

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2012-01-30

Citation File: Public Performance of Sound Recordings

Regime Collective Administration of Performing Rights and of Communication Rights
Copyright Act, section 66.52

Members Mr. Justice William J. Vancise
Mr. Claude Majeau
Mrs. Jacinthe Th  berge

Proposed Tariffs Considered Re:Sound Tariff No. 6.A – Use of Recorded Music to Accompany Dance, 2008-2012

Statement of Royalties to be collected for the performance in public or the communication to the public by telecommunication, in Canada, of published sound recordings embodying musical works and performers' performances of such works

Reasons for decision

I. INTRODUCTION

[1] Montage Management Inc. (Montage) operates Club 1234 in Montreal. It is required to pay royalties to Re:Sound pursuant to its Tariff 6.A (Use of Recorded Music to Accompany Dance), which the Board approved for the first time on July 16, 2011 for the period 2008-2012. In August, 2011, Re:Sound initiated a correspondence seeking royalties of \$6,289.52 for the years 2008 to 2011. Pursuant to section 11 of Tariff 6.A, royalties for the period were due on October 1, 2011. Re:Sound referred the matter to a collection agency one month later.

[2] On December 12, 2011, pursuant to section 66.52 of the *Copyright Act*¹ (the "Act"), Montage requested that the Board modify section 11 of Tariff 6.A so that the amounts owed for 2008 to 2011 be payable over a one-year period ending some time in 2012. Essentially, Montage takes issue with the "aggressive manner" in which Re:Sound is pursuing the payment of royalties, with the communications strategy used by the collective in this market, with the (possible) uneven

¹ R.S.C. 1985, c. C-42

enforcement of the tariff in that market and with the (possible) incorrect calculation of the royalties.

[3] For its part, Re:Sound argues that section 66.52 cannot be invoked, because no material change in circumstances has occurred since the decision. Re:Sound also advances a number of factual statements to argue that its licensing practices are perfectly acceptable and that nothing untoward has happened in its dealings with the applicant.

[4] It should be noted that on the whole, most of the allegations made by Montage and Re:Sound remain to be proven.

[5] The application is dismissed. To the extent the application raises issues of tariff enforcement, these generally are for the courts, not the Board, to decide. To the extent Montage believes that the amounts claimed are improperly calculated, it should submit to Re:Sound a different calculation: a change to the transitional provisions of the tariff would not settle this issue. To the extent Re:Sound asked to be paid two weeks early, Montage's remedy consisted in simply waiting until royalties were due. Finally, the amounts at play for any user under this tariff are so trivial that they would not justify the Board's intervention in any event.

A handwritten signature in black ink, appearing to read "Gilles McDougall". The signature is fluid and cursive, with the first name being more prominent.

Gilles McDougall
Secretary General