a. Is the Last-Approved Tariff an appropriate proxy of what could be fair and equitable for the years 2024 to 2028?
- b. Is an inflation-based adjustment appropriate and if so, what should it be?
- c. Are the proposed changes in wording warranted?

A. Whether the previously approved tariff is an appropriate proxy in this proceeding

[16] I find that the Last-Approved Tariff is an appropriate proxy in this proceeding.

[17] The Board has frequently held that it is appropriate—absent reasons to the contrary—to use the Last-Approved Tariff as a proxy of what could be fair.

[18] In recent decisions, the Board has identified changes in the relevant market as one potential indicator of whether an adjustment to the royalty rate is appropriate or necessary.

[19] The Last-Approved Tariff was published in February 2021. In the current proceeding, Re:Sound has not proposed any market-based changes to the royalty rates beyond the adjustment for inflation and has not mentioned any other changes to the market.

[20] Since there is no information on the record that points to market-based changes relevant to the consideration of the Proposed Tariff with text modifications, I have no reason to question the appropriateness of the proxy.

B. Is an inflation-based adjustment appropriate and if so, what should it be?

[21] Re:Sound submits that its proposed increase to the royalty rate, compared to the Last-Approved Tariff, is an adjustment to account for inflation based on the Default Methodology.

[22] The Board has found in the past that adjustments for inflation are appropriate as, among other considerations, they preserve the purchasing power of rights owners' royalties. In some circumstances, as noted in CBC Radio (2006-2011),¹ failing to adjust royalty rates for inflation would erode the value of royalties. I find this statement to be valid in this proceeding as well.

[23] In this case, there are two adjustment periods. The first inflation adjustment period, for the 2024 rate, is calculated from January 2017 (CPI: 129.5) to December 2023 (CPI: 158.3). The second inflation adjustment period for the 2025-2028 rate is from January 2024 (CPI:158.3) to December 2024 (CPI:161.2). Applying the inflation calculation method under the Board's guidelines, the inflation calculation yields inflation rates of 22.2% for the 2024 rate and 1.8% for the 2025-2028 rate, and translates into the following rates: 6.18 cents for 2024 and 6.29 cents for 2025-2028.

[24] Both adjustments were correctly made in accordance with the Default Methodology and correspond to the rates proposed by Re:Sound in the RFA.

C. Are the proposed changes in wording warranted?

[25] Re:Sound proposes a small set of changes:

- a. Minor language revisions to the confidentiality clause (section 7) for consistency with more recently approved Re:Sound tariffs; and
- b. Updating Re:Sound's address and removing references to service by fax in sections 10 and 11 as Re:Sound's offices have moved, and it no longer uses fax as a means of communication.

a. Confidentiality Clause

[26] Re:Sound proposes to modify subsection 7.1 to include a possibility that the person supplying confidential information could waive confidentiality.

[27] Modified subsection 7.(1) reads as follows:

7.(1) Subject to subsections (2), (3) and (4), information received pursuant to this tariff shall be treated in confidence, unless the person who supplied the information consents in writing to the information being treated otherwise. (Emphasis added)

¹ SOCAN, *Re:Sound - Tariff for CBC Radio, 2006-2011*, (reasons) (July 8, 2011), para 87.

[28] I find no reason to oppose this modification.

[29] Re:Sound also proposes some modifications to whom confidential information can be shared, to align the wording with other recently approved Re:Sound tariffs.

[30] Modified paragraph 7.(2)(a) reads as follows:

7. (2) Information received pursuant to this tariff may be shared:

(a) with Re:Sound's agents and service providers, to the extent required by the service providers for the service they are contracted to provide; (emphasis added)

[31] This modified language has the same effect as the language in the Last-Approved Tariff, which read "with Re:Sound's agents and service providers, to the extent that the execution of their mandate requires it".

[32] I find no reason to oppose this modification.

b. Address change

[33] I note the good practice of providing that users will be notified in case of a future change of address.

IV. Decision

[34] The Proposed Tariff, with modifications included in the RFA, is approved under the title *Re:Sound Tariff 6.C – Use of Recorded Music to Accompany Adult Entertainment (2024-2028)*. I fix a royalty rate of 6.18 cents per day per seating and standing capacity for 2024 and a royalty rate of 6.29 cents per day per seating and standing capacity for 2025-2028.