

## NOTICE OF GROUNDS FOR PROPOSED TARIFF

Filed with the Copyright Board by Re:Sound on 2023-10-13 pursuant to Rule 15 of *Copyright Board Rules of Practice and Procedure*

### RE:SOUND TARIFF 1.C – CBC RADIO AND SIMULCASTS (2025-2029)

#### **1. Uses covered by the proposed tariff**

The proposed tariff applies to the over-the-air (AM/FM) radio broadcasting and simulcasts of recorded music by the radio networks and stations owned and operated by the Canadian Broadcasting Corporation/Radio Canada (“CBC”).

Simulcast refers to the simultaneous online stream of an over-the-air CBC radio station broadcast. A simulcast is identical to the original radio signal and the listener cannot exercise any control over the content or the timing of the music. For example, the listener cannot skip, pause, rewind or fast-forward a song or influence which songs they hear by indicating a preference for a musical genre, artist or song. If the possibility of such influence over the music exists, a stream is not a simulcast, regardless of whether the listener actually uses any of the semi-interactive functionality available or not.

The proposed tariff does not apply to the public performance of recorded music. It does not apply to non-interactive streaming or semi-interactive streaming by CBC, which is instead subject to Re:Sound Tariff 8 (Non-Interactive & Semi-Interactive Streaming). It does not apply to any online activities by CBC except for simulcasts.

#### **2. Basis for proposed royalty rates**

The proposed rates for CBC’s over-the-air radio broadcasts are based on the current Re:Sound Tariff 1.C (2012-2019) rates approved by the Copyright Board, adjusted to allow for a repertoire adjustment of up to 100%, inflation estimated to the end of 2029, and an increase to the value of music.

The proposed rate for CBC’s simulcasts is based on a flat monthly rate or per play formula. This “greater-of” formula is proposed to ensure that the royalties paid reflect the amount of music used

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and that rights holders are fairly compensated for the use of their music in simulcasts regardless of CBC's choice of business model. The proposed flat monthly rate is calculated as 15% of the proposed over-the-air rate, based on the estimated size of CBC's simulcast audience relative to its over-the-air audience. The proposed per play rate is based on international best practices, primarily the 2023 SoundExchange Non-Subscription Commercial Webcaster rate applicable in the United States.

### **3. Description of the group of users intended to be covered by the proposed tariff**

The proposed tariff applies to CBC and its radio networks and stations.

The proposed tariff does not apply to background music suppliers, satellite radio or pay audio services.

### **4. Explanation of how the information that would be collected by Re:Sound pursuant to the proposed tariff would be used**

The information to be collected under section 4(3) of the proposed tariff would be used by Re:Sound to calculate and verify CBC's royalty payments for simulcasts. The information regarding CBC's simulcast audience would be used by Re:Sound to assess the relative size and importance of the simulcast audience to the over-the-air audience in order to ensure the proposed royalty rates and formula for simulcasts is appropriate.

The music use information to be collected under section 5 of the proposed tariff would be used by Re:Sound for the purposes of distributions, to ensure that the royalties collected are distributed to the appropriate rights holders.

### **5. Identification and explanation of changes from the previously approved tariff**

The main changes to the proposed tariff from the previously approved Re:Sound Tariff 1.C (2012-2019) relate to:

- (a) The removal of the SOCAN portions of the tariff as the proposed tariff is being proposed by Re:Sound alone.
- (b) The addition of definitions (file, play) and reporting requirements (section 4(3)) as a result of the proposed per play simulcast rate structure.

- (c) Revisions to the definition of “simulcast” to clarify that a stream is not a simulcast if the possibility of interactivity exists, in accordance with the Copyright Board’s ruling.
- (d) The addition of section 3(2) to clarify the scope of the tariff.
- (e) The addition of provisions found in most other Re:Sound tariffs (Records & Audits (section 6), Confidentiality (section 8) and Adjustments (section 9)) as a result of the proposed tariff no longer being solely a flat rate tariff, with the addition of a per play simulcast rate and its associated reporting requirements.
- (f) Revisions to the music use information requirements for consistency with more recently approved Re:Sound tariffs (section 5). Changing the timing of the provision of music use information to 14 days after the end of each month to allow for faster distributions to rights holders. Removal of the caveat “where possible” with respect to music use reporting to ensure that all information necessary to allow for timely, efficient and accurate distributions to rights holders is provided.
- (g) The addition of fees payable for late reporting (section 7) to provide a financial disincentive for CBC to provide its reporting late, which increases Re:Sound’s costs of administering the tariff and can result in delayed distributions to rights holders. A similar financial disincentive for late payments already applies under section 5 of the 2012-2019 tariff.
- (h) The removal of fax numbers from section 10 as fax is no longer used as a means of communication by Re:Sound.