



## NOTICE OF GROUNDS FOR PROPOSED RE:SOUND TARIFF 1.A – COMMERCIAL RADIO (2024-2028)

### 1. Description and examples of activities covered by the proposed tariff

The proposed tariff applies to the communication to the public by telecommunication in Canada, of published sound recordings of musical works and performers' performances of such works by commercial radio stations, by over-the-air broadcast and simulcast. In simpler terms, it applies to the terrestrial (AM/FM) broadcast and simulcast of recorded music in Canada by Canadian commercial radio stations.

The proposed tariff also applies to the public performance of published sound recordings of musical works and performers' performances of such works, by means of any radio receiving set in any place other than a theatre that is ordinarily and regularly used for entertainments to which an admission charge is made. In simpler terms, it applies to public performances of recorded music by terrestrial (AM/FM) commercial radio played in businesses such as stores, restaurants and offices. Pursuant to section 72.1(1) of the Copyright Act, Re:Sound may not collect royalties from the owner or user of the radio receiving set for such public performances, but the Copyright Board, "shall, in so far as possible, provide for the collection in advance from radio broadcasting stations of royalties appropriate to the conditions produced by the provisions of this subsection and shall fix the amount of the same."

The proposed tariff does not apply to any online activities other than simulcasts by Canadian commercial radio stations. Non-interactive streaming and semi-interactive streaming is covered by Re:Sound Tariff 8 instead. If any semi-interactive functionality is available such as the ability to skip, pause, rewind, fast-forward or influence the content of the stream, regardless of whether such functionality is used by listeners or not, the stream is not a simulcast and is covered by Re:Sound Tariff 8 and not by the proposed tariff.

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

The proposed tariff applies to commercial radio stations operating in Canada.

The proposed tariff does not apply to businesses who play terrestrial (AM/FM) radio in their establishments. In accordance with section 72.1(1) of the Copyright Act, royalties for such performances are to be collected from commercial radio stations instead.

The proposed tariff does not apply to non-commercial radio stations, who are subject to Re:Sound Tariffs 1.B and 1.B.2 instead. Simulcasts by non-Canadian commercial radio stations streaming to listeners in Canada are subject to Re:Sound Tariff 8, not the proposed tariff. The proposed tariff does not apply to satellite radio services or pay audio services, which are each subject to their own tariffs instead.

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### **3. Explanation of how the royalty rates were determined**

The proposed rates for over-the-air commercial radio broadcasts are based on economic analysis and allow for a potential repertoire adjustment of up to 100%. The proposed rates for public performances of terrestrial (AM/FM) radio broadcasts are based on the estimated value of the royalties which Re:Sound is unable to collect from businesses as a result of the exemption under section 72.1(1) of the Copyright Act. The proposed simulcasting per play rate and minimum fee are based on international best practices, including the 2022 SoundExchange rates for non-subscription commercial webcasters.

### **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 7 of the proposed tariff would be used by Re:Sound to calculate and verify a station's royalty payments. The information regarding a station's simulcast audience and number of subscribers to be collected under sections 7(b) and 7(c) would be used by Re:Sound to assess the relative size and importance of the simulcast audience to the over-the-air audience in order to ensure the proposed royalty rates and formula for simulcasts is appropriate.

The music use information to be collected under section 9 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.

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

As the proposed tariff is filed only on behalf of Re:Sound, a number of changes to the last approved tariff were made to remove references to other collective societies and rights (including reproductions and musical works) which are not applicable to Re:Sound.

#### **Definitions (s.2)**

The definition of "Act" is deleted as it is not used in the proposed tariff. Definitions of "device," "file," "play," and "simulcasting income" are added as the proposed tariff has been expanded to cover simulcasting. The definitions of "ingest copy," "live performance copy," "low use station (works)," "performer's performance," and "voice tracking copy" are deleted as they are not applicable to Re:Sound. The definition of "collective societies" is revised as the terms "collective societies" "collectives" and "societies" are used interchangeably throughout the proposed tariff. The definition of "gross income" is revised to clearly exclude simulcasting income (which is subject to a separate rate) and income from non-interactive and semi-interactive streaming which is not subject to the proposed tariff. The definition of "service provider" is revised to cover a broader range of service providers who might be engaged by Re:Sound. The definition of "simulcast" is revised to provide greater clarity and for consistency with the language of Re:Sound Tariff 8.

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### **Application (s.3)**

The scope of the proposed tariff is expanded to cover simulcasts by Canadian commercial radio stations in accordance with the Board's ruling in the 2014 Re:Sound Tariff 8 decision. The scope of the proposed tariff is also expanded to cover public performances by radio receiving set in accordance with section 72.1(1) of the Copyright Act.

The wording in section 3(2) is revised in order to avoid references to other tariffs in accordance with the Board's Practice Notice On Filing Of Proposed Tariffs [PN 2019-004 rev.2]. Section 4 of the last approved tariff (referencing former s.68.1(1)(a)(i) of the Copyright Act) is deleted to avoid references to other documents which are subject to change, and to ensure the proposed tariff is self-contained in accordance with PN 2019-004 rev.2.

### **Royalties Payable (s.4-5)**

Separate rates have been added for simulcasts and public performances pursuant to section 72.1(1) of the Copyright Act, and the proposed rates are increased for the reasons outlined above.

Section 5 has been revised to provide that royalties are to be calculated based on the total combined gross income in a year of all stations owned by the same company. This is to ensure that the lower rates applicable to stations with revenues under \$1.25Mi and under \$625,000 are not misapplied by large, profitable radio groups.

### **Reporting Requirements (s.7)**

Additional reporting requirements have been added as a result of the inclusion of simulcasts under the tariff for the reasons outlined above.

### **Information on Repertoire Use (s.9)**

Section 9(1) has been revised to require the production of music use reports by the 14<sup>th</sup> day after the end of each month, rather than for the reference month, which is 2 months' prior. This is to allow for more timely and efficient distributions to rights holders.

The list of music use information to be provided under section 9(1) has been revised for greater clarity and consistency with more recently certified Re:Sound tariffs. The name of the maker that released the sound recording has been added to assist Re:Sound in determining eligibility.

The references in sections 10(1) and 10(3) of the last approved tariff allowing stations to provide music use information only "where available" have been deleted. It is essential for accurate and timely distributions to rights holders that Re:Sound receive the music use reporting. The term "where available" implies that such reporting is optional and should therefore be removed.

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## **Records and Audits (s.10)**

Section 10(2) has been revised to refer to all information required under section 7 as opposed to just a station's gross income to correspond with the expanded reporting requirements in section 7. Section 10(5) has been revised to require a station that has been found to have made an underpayment as a result of an audit, to pay the amount of the underpayment within 30 days of receiving a demand for it, in accordance with more recently certified Re:Sound tariffs.

## **Confidentiality (s.11)**

Section 11 has been revised for consistency with more recently certified Re:Sound tariffs, including:

- allowing the sharing of confidential information with agents in section 11(2)(a);
- simplifying the process of using confidential information in Board proceedings by not requiring notification to each individual station, while ensuring that their information will be protected as confidential in section 11(2)(d);
- removing the requirement that Re:Sound share its confidentiality agreements with its service providers with radio stations in section 11(3). Such a requirement does not exist in any other Re:Sound tariff and is unduly onerous as it would for example, require Re:Sound to share its confidentiality agreement with an IT service provider working on its repertoire database, with hundreds of individual radio stations. Such a requirement is not necessary to protect the confidentiality of a station's information, as the requirement that Re:Sound ensure a confidentiality agreement is in place remains; and
- clarifying that aggregated information is not considered confidential information in section 11(4).

## **Adjustments (s.12)**

Section 12 has been revised to impose a 12 month limit on adjustments on account of overpayments made by a station. As a self-reporting tariff, the accurate calculation of royalties owing rests solely on the station. In the past, stations have tried to claim overpayments going back over 10 years on account of their own error in calculation. 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 station.

## **Late Payments and Reporting (s.13)**

Section 13 has been revised to include a financial disincentive for late reporting of both the financial information required under section 7 and the music use information required under section 9. The last approved tariff provides for interest payable on late payments which acts as a disincentive for stations to miss their payment due date. 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.

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## **Addresses for Notices, etc. (s.14) and Delivery of Notices and Payments (s.15)**

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. Section 15 has also been revised for consistency with more recently certified Re:Sound tariffs, including to allow for payment by credit card.

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