

PROPOSED TARIFF

Filed with the Copyright Board by Re:Sound on 2023-10-13 pursuant to subsection 67(1) of the *Copyright Act*

Proposed Tariff Title: *Re:Sound Tariff 1.B – Non-Commercial Radio, Simulcasting, Non-Interactive and Semi-Interactive Streaming (2025-2029)*

For the communication to the public by telecommunication, in Canada, of published sound recordings embodying musical works and performers' performances of such works.

Proposed Short Title: *Re:Sound Non-Commercial Radio & Online Tariff (2025-2029)*

Effective Period: 2025-01-01 – 2029-12-31

RE:SOUND TARIFF 1.B – NON-COMMERCIAL RADIO, SIMULCASTING, NON-INTERACTIVE AND SEMI-INTERACTIVE STREAMING (2025-2029)

Note (This note is not part of the proposed tariff)

Subsection 72(3) of the *Copyright Act* provides that, notwithstanding the tariffs approved by the Copyright Board, community systems shall pay royalties of \$100 in respect of each year for the communication to the public by telecommunication of performers' performances of musical works, or of sound recordings embodying such performers' performances by wireless transmission system. Pursuant to this provision, Re:Sound recognizes that, notwithstanding this tariff filed with respect to non-commercial radio stations, community systems are required to pay only \$100 in respect of each year for their over-the-air radio broadcasts.

Short Title

1. This tariff may be cited as the *Re:Sound Non-Commercial Radio & Online Tariff (2025-2029)*.

Definitions

2. In this tariff,

“Act” means the Copyright Act, R.S.C. 1985, c. C-42, as modified; (« Loi »)

“device” means any device capable of receiving and playing a file, including a computer, digital media player, cellular phone, smartphone, or tablet; (« appareil »)

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

“gross operating costs” means all direct expenditures of any kind and nature (whether in money or other form) incurred by the non-commercial radio station or on its behalf in connection with the products and services that are subject to this tariff; (« coûts bruts d’opération »)

“month” means a calendar month; (« mois »)

“non-commercial radio station” means any radio station that transmits in analog or digital mode, whether in the A.M. or F.M. frequency band or in any other assigned range, other than a Canadian Broadcasting Corporation radio station, that is owned and operated by a not-for-profit organization, including any campus station, community station, native station, or ethnic station owned and operated by a not-for-profit organization, whether or not any part of the station’s gross operating costs is funded by advertising revenues, and whether or not the station is licensed by the Canadian Radio-television and Telecommunications Commission; (« station de radio non commerciale »)

“non-commercial streaming service” means any streaming service other than the Canadian Broadcasting Corporation, that is owned and operated by a not-for-profit organization including any campus or community radio station, whether or not any part of the streaming service’s operating costs is funded by advertising revenues; (« service de diffusion en continu non commercial »)

“non-interactive stream” refers to a stream other than a simulcast, over which the recipient is unable to exercise any control over the content or the timing of the stream. For example, the recipient cannot skip or pause the communication of a file or influence the content by indicating a preference for a musical genre, artist or sound recording other than by selecting the channel; (« transmission non interactive »)

“on-demand stream” refers to any stream through which a specific file can be communicated to a member of the public at a place and at a time individually chosen by that member of the public; (« transmission sur demande »)

“semi-interactive stream” refers to a stream over which the recipient has the ability to exercise some level of control over the content or the timing of the stream, such as by skipping, pausing, rewinding or fast-forwarding the communication of a file or by indicating a preference for a musical genre, artist or sound recording; (« transmission semi-interactive »)

“simulcast” means the simultaneous communication of an over-the-air radio broadcast via the Internet or another digital network, to a device, which is identical to the original signal and over which the recipient is unable to exercise any control over the content or the timing of the communication. For example, the recipient cannot skip, pause, rewind

or fast-forward the communication of a file or influence the content of the communication by indicating a preference for a musical genre, artist or sound recording. If the possibility of such interaction exists, a communication is not a simulcast, regardless of whether the end user interacts with the communication or not; (« diffusion simultanée »)

“stream” means the communication in Canada, via the Internet or another digital network, to a device, of one or more files; (« transmission »)

“streaming service” means a person or organization who carries out a stream, including a simulcast; (« service de diffusion en continu »)

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

Application

3. (1) This tariff sets the royalties to be paid to Re:Sound by:

(a) non-commercial radio stations for the communication to the public by telecommunication, in Canada, of published sound recordings embodying musical works and performers’ performances of such works, by over-the-air radio broadcasting; and

(b) non-commercial streaming services, for the communication to the public by telecommunication, in Canada, of published sound recordings embodying musical works and performers’ performances of such works by simulcast, non-interactive stream and semi-interactive stream.

(2) For greater certainty, this tariff does not apply to:

(a) a communication to the public by telecommunication by commercial radio stations, the Canadian Broadcasting Corporation, a satellite radio service, or in connection with the transmission of a pay audio signal;

(b) an on-demand stream or download;

(c) the act of making a sound recording available to the public by telecommunication in a way that allows a member of the public to have access to the sound recording from a place and at a time individually chosen by that member of the public and the communication of the sound recording to the public by telecommunication in that way; or

(d) a podcast or transmission of a programme previously transmitted (whether or not it has been converted to another audio file format) for playback on a device.

- (3) Non-commercial streaming services are not subject to the special royalty rates set out in subsection 72(3) of the Act.

Royalties

4. (1) The royalties payable to Re:Sound by a non-commercial radio station in respect of each year for its over-the-air broadcasts shall be 2 per cent of the non-commercial radio station's annual gross operating costs for that year.

(2) The royalties payable to Re:Sound by a non-commercial streaming service for all simulcasts, non-interactive streams and semi-interactive streams shall be \$1,000 per year.

(3) The payment made pursuant to subsection (2), shall be accompanied by a description of the streaming and/or simulcast service the non-commercial streaming service offers or intends to offer.

(4) All royalties payable under this tariff are exclusive of any applicable federal, provincial or other governmental taxes or levies of any kind.

Payments and Reporting

5. (1) No later than January 1st of each year, a non-commercial radio station shall pay the estimated fee owing for that year. The fee is subject to adjustment when the actual gross operating costs for the year have been determined and reported to Re:Sound.

(2) With each payment, a non-commercial radio station shall forward to Re:Sound a written certified declaration of the actual gross operating costs of the non-commercial radio station for the previous year.

(3) No later than January 1st of each year, a non-commercial streaming service shall pay the fee owing for that year and provide the report required under subsection 4(3).

Streaming Service Identification

6. No later than 45 days after the end of the first month during which a non-commercial streaming service carries out a stream pursuant to subsection 3(1)(b), the streaming service shall provide to Re:Sound the following information:

(a) The name of the streaming service, including:

- (i) the name of the corporation or other entity, its jurisdiction, the names of its principal officers and any other trade name under which it carries on business; or
- (ii) the name of the proprietor of an individual proprietorship;
- (b) the address of its principal place of business and, if applicable, the address of an office in Canada if the principal place of business is located outside Canada;
- (c) the name, address and email of the persons to be contacted for the purposes of notice, for the exchange of data and for the purposes of invoicing and payment;
- (d) the name and address of any authorized distributor;
- (e) the name and Uniform Resource Locator (URL) from which the streaming service is or will be offered;
- (f) the date(s) of its first non-interactive stream, semi-interactive stream and/or simulcast in Canada; and
- (g) documentation to substantiate that the streaming service is a non-commercial streaming service.

Records and Audits

7. (1) A non-commercial radio station shall keep and preserve, for a period of six years after the end of the year to which they relate, accounts and records from which the calculation of the station's annual gross operating costs can be readily ascertained.
- (2) Re:Sound may audit these accounts and records at any time during the period set out in subsection (1), on reasonable notice and during normal business hours.
- (3) Re:Sound shall, upon receipt, supply a copy of the report of the audit to the non-commercial radio station which was the subject of the audit and to any other Canadian collective society with a tariff applicable to non-commercial radio stations.
- (4) If an audit discloses that royalties due to Re:Sound have been understated in any year by more than 10 per cent, the non-commercial radio station which was the subject of the audit shall pay the reasonable costs of the audit to Re:Sound within 30 days of the demand for such payment. The amount of any understatement shall be paid within 30 days of the demand for such payment.

Interest on Late Payments

8. 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.

Adjustments

9. 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. No adjustments to reduce the amount of royalties owed may be made in respect of an error discovered by a non-commercial radio station or non-commercial streaming service which occurred more than 12 months prior to notification to Re:Sound. Excess payments are not subject to interest.

Confidentiality

10. (1) Subject to subsections (2) to (4), information received from a non-commercial radio station or non-commercial streaming service pursuant to this tariff shall be treated in confidence, unless the station/service consents in writing to the information being treated otherwise.

(2) Information received from a non-commercial radio station or streaming service 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;
- (b) in connection with the collection of royalties or the enforcement of a tariff, with any other Canadian collective society that has a tariff applicable to non-commercial radio stations or streaming services;
- (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 subsection (2)(a), 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 non-commercial radio station or streaming service that supplied the information and who is not under an apparent duty of confidentiality to that station/service with respect to the supplied information.

Delivery of Notices and Payments

11. (1) Anything addressed to Re:Sound shall be sent to 1235 Bay Street, Suite 900, Toronto, Ontario M5R 3K4, email: radio@resound.ca, or to any other address or email address of which the non-commercial radio station or streaming service has been notified in writing.
- (2) Anything addressed to a non-commercial radio station or streaming service shall be sent to the last address or email address of which Re:Sound has been notified in writing.
- (3) A notice may be delivered by hand, by postage-paid mail, by email, 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 Re:Sound by email
- (4) Anything mailed in Canada shall be presumed to have been received four business days after the day it was mailed. Anything sent by email, by FTP or by EBT shall be presumed to have been received the day it was transmitted.