NOTICE OF GROUNDS FOR OBJECTION

Filed by **Hotel Association of Canada**

In relation to proposed tariff *RE:SOUND TARIFF 5.B – RECEPTIONS, CONVENTIONS, ASSEMBLIES AND FASHION SHOWS (2026-2030)*

Filed with the Copyright Board on 2024-12-16 pursuant to Rule 15 of Copyright Board Rules of Practice and Procedure*.*

General Statement of Objection

The following Notice of Grounds for Objection (the "Notice") is filed on behalf of the Hotel Association of Canada (HAC) in respect of Proposed Tariff *RE:SOUND TARIFF 5.B – RECEPTIONS, CONVENTIONS, ASSEMBLIES AND FASHION SHOWS (2026-2030)* filed by Re:Sound on 2024-10-11. This Notice is filed in accordance with Board Order CB-CDA 2024-008 PN 2022-006 rev.2.

HAC is currently engaged in a proceeding before the Copyright Board to address this proposed tariff for the prior years (2016-2025). To the extent that the proceeding to consider the prior years has an impact on the proposal for the future years, HAC reserves the right to bring additional objections reflecting any such changes.

Grounds for Objecting to Royalty Rates in the Proposed Tariff

Re:Sound is proposing enormous rate increases in this tariff. The currently certified maximum fee per event without dancing is $39.33. Re:Sound is proposing to increase that to $192.88. HAC's members cannot absorb a rate increase of that magnitude.

Re:Sound offers three justifications for these increases: 100% repertoire, a 20% increase in the value of music, and inflation.

With respect to the first, Re:Sound states that it now has 100% repertoire. This is currently subject to dispute before the Board for the prior years. Re:Sound cannot simply state that it has 100% of SOCAN's repertoire and expect to be compensated for that new repertoire without providing any justification or documentary evidence to establish that those US sound recordings have properly been brought into repertoire for the rights at issue in this proposed tariff. HAC appreciates and understand Re:Sound's position that the amendment to the Ministerial Statement has made US sound recordings *eligible* for remuneration in Canada where they were not before, but it does not follow that those eligible sound recordings are automatically *included* in Re:Sound's repertoire and are therefore compensable in Canada. When the impact of this position is to exponentially increase the amount payable by restaurants and hotels at a time when the hospitality sector is struggling financially, it is simply not possible for the Associations to accept Re:Sound's position on repertoire without proof that they must.

With respect to the second, Re:Sound has offered no justification for its claim that the value of music has increased by 20%. If anything, HAC argues that the value of music to its members has decreased following the pandemic. This 20% increase should be rejected outright.

With respect to the third justification, Re:Sound states that the appropriate inflationary adjustment is 83.9%. This is absurd. While inflation is a popular justification for widescale price increases in the current economic climate, Re:Sound offers no explanation as to why the factors driving inflationary increases across other sectors of the economy are specifically applicable to works in Re:Sound's repertoire such that Re:Sound should be entitled to its proposed rate increases. HAC acknowledges that the Copyright Board has accepted inflation as a justification for price increases in other tariffs but note that the increases being proposed by Re:Sound should not be accepted without substantial supporting economic evidence.

In the context of a weakening economy and reduced discretionary consumer spending, there is no evidence that the value of music has increased on par with inflationary calculations that are based on a measure of a basket of goods that have no correlation with music valuation. In Canada, the "basket" of goods and services used to calculate CPI includes a wide range of items. "Other cultural and recreational services" comprises less than 2% of the value of the basket.[1] "Purchase of digital media" comprises less than 0.2% of the value of the basket. In any event, the overall index, which is overwhelmingly impacted by food, shelter, household operations, furnishings and equipment as well as transportation, is a poor proxy from which to calculate the change in the value of music over time. Absent valid justification, the rate increases should be rejected entirely.

Finally, HAC notes that Re:Sound's proposed rates are higher than SOCAN's proposed rates for the same use for the same time period ($385.75 for Re:Sound vs $271.65 for SOCAN). The value of these rights has long been held to be the same, with adjustments made for repertoire. Even if we accept that Re:Sound has an equivalent repertoire (which we do not), that would only support a claim for an equivalent royalty. For hotel or restaurant operator that hosts a wedding to pay over $650 per event in copyright royalties ($271.65 for SOCAN and $385.75 for Re:Sound) when the previously certified combined rate was $266.21 (i.e. $187.55 for SOCAN and $78.66 for Re:Sound) would be unfair and prejudicial to these small venues. This proposal from Re:Sound is excessive and when considered together with the SOCAN royalty for the same use, would amount to an unreasonable and disproportionate burden on HAC's members.

Grounds for Objecting to Terms and Conditions in the Proposed Tariff

Re:Sound proposes to change the certified tariff to limit the time during which a venue may recover overpayments to 12 months. There is no corresponding limit on the time for which Re:Sound may recover royalties. This is unfair. Re:Sound has provided no indication that it has suffered prejudice from the absence of this type of provision. This time limit is unnecessary and unjustified and should not be included in the tariff.

Similarly, Re:Sound has proposed what it calls "a financial disincentive" for late reporting. As it notes, the last approved tariff provides for interest payable on late payments which acts as a disincentive for venues to miss their payment due date, and Re:Sound is now proposing "a similar disincentive for late reporting which increases Re:Sound's costs of administering the tariff." Again, Re:Sound has provided no explanation of the extent to which late reporting has occurred or the supposed increase to its costs for administering the tariff. This provision should not be included in the tariff.

[1] https://www150.statcan.gc.ca/n1/pub/62f0014m/62f0014m2023003-eng.htm

Submitted on behalf of HAC by

Gabriel van Loon Kathleen Simmons