

Copyright Board  
Canada



Commission du droit d'auteur  
Canada

**Date** 2014-04-17

**Citation** File: Public Performance of Sound Recordings

**Regime** Collective Administration of Performing Rights and of Communication Rights  
*Copyright Act*, section 66.51

**Members** The Honourable William J. Vancise  
Mr. Claude Majeau  
Mr. J. Nelson Landry

**Proposed Tariffs Considered** Re:Sound Tariff 6.B – Use of Recorded Music to Accompany Physical Activities, 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] On July 6, 2012, the Board certified Re:Sound Tariff No. 6.B (Use of Recorded Music to Accompany Physical Activities). Re:Sound applied for judicial review of the tariff. On February 24, 2014, the Federal Court of Appeal granted the application in part. It set aside the tariff in so far as it concerns fitness classes, dance instruction, and other physical activities for which no specified rate has been determined; the tariff was left untouched as it relates to skating only. The Court remitted the matter for redetermination by the Board after the parties have had an opportunity to address the appropriateness of the ground on which the Board based its decision.

[2] On March 7, 2014, Re:Sound informed the Board that the parties had agreed in principle to the terms of a final tariff that would replace the one the Board had certified in 2012.

[3] On March 21, 2014, Re:Sound filed with the Board the proposed wording for the tariff agreed upon by the parties and asked on behalf of all parties that the Board certify the tariff as

proposed. The proposed changes to the rates from the tariff the Board certified in 2012 may be significant. Final certification may take some time.

[4] In the intervening period, on March 12, 2014, Re:Sound asked that the Board issue, pursuant to section 66.51 of the *Copyright Act*, [R.S.C. ch. C-42 (the “Act”)] an interim decision at the same rates and on the same terms as the 2012 tariff. The objectors to Tariff 6.B did not oppose the application.

[5] As a result of the decision of the Federal Court of Appeal, Tariff 6.B is a nullity as it applies to all fitness activities except skating. Since this is an inaugural tariff, there is no earlier tariff which could continue to apply on an interim basis pursuant to paragraph 68.2(3)(b) of the *Act*. Re:Sound cannot collect royalties for fitness activities other than skating until the Board has complied with the order of the Federal Court of Appeal. Re:Sound may even be required to refund royalties collected to date pursuant to the tariff. The Board recognized Re:Sound’s entitlement to collect some royalties in its July 6, 2012 decision.

[6] We agree that, for the reasons stated by Re:Sound, the application conforms with earlier decisions of the Board dealing with interim decisions. Consequently, the application for an interim decision is granted.

#### **A. DECISION OF THE BOARD**

[7] The March 12, 2014 application by Re:Sound for an interim decision is granted. Those parts of Re:Sound Tariff No. 6.B (Use of Recorded Music to Accompany Physical Activities) that were set aside on February 24, 2014 in *Re:Sound v Fitness Industry Council of Canada et al.* (2014 FCA 48) are reinstated on an interim basis effective as of January 1, 2008 and until the Board issues a further interim decision or a final decision.

[8] The title of the tariff is amended to read as follows:

*Tariff No. 6.B*

USE OF RECORDED MUSIC TO ACCOMPANY PHYSICAL ACTIVITIES

Final tariff (Skating)

Interim tariff (all other activities)



Gilles McDougall  
Secretary General