

NOTICE OF GROUNDS FOR OBJECTION

Filed by **Hotel Association of Canada and Restaurants Canada**

In relation to proposed tariff *RE:SOUND TARIFF 5.A – RECORDED MUSIC ACCOMPANYING LIVE ENTERTAINMENT (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) and Restaurants Canada (RC), (together “the Associations”) in respect of Proposed Tariff *RE:SOUND TARIFF 5.A – RECORDED MUSIC ACCOMPANYING LIVE ENTERTAINMENT (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.

The Associations are 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, the Associations reserve 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 minimum fee is \$15 or \$30 per event, and Re:Sound is proposing to increase those rates to \$52.11 and \$104.22 per event respectively. Where royalties are paid on an annual basis, Re:Sound is proposing to increase the fee from \$50 per year to \$173.70 per year.

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. The Associations appreciate 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, the Associations argue that the value of music to their businesses has decreased following the pandemic where restaurants, in particular, have shifted towards delivery services rather than in-person dining such that music is of less value to their operations. This 20% increase should be rejected outright.

With respect to the third justification, Re:Sound states that the appropriate inflationary adjustment is 73.7%. 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. The Associations acknowledge 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.

Grounds for Objecting to Terms and Conditions in the Proposed Tariff

For the prior years, 2023-2025, Re:Sound has proposed to consolidate Tariff 5.A (Live Entertainment in Cabarets, Cafes, Clubs, Restaurants, Roadhouses, Taverns and Similar Establishments, 2013-2015) and Tariff 5.K (Theatrical, Dance and Other Similar Live Performances, 2008-2015) into a single tariff, and to use the framework from Tariff 5.K instead of the framework from Tariff 5.A. The Associations have objected to this consolidation because the switch from 5.A to 5.K will result in a significant administrative burden and a material increase in royalties owed, and because Tariff 5.A as defined is not easily applied to the activities of the Association's members.

The reporting requirements under certified Tariff 5.A and proposed Tariff 5.A are drastically different. Under the certified Tariff 5.A, the Associations members are required to submit one annual report showing compensation paid for entertainment during the previous year. This is sufficient to enable Re:Sound to determine whether the entity complied with its obligations under the tariff and paid sufficient royalties. Under Re:Sound's proposal, these same entities, for the same use of music, would be required to determine whether to pay per event or per year, and provide details such as name and location of event, number of admissions, duration of use of sound recordings at the event in minutes and duration of use of sound recordings as a percentage of the total length of the event, excluding

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

intermissions and the entrance and exit of audiences before and after the event. This would represent a significant and time-consuming administrative burden for the Associations' members at a time when hotel and restaurant operators are struggling with labour shortages and many are working in excess of 60-65 hours/week.

The Associations wish to preserve the framework under certified Tariff 5.A and intend to make arguments to that effect before the Copyright Board with respect to the current period. In filing the tariff in its current form for 2026-2030, Re:Sound has removed pre-existing Tariff 5.A in its entirety, resulting in significant prejudice to the Associations.

In addition, 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.

Other Grounds

Submitted on behalf of the Associations by

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