

NOTICE OF GROUNDS FOR PROPOSED TARIFF

Filed with the Copyright Board by Re:Sound on 2024-10-11 pursuant to Rule 15 of *Copyright Board Rules of Practice and Procedure*

RE:SOUND TARIFF 5.A – RECORDED MUSIC ACCOMPANYING LIVE ENTERTAINMENT (2026-2030)

1. Uses covered by the proposed tariff

The proposed tariff applies to the communication or public performance of recorded music as a part of any type of live entertainment event including theatrical, dance, acrobatic arts, integrated arts, contemporary circus arts or other live performances. For example, the proposed tariff applies to a live dance show accompanied by recorded music, a play or other theatrical performance in which recorded music is used as part of the show, an acrobatics show or contemporary circus arts show such as Cirque du Soleil using recorded music, and any similar live performance using recorded music as part of the show itself.

The proposed tariff applies to all live events using recorded music which are currently subject to *Re:Sound Tariff 5.A – Live Entertainment in Cabarets, Cafes, Clubs, Restaurants, Roadhouses, Taverns and Similar Establishments (2013-2015)* as well as *Re:Sound Tariff 5.K – Theatrical, Dance and Other Similar Live Performances (2008-2015)*.

Where the proposed tariff applies to an event, it applies to all recorded music used at the event, both inside and outside the venue, including recorded music played during intermissions and during the entrance and exit of the audience, as well as the use of recorded music as a part of the live entertainment itself.

The proposed tariff does not apply to events where recorded music is not used as a part of the live entertainment and is only played during intermissions or during the entrance and exit of the audience. Re:Sound's Background Music Tariff (3.B) would apply to such events instead.

The proposed tariff applies in addition to any other applicable Re:Sound tariffs for any uses of recorded music other than during the event. For example, a venue that holds live dance performances as well as concerts would be subject to the proposed tariff for the live dance performances and Tariff 5.J for the concerts.

2. Basis for proposed royalty rates

The proposed rates are based on *Re:Sound Tariff 5.K – Theatrical, Dance and Other Similar Live Performances (2008-2015)*, allowing for a repertoire adjustment of 100% (from 50%) and a 20% increase to the value of music.

The proposed rates are also adjusted for inflation since 2008, which is the last year for which the Tariff 5.K rates were adjusted, estimated to 2030. While Tariff 5.K (2008-2015) was approved by the Copyright Board based on a jointly-submitted text, there is no reason for treating the application of inflation any differently than a tariff subject to a full oral hearing. Inflation should therefore be calculated starting January 1, 2009, and not the month after the end of the period for which the Board approved a tariff based on a jointly-submitted text, as suggested in the Copyright Board's *Inflation Adjustments to Royalty Rates: Default Methodology*.

Inflation Calculations

Inflation was calculated for the period of 2009 to 2023 using Statistics Canada's Consumer Price Index (CPI) monthly series for Canada, all-items, not seasonally adjusted, and not adjusted for taxes. CPI for January 2009 (113.0) was subtracted from CPI for December 2023 (158.3) and divided by CPI for January 2009, resulting in an inflation rate of 40.1%.

For the period of 2024 to 2030, as full year CPI is not yet known, inflation was estimated using an average of the last 3 years of inflation. This was calculated by subtracting CPI for January 2021 (138.2) from CPI for December 2023 (158.3) and dividing by CPI for January 2021, resulting in an inflation rate of 14.5%, which when divided by 3 years, results in an average annual rate of inflation of 4.8%. The period of 2024 to 2030 is 7 years, so the estimated inflation was calculated by multiplying 4.8% by 7 years for an estimated inflation rate of 33.6%.

Combining the known inflation rate of 40.1% with the estimated inflation rate of 33.6% results in a total inflationary adjustment of 73.7%. As it is not known at this time when the Copyright Board will approve the proposed tariff, the full inflationary adjustment has been applied to the period of 2026-2030, recognizing that a re-calculation will be required based on known inflation values at the time of approval.

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

The proposed tariff applies to venues, presenting companies, promoters, and any other organization or individual responsible for putting on the live events described above including theatres and other performing arts venues, cabarets, cafes, clubs, restaurants, roadhouses, taverns and similar establishments.

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 6 of the proposed tariff would be used by Re:Sound to calculate and verify the royalty payments of a music user reporting and paying royalties under the tariff. This is the same information already required under *Re:Sound Tariff 5.K – Theatrical, Dance and Other Similar Live Performances (2008-2015)*.

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

(a) Stand-alone document

The proposed tariff has been drafted as an individual, stand-alone document that contains all applicable terms and conditions, in accordance with the Copyright Board's *Practice Notice on Filing a Proposed Tariff* [PN 2019-004 rev.4] (the "Practice Notice"). References to other tariffs have been removed in accordance with the Practice Notice.

(b) Consolidation

The proposed tariff consolidates *Re:Sound Tariff 5.A – Live Entertainment in Cabarets, Cafes, Clubs, Restaurants, Roadhouses, Taverns & Similar Establishments (2013-2015)* with *Re:Sound Tariff 5.K – Theatrical, Dance & Other Similar Live Performances (2008-2015)* into a single tariff to help simplify and reduce the number of tariffs applicable to music users, as requested by members of the relevant industries.

(c) Royalties (s.5)

The proposed rates are increased for the reasons outlined above.

(d) Accounts and Records (s.7)

Section 7(3) is revised to require Re:Sound to share the results of an audit with other Canadian collective societies with tariffs applicable to the same uses as the proposed tariff in order to increase efficiencies and reduce the need for multiple audits of the same music user by different collective societies.

(e) Confidentiality (s.8)

Section 8 is updated for consistency with more recently approved Re:Sound tariffs, including changes to allow Re:Sound to share information with its agents and service providers such as Entandem. Section 8(2)(b) is revised to allow Re:Sound to share information in connection with the collection of royalties or enforcement, not just with SOCAN, but with any other Canadian collective society with a tariff applicable to the same uses as the proposed tariff. This proposed revision would increase efficiencies and allow for potential joint enforcement practices.

(f) Adjustments (s.9)

Section 9 has been revised to impose a 12 month limit on adjustments on account of overpayments made by a music user under the tariff. As a self-reporting tariff, the accurate calculation of royalties owing rests solely on the music user making the report. 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 the music user.

(g) Late Payments and Reporting (s.10)

Section 10 has been revised to include a financial disincentive for late reporting under the proposed tariff. The last approved tariff provides for interest payable on late payments which acts as a disincentive for music users to miss their payment due date. The proposed revision would provide a similar disincentive for late reporting which increases Re:Sound's costs of administering the tariff.

(h) Addresses for Notices, etc. (s.11) and Delivery of Notices and Payments (s.12)

These provisions have been updated for consistency with more recently approved Re:Sound tariffs, allowing for notice by file transfer protocol and for payment by credit card and electronic bank transfer. The use of fax numbers has been removed from these provisions as it is out of date and no longer used by Re:Sound as a means of communication. Re:Sound's address is updated, which will be effective December 1, 2024.