

Copyright Board
Canada



Commission du droit d'auteur
Canada

October 28, 2020

In accordance with section 68.2 of the *Copyright Act*, the Copyright Board hereby publishes the following proposed tariffs:

- Re:Sound Tariff 1.B – Non-Commercial Radio, 2022-2024
- Re:Sound Tariff 1.C – CBC Radio and Simulcasts, 2022-2024
- Re:Sound Tariff 4 – Satellite Radio Services, 2022-2024
- **Re:Sound Tariff 8 – Non-Interactive and Semi-Interactive Streaming, 2022-2024**

By that same section, the Copyright Board hereby gives notice to any person affected by these proposed tariffs that users or their representatives who wish to object to the above-mentioned proposed tariffs must file written objections with the Board, at the address indicated below, no later than the 30th day after the day on which the Board published the proposed tariffs, that is no later than **November 27, 2020**.

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PROPOSED TARIFF

Filed with the Copyright Board pursuant to subsection 67(1) of the *Copyright Act*

2020-10-14

RE:SOUND

Tariff 8

For the communication to the public by telecommunication, in Canada, of published sound recordings embodying musical works and performers' performances of such works

2022-01-01 – 2024-12-31

Proposed citation:

Re:Sound, Non-Interactive and Semi-Interactive Streaming (2022–2024)

STATEMENT OF PROPOSED ROYALTIES TO BE COLLECTED BY RE:SOUND FOR THE COMMUNICATION TO THE PUBLIC BY TELECOMMUNICATION, IN CANADA, OF PUBLISHED SOUND RECORDINGS EMBODYING MUSICAL WORKS AND PERFORMERS' PERFORMANCES OF SUCH WORKS FOR THE YEARS 2022-2024

Tariff No. 8

NON-INTERACTIVE AND SEMI-INTERACTIVE STREAMING

Short Title

1. This tariff may be cited as the *Re:Sound Non-Interactive and Semi-Interactive Streaming Tariff, 2022-2024*.

Definitions

2. In this tariff,

“Act” means the *Copyright Act*, R.S.C. 1985, c. C-42, as modified; (« *Loi* »)

“channel” means an individual programme or playlist which a user selects to initiate a communication of a file. For example, if a service offers 10 different musical genres and within each genre, there are a further 10 sub-genres, the selection of each of which initiates the streaming of a different playlist, the service has 100 channels. For semi-interactive streams that permit a user to customize a programme or playlist, each such individually customized programme or playlist constitutes one channel; (« *chaîne* »)

“device” means any device capable of receiving and playing a file, including a computer, digital media player, cellular phone, smartphone, or tablet; (« *appareil* »)

“file” means a digital file of a sound recording of a musical work or a part thereof, whether or not that sound recording has been published, is in the public domain, is eligible to receive equitable remuneration or is within the repertoire of Re:Sound; (« *fichier* »)

“gross revenues” includes all direct and indirect revenues of a service with respect to its communications in Canada by non-interactive stream, semi-interactive stream and by simulcast (except a simulcast excluded under section 3(1)(a)), including, but not limited to:

- (a) user revenues, which mean all payments made by, on behalf of, or to enable, users to access the stream, including, but not limited to, subscriber fees, connect time charges, access or activation fees, administrative fees, account history fees, returned payment fees, invoice fees, cancellation fees and hardware transfer and other transfer fees, whether made directly to the service or to any entity under the same or substantially the same ownership, management or control, or to any other person, firm or corporation including, but not limited to, any partner or co-publisher of the service, pursuant to an agreement or as directed or authorized by any agent or employee of the service; and

(b) sponsor revenue, which means all payments made by or on behalf of sponsors, advertisers, programme suppliers, content providers, or others in connection with the stream including, but not limited to, advertising included within the stream or played upon selecting a link to the stream, or on banner adverts on media players and pop up windows associated with media players whilst the media player is delivering the stream, payments associated with syndicated selling, on-line franchising, associate or affiliate programs, bounty, e-commerce or other revenue including revenue from the sale, design, development, manufacture, rental or installation of receiving devices and any other hardware and accessories used in the reception of the stream and also includes the value of any goods or services received from any source as barter in connection with the stream including, but not limited to, barter received in exchange for providing advertising time or space;

For greater certainty, gross revenues includes all income accruing from any allied or subsidiary business that is a necessary adjunct to the stream and which results in the use of the stream, including the gross amounts received by the service pursuant to a turn-key contract with an advertiser; (« *revenus bruts* »)

“month” means a calendar month; (« *mois* »)

“non-commercial webcaster” means any webcaster other than the Canadian Broadcasting Corporation, that is owned and operated by a not-for-profit organization including any campus webcaster and community webcaster, whether or not any part of the webcaster’s operating costs are funded by advertising revenues; (« *webdiffuseur non commercial* »)

“non-interactive stream” refers to a stream over which the recipient is unable to exercise any control over the content or the timing of the stream. For example, the recipient cannot skip or pause the communication of a file or influence the content by indicating a preference for a musical genre, artist or sound recording other than by selecting the channel; (« *transmission non interactive* »)

“on-demand stream” refers to any stream through which a specific file can be communicated to a member of the public at a place and at a time individually chosen by that member of the public; (« *transmission sur demande* »)

“play” means the single communication of a file or a part thereof, to a single person; (« *écoute* »)

“semi-interactive stream” refers to a stream over which the recipient has the ability to exercise some level of control over the content or the timing of the stream, such as by skipping, pausing, rewinding or fast-forwarding the communication of a file or by indicating a preference for a musical genre, artist or sound recording; (« *transmission semi-interactive* »)

“service” means a person or organization, including an aggregator, who carries out a stream, excluding a non-commercial webcaster; (« *service* »)

“simulcast” means the simultaneous communication of an over-the-air radio, pay audio or satellite radio broadcast via the Internet or another digital network, to a device, which is identical to the original signal and over which the recipient is unable to exercise any control over the content

or the timing of the communication. For example, the recipient cannot skip, pause, rewind or fast-forward the communication of a file or influence the content of the communication by indicating a preference for a musical genre, artist or sound recording; (« *diffusion simultanée* »)

“stream” means the communication in Canada, via the Internet or another digital network, to a device, of one or more files; (« *transmission*»)

“year” means a calendar year. (« *année* »)

Application

3. (1) This tariff sets the royalties to be paid by a service, for the years 2022-2024, for the communication to the public by telecommunication of published sound recordings embodying musical works and performers’ performances of such works by non-interactive stream, semi-interactive stream or simulcast, other than:

- (a) a simulcast of programming by the Canadian Broadcasting Corporation, a Canadian commercial radio station, a satellite radio service, or a pay audio service. For greater certainty, any other simulcasts or non-interactive or semi-interactive streams in Canada are subject to the royalties payable under this tariff including simulcasts by non-Canadian commercial radio stations, and any non-interactive or semi-interactive stream of programming by a commercial radio station, the Canadian Broadcasting Corporation, a pay audio service or satellite radio service that does not constitute a simulcast within the meaning of this tariff;
- (b) an on-demand stream or download;
- (c) the act of making a sound recording available to the public by telecommunication in a way that allows a member of the public to have access to the sound recording from a place and at a time individually chosen by that member of the public and the communication of the sound recording to the public by telecommunication in that way;
- (d) a podcast or transmission of a programme previously transmitted (whether or not it has been converted to another audio file format) for playback on a device; and
- (e) a communication by a background music supplier to its commercial subscribers or any public performance of sound recordings.

(2) If a service offers an on-demand streaming, download or simulcast service as well as a non-interactive or semi-interactive streaming service, the non-interactive streaming and semi-interactive streaming shall not be treated as part of the on-demand streaming, download or simulcast service.

(3) This tariff is not subject to the special royalty rates applicable to wireless transmission systems or community systems set out in section 72 of the *Act*.

ROYALTIES

4. The royalties payable for any given month by a service including the CBC, shall be the greater of:

- (a) 21.75 per cent of its gross revenues for that month; or

(b) \$0.00157 for each play of a file in Canada in that month by non-interactive stream, semi-interactive stream, and by simulcast (except a simulcast excluded under section 3(1)(a)); subject to a minimum annual fee of \$500 per channel up to a maximum of \$50,000.

Date Payable

5. (1) Royalties payable under section 4 are due 14 days after the end of the month for which they are being paid.

(2) All royalties payable under this tariff are exclusive of any applicable federal, provincial or other governmental taxes or levies of any kind.

(3) Minimum fees are due on the 14th day of January of each year for which they apply, to be credited against the monthly amounts payable under section 4. If a service starts operating after January 14th, the minimum fees are due 14 days after the end of the first month of operation, pro-rated based on the number of months of operation.

REPORTING REQUIREMENTS

Service Identification

6. No later than 14 days after the end of the first month during which a service carries out a stream pursuant to section 3, the service shall provide to Re:Sound the following information:

- (a) The name of the service, including:
 - (i) the name of the corporation or other entity, its jurisdiction, the names of its principal officers and any other trade name under which it carries on business; or
 - (ii) the name of the proprietor of an individual proprietorship;
- (b) the address of its principal place of business and, if applicable, the address of an office in Canada if the principal place of business is located outside Canada;
- (c) the name, address and email of the persons to be contacted for the purposes of notice, for the exchange of data and for the purposes of invoicing and payment;
- (d) the name and address of any authorized distributor;
- (e) the name and Uniform Resource Locator (URL) from which the stream is or will be offered;
- (f) whether the stream is non-interactive and/or semi-interactive or both;
- (g) the date(s) of its first non-interactive and/or semi-interactive stream in Canada; and
- (h) the number of channels.

Music Use Information

7. (1) No later than 14 days after the end of each month, a service shall provide to Re:Sound, in relation to each file or part thereof included in a non-interactive and semi-interactive stream and in a simulcast (except a simulcast excluded under section 3(1)(a)) in that month:

- (a) the title of the sound recording;
- (b) the name of each performer or group to whom the sound recording is credited;
- (c) the name of the record label or maker that released the sound recording;
- (d) the name of each author of the musical work;

- (e) the International Standard Recording Code (ISRC) assigned to the sound recording;
- (f) the name of the music publisher associated with the musical work;
- (g) the International Standard Musical Work (ISWC) assigned to the musical work;
- (h) if the sound recording was released as part of an album, the name, identifier, product catalogue number and Universal Product Code (UPC) assigned to the album, together with the associated disc and track numbers;
- (i) the Global Release Identifier (Grid) assigned to the sound recording and, if applicable, the Grid of the album or bundle in which the sound recording was released;
- (j) the running time of the sound recording as streamed, in minutes and seconds;
- (k) the running time of the sound recording as listed on the album, in minutes and seconds;
- (l) any alternative title used to designate the musical work or sound recording; and
- (m) in the case of syndicated programming, the cue sheet, with the relevant music use information inserted into the Excel report.

(2) A service shall provide, as part of the information set out in subsection (1), a report setting out, for that month:

- (a) the number of plays of each file;
- (b) the total number of plays of all files; and
- (c) the gross revenues of the service including, where applicable, the total number of subscribers (including both free and paid subscriptions) and the total amounts paid by them.

(3) The information set out in subsections (1) and (2) shall be provided electronically, in Excel format or in any other format agreed upon by Re:Sound and the service, with a separate field for each piece of information required in subsection (1) other than the cue sheets which are to be used to insert the relevant music use information into each field of the report.

Adjustments

8. Adjustments to any information provided pursuant to sections 6 or 7 shall be provided with the next monthly report provided pursuant to section 7.

9. Adjustments in the amount of royalties owed as a result of the discovery of an error or otherwise, shall be made on the date the next royalty payment is due. No adjustments to reduce the amount of royalties owed may be made in respect of an error discovered by the service which occurred more than 12 months prior to notification to Re:Sound. Excess payments are not subject to interest.

Records and Audits

10. (1) A service shall keep and preserve, for a period of six years after the end of the year to which they relate, records from which the calculation of that service's payment under this tariff can be readily ascertained, including the information required under subsections 7(1) and (2).

(2) Re:Sound may audit these records at any time during the period set out in subsection (1), on reasonable notice and during normal business hours.

(3) Re:Sound shall, upon receipt, supply a copy of the report of the audit to the service that was the subject of the audit and to any other Canadian collective society with a tariff applicable to non-interactive streams, semi-interactive streams or simulcasts.

(4) If an audit discloses that the royalties owed to Re:Sound during any reporting period have been understated by more than 10 per cent, the service that was the subject of the audit shall pay the reasonable costs of the audit to Re:Sound within 30 days of the demand for such payment. The amount of any understatement shall be paid within 30 days of the demand for such payment.

Confidentiality

11. (1) Subject to subsections (2) to (4), information received from a service pursuant to this tariff shall be treated in confidence, unless the service that supplied the information consents in writing to the information being treated otherwise.

(2) Information received from a service pursuant to this tariff may be shared:

- (a) with Re:Sound's agents and service providers, to the extent required by the service providers for the service they are contracted to provide;
- (b) in connection with the collection of royalties or the enforcement of a tariff, with any other Canadian collective society that has a tariff applicable to non-interactive streams, semi-interactive streams or simulcasts;
- (c) with the Copyright Board;
- (d) in connection with proceedings before the Copyright Board, if it is protected by a confidentiality order;
- (e) to the extent required to effect the distribution of royalties; or
- (f) if required by law.

(3) Where confidential information is shared with a service provider pursuant to section 11(2)(a), that service provider shall sign a confidentiality agreement.

(4) Subsection (1) does not apply to information that is publicly available, to aggregated information, or to information obtained from someone other than the service who supplied the information and who is not under an apparent duty of confidentiality to the service with respect to the supplied information.

Late Payments and Reporting

12. (1) In the event that a service does not pay the amounts owed under section 4 or provide the reporting required under subsection 7(2) by the due date, the service shall pay to Re:Sound interest calculated on the amount payable for the relevant period from the due date until the date both the amount and the report are received by Re:Sound. Interest shall be calculated daily at a rate equal to one per cent above the Bank Rate, effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.

(2) In the event that a service does not provide the reporting required by subsection 7(1) within 7 days of the due date, upon written notice by Re:Sound, the service shall pay to Re:Sound a late fee

based on the number of days from the due date to the date the reporting is received by Re:Sound of:

- (a) \$10.00 per day for the first 30 days after the due date;
- (b) \$20.00 per day for the next 30 days; and
- (c) \$50.00 per day thereafter;

until the reporting is received.

Addresses for Notices, etc.

13. (1) Anything addressed to Re:Sound shall be sent to 1235 Bay Street, Suite 900, Toronto, Ontario M5R 3K4, email: internet@resound.ca, fax number: 416-962-7797, or to any other address, email address, or fax number of which the service has been notified in writing.

(2) Anything addressed to a service shall be sent to the last address, email address, or fax number of which Re:Sound has been notified in writing.

Delivery of Notices and Payments

14. (1) A notice may be delivered by hand, by postage-paid mail, by fax, by email or by file transfer protocol (FTP). A payment may be made by credit card or delivered by hand, by postage-paid mail or by electronic bank transfer (EBT). Where a payment is delivered by EBT, the associated reporting required under section 7 shall be provided concurrently to Re:Sound by email.

(2) The information set out in section 7 shall be sent by email.

(3) Anything mailed in Canada shall be presumed to have been received four business days after the day it was mailed.

(4) Anything sent by fax, by email, by FTP or by EBT shall be presumed to have been received the day it was transmitted.