

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 8 – NON-INTERACTIVE AND SEMI-INTERACTIVE STREAMING (2025-2027)

1. Uses covered by the proposed tariff

The proposed tariff applies to the communication to the public by telecommunication in Canada of recorded music by non-interactive streaming and semi-interactive streaming. The proposed tariff also applies to simulcasts by non-Canadian commercial radio stations streaming in Canada.

Non-interactive streaming refers to an online music service or radio station (other than a simulcast), where the listener has no control over the content or the timing of the music. For example, the listener cannot skip or pause the song or influence which songs they hear by indicating a preference for a musical genre, artist or song, other than by selecting the channel.

Semi-interactive streaming refers to an online music service or radio station where the listener can exercise some level of control over the content or the timing of the music, such as by skipping, pausing, rewinding or fast-forwarding a song, or by indicating a preference for a musical genre, artist or song.

Simulcast refers to the simultaneous online stream of an over-the-air broadcast. A simulcast is identical to the original 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 simulcasts by the Canadian Broadcasting Corporation (“CBC”), Canadian commercial radio stations, satellite or pay audio services. However, any non-interactive or semi-interactive stream of programming by a commercial radio station, the CBC, a pay audio service or satellite radio service that does not constitute a simulcast is subject to the proposed tariff.

The proposed tariff does not apply to downloads, podcasts, or on-demand streaming where the listener can listen to the song of their choice at the time and place of their choosing.

The proposed tariff does not apply to the public performance of recorded music. Businesses which play non-interactive or semi-interactive streaming services or simulcasts for customers and the general public in their establishments are subject to Re:Sound Tariff 3.B (Background Music) unless public performance royalties are paid on their behalf by their music supplier pursuant to Re:Sound Tariff 3.A (Background Music Suppliers).

The proposed tariff does not apply to subscribers or listeners of simulcasts, non-interactive or semi-interactive music streaming services.

2. Basis for proposed royalty rates

The proposed rates (including the minimum fees) are based on international best practices, primarily the rates which apply to non-interactive and semi-interactive music streaming services in the United States under SoundExchange’s 2023 Non-Subscription Commercial Webcaster rates. The proposed rates are based on a percentage of revenue or per play formula. This “greater-of” formula is proposed to ensure that the royalties paid reflect the amount of music used and that rights holders are fairly compensated for the use of their music regardless of a service’s choice of business model.

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

The proposed tariff applies to non-interactive and semi-interactive music streaming services operating in Canada such as AccuRadio, the CBC, iHeartRadio, Live365, SiriusXM Canada and Slacker/Live One. The proposed tariff also applies to non-Canadian commercial radio stations simulcasting to listeners in Canada.

The proposed tariff does not apply to a non-commercial streaming service, which is any streaming service other than the CBC, 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. Non-commercial streaming services are subject to Re:Sound Tariff 1.B.2 – Non-Commercial Simulcasts and Webcasts (2013-2019) and proposed Re:Sound Tariff 1.B – Non-Commercial Radio, Simulcasting, Non-Interactive and Semi-Interactive Streaming (2025-2029).

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

The service identification information to be collected under section 6 of the proposed tariff would be used by Re:Sound to identify and contact a service, ensure the applicable tariff and rates are applied, and to ensure the applicable taxes are charged and remitted based on the service's residency.

The music use information to be collected under section 7(1) 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.

The information to be collected under section 7(2) of the proposed tariff would be used by Re:Sound to calculate and verify a service's royalty payments.

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 8 – Non-Interactive and Semi-Interactive Webcasting (2009-2012) relate to:

- (a) The change in rate structure from a per play formula to a greater of percentage of revenue and per play formula, as well as the change in minimum fee structure to a minimum fee per channel. These changes resulted in additional definitions (channel, gross revenue) and additional reporting requirements (section 7(2)).
- (b) Revised wording, changing “webcaster” to “service,” “webcasting” and “webcast” to “streaming” and “stream,” and “interactive” to “on-demand” to reflect more current terminology.
- (c) Changes for the purpose of greater clarity including adding definition of “simulcast” and revisions to definitions of “file,” “non-interactive stream,” and “semi-interactive stream”.

- (d) Removal of the provisions relating to “aggregate tuning hours” as these were transitional provisions under the inaugural Tariff 8 and are no longer applicable.
- (e) Removing non-commercial streaming services from the scope of the tariff as they are now covered by Re:Sound Tariff 1.B.2 – Non-Commercial Simulcasts and Webcasts (2013-2019) and proposed Re:Sound Tariff 1.B – Non-Commercial Radio, Simulcasting, Non-Interactive and Semi-Interactive Streaming (2025-2029).
- (f) Removing references to other tariffs in accordance with the Board’s Practice Notice on Filing of Proposed Tariffs [PN 2019-004 rev.3].
- (g) Revising the provisions regarding the scope of the tariff (section 3) for greater clarity and updating the reference to the Copyright Act in section 3(3).
- (h) Revising the deadline for providing payments and reporting to 14 days after the end of each month rather than 45 days (sections 5, 6 and 7), in order to allow for more timely and efficient distributions to rights holders.
- (i) Clarifying when minimum fees are due in section 5(3).
- (j) Removing “where available” from the music use information requirements (section 7) as it is essential for accurate and timely distributions to rights holders that Re:Sound receive all required music use reporting.
- (k) Revisions to the adjustments provision (section 8) to impose a 12 month limit on adjustments on account of overpayments made by a service. As a self-reporting tariff, the accurate calculation of royalties owing rests solely on a service. In order to be able to make timely and accurate distributions to rights holders, Re:Sound cannot be subject to unlimited adjustments on account of retroactive overpayments, based on information that is solely in the hands of a service. In addition, section 11(2) of the current tariff has been deleted as it is impractical to apply credits on an individual sound recording basis.
- (l) Revisions to the audit provision (section 10) to allow for the sharing of audit results with other Canadian collective societies with tariffs applicable to services as well as revisions for greater clarity and consistency with more recently approved Re:Sound tariffs.

- (m) Revisions to the confidentiality provision (section 11) for consistency with more recently approved Re:Sound tariffs.
- (n) The addition of a financial disincentive for late reporting of both the financial information and the music use information required under the proposed tariff (section 12). The last approved tariff provides for interest payable on late payments which acts as a disincentive for a service to miss its payment due dates. The proposed revisions would provide a similar disincentive for late reporting which increases Re:Sound's costs of administering the tariff and can result in delayed distributions to rights holders.
- (o) Revisions to the Addresses for Notices and Delivery of Notices and Payments provisions (sections 13 and 14) to remove references to fax numbers as fax is no longer used as a means of communication by Re:Sound. In addition, Re:Sound's email address is updated in section 13 and section 14 is revised to allow for the use of file transfer protocol and electronic bank transfer, for consistency with more recently approved Re:Sound tariffs.