

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.J – CONCERTS (2026-2030)

1. Uses covered by the proposed tariff

The proposed tariff applies to the communication or public performance of recorded music during the entrance and exit of audiences and during breaks in live performances at live music concerts. The proposed tariff does not apply to the use of recorded music as part of the live musical performance itself. Such uses would be subject to Re:Sound Tariff 5.A instead.

2. Basis for proposed royalty rates

The proposed rates are based on *Re:Sound Tariff 5.J – Concerts (2008-2015)*, which in turn, are based on the capacity rates under *Re:Sound Tariff 3 – Use and Supply of Background Music (2003-2009)*. The proposed rates are adjusted to allow for a repertoire adjustment of 100% (from 43.06%) and a 20% increase to the value of music.

The capacity rates are adjusted for inflation since 2006 (the last year that inflation was taken into account in Re:Sound Tariff 3 (2003-2009), upon which the Tariff 5.J rates are based), estimated to 2030. The per event minimum fee is adjusted for inflation since 2008 (the last year for which this rate was adjusted under Tariff 5.J), estimated to 2030.

An annual minimum fee has been introduced to the proposed tariff, as requested by the relevant industries, in order to reduce the total royalties payable by organizations which hold multiple small concerts in a year. The proposed annual minimum fee is based on the jointly-submitted text for Tariff 5.J (2016-2025), recently filed with the Copyright Board. This fee is then adjusted for inflation since 2016 (the last year for which it was adjusted under the jointly-submitted text), estimated to 2030.

While Tariff 5.J (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 using the various starting points outlined above, 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

a) Capacity rates

Inflation was calculated for the period of 2007 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 2007 (109.4) was subtracted from CPI for December 2023 (158.3) and divided by CPI for January 2007, resulting in an inflation rate of 44.7%.

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 44.7% with the estimated inflation rate of 33.6% results in a total inflationary adjustment of 78.3%. 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.

b) Per event minimum fee

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.

c) Annual minimum fee

Inflation was calculated for the period of 2017 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 2017 (129.5) was subtracted from CPI for December 2023 (158.3) and divided by CPI for January 2017, resulting in an inflation rate of 22.2%.

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 22.2% with the estimated inflation rate of 33.6% results in a total inflationary adjustment of 55.8%. 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, concert promoters, presenting companies, and any other organization or individual responsible for holding live music concerts using recorded music.

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.J – Concerts (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) Royalties (s.5)

The proposed rates are increased, and an annual minimum fee is introduced, for the reasons outlined above.

(c) 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.

(d) 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.

(e) 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 subject to the tariff. As a self-reporting tariff, the accurate calculation of royalties owing rests solely on the music user. 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 music user.

(f) 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.

(g) 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.