December 16, 2022

Copyright Board of Canada
800-56 Sparks Street
Ottawa, ON K1A 0C9

Filed via: Copyright Board Website Objection Form Portal

Re: Proposed Tariff Title: Re:Sound Tariff 6.A – Use Of Recorded Music To Accompany Dance (2024-2028)

NOTICE OF GROUNDS FOR OBJECTION

The following Notice of Grounds for Objection (the "Notice") is filed on behalf of the Hotel Association of Canada (HAC) and Restaurants Canada (RC) in respect of Proposed Tariff *Re:Sound Tariff 6.A – Use Of Recorded Music To Accompany Dance (2024-2028)* which was filed with the Copyright Board by Re:Sound on 2022-10-13 pursuant to subsection 67(1) of the *Copyright Act*. This Notice is filed in accordance with PN 2022-007.

1. **Any grounds for why the Board should not approve the proposed tariff despite any alteration of royalties or levies or fixation of terms and conditions**

Re:Sound has removed the reference to "works in the repertoire of Re:Sound" on the grounds that it is not necessary and does not affect the scope of the proposed tariff. On the contrary, the scope of a tariff proposed by Re:Sound is inherently tied to the repertoire represented by Re:Sound, particularly where Re:Sound uses the most recently certified SOCAN tariff as the basis for its own proposal. The Copyright Board has long held that the value of the rights represented by SOCAN and Re:Sound is equivalent, and that tariff rates must be adjusted to reflect properly eligible and represented repertoire. Re:Sound has offered no evidence to establish that it represents 100% of SOCAN's repertoire, and therefore it is unclear to the objectors why the reference to its repertoire is either unnecessary or unrelated to the scope. The Copyright Board should not approve any tariff for Re:Sound that is not tied to its properly established repertoire.

2. **Any grounds for objecting to any royalty or levy rates in the proposed tariff**

The currently certified tariff 6.A (2013-2016) includes the following rates:

	Days of operation	
Months of operation	1-3 days	4-7 days
Six months or less	$157.33	$314.66
More than six months	$314.66	$629.31

The proposed tariff includes the following rates, which are drastically higher:

	Days of operation	
Months of operation	1-3 days	4-7 days

Six months or less	$920.00	$2525.00
More than six months	$2360.00	$6500.00

At the lowest possible rate, for an establishment that is open less than 3 days per week for less than 6 months a year, the rate increases from $157.33 to $920 (almost 6x the current rate); and at the highest possible rate, for an establishment that is open more than 4 days per week and more than 6 months per year, the rate increases from $629.31 to $6500 (more than 10x the current rate). And these rates are subject to a 10% bump up for every capacity increase of up to 20 patrons for venues accommodating more than 100 patrons.

Re:Sound says the proposed rates are based on the last approved SOCAN Tariff 18, but as the Board knows, the highest possible rate in SOCAN Tariff 18 is $1147.38.[1] Re:Sound is asking for almost 6 times more than SOCAN for the same use. Even if we accepted that Re:Sound has 100% of SOCAN's repertoire (which we do not), the highest rate that would justify is the same rate as SOCAN.

Re:Sound also points to the rates applicable in the United Kingdom for similar activities under the PPL Specially Featured Entertainment Tariff as a justification for its proposed rates. It does not provide any details relating to these rates, how they were determined or to whom they apply, nor does it provide any explanation of how or why similar rates in the United Kingdom are in any way a reasonable or relevant proxy for the Canadian marketplace.

In short, the rate proposal is completely unacceptable, out of line with the relative value of the rights, and totally unjustified. A rate increase of this size would be extremely prejudicial to the objectors.

According to a September 2022 survey published by Restaurants Canada, 75% of table-service restaurants in Canada were still in debt as a result of the COVID-19 crisis. Of those still in debt, 54% of respondents said it would take them at least 18 months to recover from the pandemic debt; and 23% said they won't be able to recover from their pandemic debt unless conditions change. All of this comes at a time when Canada's economy is forecast to slow sharply in 2023. According to Restaurants Canada's latest projections, annual commercial foodservice sales in Canada are forecast to moderate to 5.8% in 2023 to $87.6 billion. Once adjusted for inflation, however, real sales are forecast to be relatively flat in 2023 compared to 2022. This will mean that real sales will remain 4.4% below pre-pandemic levels.[2]

Similarly, public statements issued by the Hotel Association of Canada indicate that the accommodations industry was hit first and hit the hardest with revenue (Revenue Per Available Room - RevPAR) losses between 70 and 90% in the spring of 2020. Since then, hotels have endured two years of deep negative cashflows. By mid-January 2022, RevPAR was down 50% compared to 2019 with urban hotels seeing average revenue declines of close to 70%. The industry's actual RevPAR was dramatically

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[1] SOCAN Tariff 18 — Recorded Music for Dancing (2018-2022), 2022 CB 4-T, <https://decisions.cb-cda.gc.ca/cb-cda/certified-homologues/en/item/520916/index.do?q=18>.

[2] Restaurants Canada, *Restaurant Sales Forecast to Moderate in 2023, Putting More Pressure on Margins*, 22 November 2022, <https://www.restaurantscanada.org/resources/restaurant-sales-forecast-to-moderate-in-2023/>.

underperforming forecasts from just two months earlier. Consistent negative cash flow and depleted savings and loans mean few hotels will have the financial capacity to ramp up operations with adequate staffing and supply contracts to service demand this summer. In addition, frequent lockdowns and instability have driven hundreds of thousands of long-term employees to other sectors, and HAC forecast a labour shortage of over 320,000 tourism workers for this summer, which cannot be filled entirely by domestic workers.[3]

Both restaurants and hotels are still reeling from the COVID-19 crisis, and cannot absorb increases anywhere near the scale proposed by Re:Sound.

Absent evidence from Re:Sound that justifies an increase in its eligible and properly represented repertoire from the currently certified 50% of SOCAN, the tariff should be certified at status quo rates.

3. Any grounds for objecting to any terms or conditions in the proposed tariff

Re:Sound proposes to change the certified tariff to limit the time during which a venue may recover overpayments to 12 months. There is no corresponding limit on the time for which Re:Sound may recover royalties. This is unfair. Re:Sound has provided no indication that it has suffered prejudice from the absence of this type of provision. This time limit is unnecessary and unjustified and should not be included in the tariff.

Similarly, Re:Sound has proposed what it calls “a financial disincentive” for late reporting. As it notes, the last approved tariff provides for interest payable on late payments which acts as a disincentive for venues to miss their payment due date, and Re:Sound is now proposing “a similar disincentive for late reporting which increases Re:Sound’s costs of administering the tariff.” Again, Re:Sound has provided no explanation of the extent to which late reporting has occurred or the supposed increase to its costs for administering the tariff. This provision should not be included in the tariff.

4. Any grounds not identified above

Restaurants Canada and the Hotel Association of Canada are committed to representing their membership in opposition to proposed copyright tariff increases. However, these industries are continuing to struggle with debt and labour shortages, and their associations have minimal resources to allocate to contesting copyright tariffs. The Associations request that the Copyright Board consider this proposed tariff in the most efficient manner possible.

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[3] Hotel Association of Canada, *Written Submission for the Pre-Budget Consultations in Advance of the 2022 Budget*, February 2022, <http://www.hotelassociation.ca/wp-content/uploads/2022/03/HAC-Pre-Budget-Submission_Feb-2022.pdf>.