

## 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.G – PARKS, STREETS AND OTHER PUBLIC AREAS (2026-2030)

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

The proposed tariff applies to the communication or public performance of recorded music in parks, streets or other public areas, which are not subject to another Re:Sound tariff, such as buskers/street performers using recorded music as part of their performance.

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

The proposed rates are based on *Re:Sound Tariff 5.G – Parks, Streets and Other Public Areas (2013-2015)* and *Re:Sound Tariff 5.G – Parks, Streets and Other Public Areas (2008-2012)*, which in turn, are based on SOCAN Tariff 10.A. The proposed rates are adjusted to allow for a repertoire adjustment of 100% (from 50%) and a 20% increase to the value of music.

In addition, the proposed rates are adjusted for inflation since 2004, estimated to 2030. The SOCAN Tariff 10.A rates on which Re:Sound Tariff 5.G is based, had not been adjusted for inflation since 2004 at the time the Re:Sound Tariff 5.G rates were initially set for 2008-2012 or when Re:Sound filed a jointly-submitted text for its renewal for 2013-2015. SOCAN has subsequently received an inflationary adjustment to its Tariff 10.A rates back to January 1, 2005. Failure to adjust Re:Sound Tariff 5.G for the same time period would disrupt the one-to-one value long-established by the Copyright Board and unfairly prejudice performers and makers. Inflation should therefore be calculated starting January 1, 2005, 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 2005 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 2005 (105.3) was subtracted from CPI for December 2023 (158.3) and divided by CPI for January 2005, resulting in an inflation rate of 50.3%.

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 50.3% with the estimated inflation rate of 33.6% results in a total inflationary adjustment of 83.9%. 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 anyone using recorded music as part of a public performance in a park, street or other public area such as a busker/street performer.

### **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.G – Parks, Streets and Other Public Areas (2013-2015)*.

### **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 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.