

## PROPOSED TARIFF

Filed with the Copyright Board by Re:Sound on 2022-10-13 pursuant to subsection 67(1) of the *Copyright Act*

Proposed Tariff Title: *Re:Sound Tariff 1.A – Commercial Radio (2024-2028)*

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.

Proposed Short Title: *Re:Sound Commercial Radio Tariff (2024-2028)*

Effective Period: 2024-01-01 – 2028-12-31

### RE:SOUND TARIFF 1.A – COMMERCIAL RADIO (2024-2028)

#### *Short Title*

1. This tariff may be cited as the *Re:Sound Commercial Radio Tariff (2024-2028)*.

#### *Definitions*

2. In this tariff,

“collective societies,” “collectives” or “societies” means SOCAN, Re:Sound, CSI, Connect/SOPROQ and Artisti; (« *sociétés de gestion* »)

“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 income” means the gross amounts paid by any person for the use of one or more broadcasting services or facilities provided by a station’s operator, including the value of any goods or services provided by any person in exchange for the use of such services or facilities, and the fair market value of non-monetary consideration (e.g. barter or “contra”), but excluding the following:

- (a) income accruing from investments, rents or any other business unrelated to the station’s broadcasting activities. However, income accruing from any allied or subsidiary business that is a necessary adjunct to the station’s broadcasting services and facilities or which results in their being used, including the gross amounts received by a station pursuant to turn-key contracts with advertisers, shall be included in the “gross income”;
- (b) amounts received for the production of a program that is commissioned by someone other than the station and which becomes the property of that person;
- (c) income from non-interactive streaming, semi-interactive streaming or simulcasting;

- (d) the recovery of any amount paid to obtain the exclusive national or provincial broadcast rights to a sporting event, if the station can establish that the station was also paid normal fees for station time and facilities; and
- (e) amounts received by an originating station acting on behalf of a group of stations, which do not constitute a permanent network and which broadcast a single event, simultaneously or on a delayed basis, that the originating station subsequently pays out to the other stations participating in the broadcast. These amounts paid to each participating station are part of that station's "gross income"; (« *revenus bruts* »)

"low-use station (sound recordings)" means a station that:

- (a) broadcasts published sound recordings of musical works for less than 20 per cent of its total broadcast time (excluding production music) during the reference month; and
- (b) keeps and makes available to Re:Sound complete recordings of its last 90 broadcast days; (« *station utilisant peu d'enregistrements sonores* »)

"month" means a calendar month; (« *mois* »)

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

"production music" means music used in interstitial programming such as commercials, public service announcements and jingles; (« *musique de production* »)

"reference month" means the second month before the month for which royalties are being paid; (« *mois de référence* »)

"service provider" means a professional service provider which may be retained by a collective society to assist in its operations including the conduct of an audit, maintenance or improvements to its database or other information technology systems, licensing, enforcement of tariffs, or the distribution of royalties to rights holders; (« *prestataire de services* »)

"simulcast" means the simultaneous, unaltered, real-time communication of an over-the-air broadcast signal to which this tariff applies, via the Internet or other digital network, to a device, which is identical to the original signal and over which the recipient exercises no 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. If the possibility of such interaction exists, a communication is not a simulcast, regardless of whether the end user interacts with the communication or not; (« *diffusion simultanée* »)

"simulcasting income" includes all direct and indirect revenues of a station's simulcasts in Canada, including, but not limited to:

- (a) user revenues, which mean all payments made by, on behalf of, or to enable, users to access the simulcast, including, but not limited to, subscriber fees, connect time charges, access or activation fees and any administrative fees, whether made directly to the station broadcaster 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 station broadcaster, pursuant to an agreement or as directed or authorized by any agent or employee of the station broadcaster; and
- (b) sponsor revenue, which means all payments made by or on behalf of sponsors, advertisers, program suppliers, content providers, or others in connection with the simulcast including, but not limited to, advertising included within the simulcast or played upon selecting a link to the simulcast, or on banner adverts on media players

and pop up windows associated with media players whilst the media player is delivering the simulcast, 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 simulcast and also includes the value of any goods or services received from any source as barter in connection with the simulcast including, but not limited to, barter received in exchange for providing advertising time or space;

For greater certainty, simulcasting income includes all income accruing from any allied or subsidiary business that is a necessary adjunct to the simulcast and which results in the use of the simulcast, including the gross amounts received by the station broadcaster pursuant to a turn-key contract with an advertiser; (« *revenu provenant de la diffusion simultanée* »)  
“year” means a calendar year. (« *année* »)

### *Application*

3. (1) This tariff sets the royalties to be paid each month by commercial radio stations:
  - (a) to communicate to the public by telecommunication in Canada, published sound recordings embodying musical works and performers’ performances of such works by over-the-air radio broadcasting and simulcast; and
  - (b) to perform in public by means of any radio receiving set in any place other than a theatre that is ordinarily and regularly used for entertainments to which an admission charge is made, published sound recordings embodying musical works and performers’ performances of such works.

(2) This tariff does not apply to a communication to the public by anyone other than a commercial radio station and excludes communications by pay audio signal, satellite radio, and non-interactive and semi-interactive streaming. For greater certainty, this tariff does not apply to the communication to the public by telecommunication of sound recordings to end-users via the Internet or another digital network, to a device, except by simulcast.

### *Royalties Payable*

4. A low-use station (sound recordings) shall pay to Re:Sound:
  - (a) 3.44 per cent of its gross income for the reference month in respect of the communication to the public by telecommunication by over-the-air broadcast referred to in subsection 3(1)(a);
  - (b) The greater of:
    - i. 3.44 per cent of its simulcasting income for the reference month; or
    - ii. \$0.00176 for each play of a file in Canada by simulcast;Subject to a minimum annual fee of \$1,000 per station, in respect of the communication to the public by telecommunication by simulcast referred to in subsection 3(1)(a); and
  - (c) 0.5 per cent of its gross income for the reference month in respect of the performance in public referred to in subsection 3(1)(b).

5. Except as provided in section 4, a station shall pay to Re:Sound on its income for the reference month:
- (a) 6.61 per cent on its first \$625,000 gross income in a year, 6.61 per cent on its next \$625,000 gross income in a year, and 9.64 per cent on the rest in respect of the communication to the public by telecommunication by over-the-air broadcast referred to in subsection 3(1)(a);
  - (b) The greater of:
    - i. 9.64 per cent of its simulcasting income; or
    - ii. \$0.00176 for each play of a file in Canada by simulcast;  
Subject to a minimum annual fee of \$1,000 per station, in respect of the communication to the public by telecommunication by simulcast referred to in subsection 3(1)(a); and
  - (c) 0.5 per cent of its gross income in respect of the performance in public referred to in subsection 3(1)(b).

For the purposes of determining royalties payable under section 5, where two or more stations are owned by the same company, the station shall pay royalties based on the total combined gross income for the year of all of the stations owned by the company.

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

#### *Reporting Requirements*

7. No later than the first day of each month, a station shall pay the royalties for that month and report for the reference month:
- (a) the station's gross income;
  - (b) the station's simulcasting income, including, where applicable, the total number of subscribers (including both free and paid subscriptions) and the total amounts paid by them;
  - (c) the total simulcast audience relative to the over-the-air broadcast audience, the number of listeners and listening hours or, if not available, any other available indication of the extent of the listeners' use of simulcast;
  - (d) the number of plays of each file by simulcast; and
  - (e) the total number of plays of all files by simulcast.

8. At any time during the period set out in subsection 10(2), Re:Sound may require the production of any contract granting rights referred to in section (d) of the definition of "gross income," together with the billing or correspondence relating to the use of these rights by other parties.

#### *Information on Repertoire Use*

9. (1) No later than the 14th day of each month, a station shall provide to Re:Sound, the full sequential lists of all published sound recordings embodying musical works or parts thereof, broadcast during each day of the previous month. For greater clarity, sequential list reporting

requires full music use reporting for each day of the month, for 365 days per year. Each entry shall include the following information:

- (a) the date of the broadcast;
- (b) the time of the broadcast;
- (c) the title of the sound recording;
- (d) the name of the record label or maker that released the sound recording;
- (e) the name of each author of the musical work;
- (f) the name of the music publisher associated with the musical work;
- (g) the name of each performer or group to whom the sound recording is credited;
- (h) the running time of the sound recording as broadcast, in minutes and seconds;
- (i) the running time of the sound recording as listed on the album, in minutes and seconds;
- (j) 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;
- (k) the International Standard Recording Code (ISRC) assigned to the sound recording;
- (l) the International Musical Work (ISWC) assigned to the musical work;
- (m) 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;
- (n) the type of usage (feature, theme, background, etc.);
- (o) any alternative title used to designate the musical work or sound recording; and
- (p) the cue sheets for all syndicated programming, with the relevant music use information inserted into the Excel report.

(2) The information set out in subsection (1) shall be provided electronically, in Excel format or in any other format agreed upon by Re:Sound and the station, 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.

### *Records and Audits*

10. (1) A station shall keep and preserve, for a period of six months after the end of the month to which they relate, records from which the information set out in section 9 can be readily ascertained.

(2) A station shall keep and preserve, for a period of six years after the end of the year to which they relate, records from which the information set out in section 7 can be readily ascertained.

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

(4) Re:Sound shall, upon receipt, supply a copy of the report of the audit to the station that was audited and to the other collective societies.

(5) If an audit discloses that royalties owed to Re:Sound have been understated in any month by more than 10 per cent, the station that was subject to the audit shall pay the reasonable costs of

the audit 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), (3) and (4), information received from a station pursuant to this tariff shall be treated in confidence, unless the station that supplied the information consents in writing and in advance to each proposed disclosure of the information.

(2) Information received from a station 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) amongst the collective societies;
- (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 service providers as per subsection (2)(a), those service providers 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 station that supplied the information and who is not under an apparent duty of confidentiality to that station with respect to the supplied information.

### *Adjustments*

12. 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 station which occurred more than 12 months prior to notification to Re:Sound.

### *Late Payments and Reporting*

13. (1) In the event that a station does not pay the amount owed under this tariff or provide the reporting required by subsection 7 by the due date, the station 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 station does not provide the music use reporting required by section 9 within 7 days of the due date, upon written notice by Re:Sound, the station 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.*

14. (1) Anything addressed to Re:Sound shall be sent to 1235 Bay Street, Suite 900, Toronto, Ontario M5R 3K4, email: radio@resound.ca, or to any other address or email address of which a station has been notified in writing.

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

*Delivery of Notices and Payments*

15. (1) A notice may be delivered by hand, by postage-paid mail, 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 sections 7 and 9 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 email, by FTP or by EBT shall be presumed to have been received the day it was transmitted.