

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 3.C - Aircraft (2025-2029)*

For 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.

Proposed Short Title: *Re:Sound Aircraft Tariff (2025-2029)*

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

RE:SOUND TARIFF 3.C - AIRCRAFT (2025-2029)

Short Title

1. This tariff may be cited as the *Re:Sound Aircraft Tariff (2025-2029)*.

Definitions

2. In this tariff,

“airline” means the owner or operator of one or more aircraft; (« *compagnie aérienne* »)

“quarter” means from January to March, from April to June, from July to September and from October to December; (« *trimestre* »)

“recorded music” means published sound recordings embodying musical works and performers' performances of such works; (« *musique enregistrée* »)

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

Application

3. This tariff sets the royalties to be paid to Re:Sound, for the benefit of performers and makers, for the performance in public or the communication to the public by telecommunication of recorded music, in an aircraft.

Royalties Payable

4. (1) The annual royalties payable by an airline, for each aircraft they own or operate, is

calculated as follows:

- (a) Recorded music while on the ground: \$4.42 per seat for each aircraft in service during the year, prorated to the number of days in which the aircraft is in service during the year;
- (b) Recorded music as part of in-flight programming: \$10.44 per seat for each aircraft in service during the year, prorated to the number of days in which the aircraft is in service during the year.

(2) Where royalties for an aircraft are paid under subsection (1)(b), no royalties are payable for that aircraft under subsection (1)(a).

(3) For the purpose of this tariff, an aircraft is not “in service” if it is no longer owned, leased or under contract by the airline or during any period of 15 consecutive days or more it has not been used to carry the airline’s passengers.

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

Reporting & Payment Requirements

5. (1) No later than January 31 of each year, an airline shall pay the estimated royalties to Re:Sound for that year, based on the total seating capacity of all aircraft owned or operated by it during the previous year.

(2) Together with its payment, the airline shall provide a report including:

- (a) the number of aircraft owned or operated by the airline during the preceding year;
- (b) the seating capacity of each aircraft;
- (c) the dates of any 15 consecutive days or more that an aircraft was not used to carry the airline’s passengers; and
- (d) whether recorded music was used as part of in-flight programming and/or while the aircraft was on the ground.

(3) Any adjustment of the royalties payable to Re:Sound from the estimated amount previously paid shall be made and any additional fees due on the basis of the actual seating capacity shall be paid, by January 31 of the following year.

(4) If the royalties due are less than the estimated amount previously paid, Re:Sound shall credit the airline with the amount of the overpayment against future payments.

Music Use Reporting Requirements

6. (1) No later than 30 days after the end of each quarter, an airline shall provide to Re:Sound a report setting out, for each published sound recording of a musical work, or part thereof, performed or communicated during the quarter:
- (a) the title of the sound recording;
 - (b) the name of each performer or group to whom the sound recording is credited;
 - (c) the name of the record label or maker that released the sound recording;
 - (d) the name of each author of the musical work;
 - (e) the International Standard Recording Code (ISRC) assigned to the sound recording;
 - (f) the name of the music publisher associated with the musical work;
 - (g) the International Standard Musical Work Code (ISWC) assigned to the musical work;
 - (h) if the sound recording was released as part of an album, the name, identifier, product catalogue number and Universal Product Code (UPC) assigned to the album, together with the associated disc and track numbers;
 - (i) the Global Release Identifier (Grid) assigned to the sound recording and, if applicable, the Grid of the album or bundle in which the sound recording was released;
 - (j) the running time of the sound recording as played, in minutes and seconds;
 - (k) the running time of the sound recording as listed on the album, in minutes and seconds; and
 - (l) any alternative title used to designate the musical work or sound recording.

(2) The information set out in subsection (1) shall be provided electronically, in Excel format or in any other format agreed upon by Re:Sound and the airline, with a separate field for each piece of information required in subsection (1).

Records and Audits

7. (1) An airline shall keep and preserve, for a period of six months after the period to which they relate, records from which the information reported in section 6 can be readily ascertained.

(2) An airline shall keep and preserve, for a period of six years after the end of the year to which they relate, records from which the calculation of its payment can be readily ascertained, including information used to determine the choice of calculation, seating capacity of the aircraft, and any periods for which an aircraft was not in service.

(3) Re:Sound may audit these records at any time during the periods set out in subsections (1) or (2) as applicable, on reasonable notice and during normal business hours.

(4) Re:Sound shall, upon receipt, supply a copy of the report of the audit to the airline that was subject to the audit. and to any other Canadian collective society with a tariff applicable to aircraft.

(5) If an audit discloses that royalties due to Re:Sound have been understated during any period by more than 10 per cent, the airline that was the subject of the audit shall pay the reasonable costs of the audit 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.

Confidentiality

8. (1) Subject to subsections (2) to (4), information received from an airline pursuant to this tariff shall be treated in confidence, unless the airline that supplied the information consents in writing to the information being treated otherwise.

(2) Information received from an airline 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 with a tariff applicable to aircraft;
- (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 airline that supplied the information and who is not under an apparent duty of confidentiality to the airline with respect to the supplied information.

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 the airline which occurred more than 12 months prior to notification to Re:Sound. Excess payments are not subject to interest.

Late Payments & Reporting

10. (1) In the event that an airline does not pay the amounts owed under section 4 or provide the reporting required under section 5 by the due date, the airline shall pay to Re:Sound interest calculated on the amount payable for the relevant period from the due date until the date both the amount and the report are received by Re:Sound.

(2) In the event that an airline does not provide the reporting required by section 6 within 7 days of the due date, upon written notice by Re:Sound, the airline shall pay to Re:Sound a late fee based on the number of days from the due date to the date the reporting is received by Re:Sound of:

- (a) \$10.00 per day for the first 30 days after the due date;
- (b) \$20.00 per day for the next 30 days; and
- (c) \$50.00 per day thereafter;

until the reporting is received.

(3) 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.

Addresses for Notices, etc.

11. (1) Anything addressed to Re:Sound shall be sent to 1235 Bay Street, Suite 900, Toronto, Ontario M5R 3K4, email: licensing@resound.ca, or to any other address or email address of which the sender has been notified in writing.

(2) Anything addressed to an airline shall be sent to the last address or email address of which Re:Sound has been notified in writing.

Delivery of Notices and Payments

12. (1) 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 required under section 5 shall be provided concurrently to Re:Sound by email.
- (2) The information set out in section 6 shall be sent by email.
- (3) Anything mailed in Canada shall be presumed to have been received four business days after the day it was mailed.
- (4) Anything sent by email, by FTP or by EBT shall be presumed to have been received the day it was transmitted.