#### COPYRIGHT BOARD

Statement of 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

#### PROPOSED TARIFF

Filed with the Copyright Board by Re:Sound on 2023-10-13 pursuant to subsection 67(1) of the Copyright Act

<u>Proposed</u> Tariff No. <u>Title</u>: <u>Re:Sound Tariff</u> 8—Non-Interactive and

\_Semi-Interactive <del>Webcasts</del><u>Streaming (2025-2027)</u>

(2009-2012)

#### **COPYRIGHT BOARD**

FILE: Public Performance of Sound Recordings

Statement of Royalties to Be Collected by Re:Sound in Respect of Non-Interactive and Semi-Interactive Webcasts

In accordance with subsection 68(4) of the *Copyright Act*, the Copyright Board has certified and hereby publishes the statement of royalties to be collected from Re:Sound Music Licensing Company (Re:Sound) for For the communication to the public by telecommunication, in Canada, of published sound recordings embodying musical works and performers' performances of such works pursuant to Tariff No. 8 (Non-Interactive and Semi-Interactive Webcasts) for the years 2009 to 2012.

STATEMENT OF Proposed Short Title: Re:Sound Streaming Tariff (2025-2027)

Effective Period: 2025-01-01 – 2027-12-31

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 2009 TO 2012

Tariff No. TARIFF 8

NON-INTERACTIVE AND SEMI-INTERACTIVE WEBCASTS STREAMING (2025-2027)

## Short Title

1. This tariff may be cited as the *Re:Sound Streaming Tariff* (2025-2027).

## **Definitions**

1.2. In this tariff,

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

#### "ATH »)

<u>"channel"</u> means aggregate tuning hours, the total <u>an</u> individual hours of programming a webcaster communicates during the relevant period programme or playlist which a user selects to all listeners in Canada that provide audio programming consisting, in whole or in part, initiate a communication of sound recordings of musical works. a file. For example, if the webcaster communicated 2 hours of programming to a service offers 10 simultaneous listeners, the webcaster's ATH would be 20; (*«NTHE»*)

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 included in a webcast, 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; (« fichier »), 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:

"interactive webcast" refers to any webcast 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; ("webdiffusion interactive")

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

- (a) "non-commercial webcaster" means any webcaster 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 copublisher 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 streaming service" means any streaming service other than the Canadian Broadcasting Corporation, that is owned and operated by a not-for-profit organization including any campus webcaster and or community webcaster adio station, whether or not any part of the webcaster's streaming service's operating costs is funded by advertising revenues; (

webdiffuseur service de diffusion en continu non commercial »)

"non-interactive webcast" refers to a webcast—other than a simulcast of programming to which the CBC Radio Tariff (SOCAN, Re:Sound), the Commercial Radio Tariff (SOCAN, Re:Sound, CSI, AVLA/SOPROQ, Artistl), the Pay Audio Services Tariff (SOCAN, NRCC) or the Satellite Radio Services Tariff (SOCAN, NRCC, CSI) applies—<u>»</u>)

"non-interactive stream" refers to a stream over which the recipient exercises no is unable to exercise any control over the content or the timing of the webcast; (« webdiffusion non interactive »)

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 performance communication of a file or a part thereof, to a single person; («-écoute»)

**»**)

"semi-interactive webcaststream" refers to a webcast — other than a simulcast of programming to which the CBC Radio Tariff (SOCAN, Re:Sound), the Commercial Radio Tariff (SOCAN, Re:Sound, CSI, AVLA/SOPROQ, ArtistI), the Pay Audio Services Tariff (SOCAN, NRCC) or the Satellite Radio Services Tariff (SOCAN, NRCC, CSI) applies, an interactive webcast or a non-interactive webcast — stream over which the recipient exercises has the ability to exercise some level of control over the content of the webcast or the timing of the webcast; (« webdiffusion semi-interactive »)

"webcaststream, 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 streaming service; (« 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. 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 »)

<u>"stream"</u>" means the communication in Canada, via the Internet or another digital network, to a device, of one or more files that are intended to be reproduced onto the device only to the extent required to allow listening to the files at substantially the same time as when the files are communicated; (<u>wwebdiffusion</u>)

"webcaster" means a person or organization who carries out a webcast; (« webdiffuseur »)

; (« transmission»)

"year" means a calendar year. («- année-»)

Application

2.-3. (1) This tariff sets the royalties to be paid by a webcaster, in service, for the years 2009 to 20122025-2027, for the communication to the public by telecommunication, in Canada, of published sound recordings embodying musical works and performers' performances of such works in the repertoire of Re:Soundby non-interactive stream, semi-interactive stream or simulcast, other than:

(a) a simultaneous transmission (or simulcast) of programming to which the CBC Radio Tariff (SOCAN, Re:Sound), the Commercial Radio Tariff (SOCAN, Re:Sound, CSI, AVLA/SOPROQ, ArtistI), the Pay Audio Services Tariff (SOCAN, NRCC) or the Satellite Radio Services Tariff (SOCAN, NRCC, CSI) applies;

- (b) an interactive webcast; and
  - (a) (e)—a simulcast of programming by the Canadian Broadcasting Corporation (CBC), 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 CBC, 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;

- (a)(d) a podcast or transmission of a programprogramme previously transmitted (whether or not it has been converted to another audio file format) for playback on a device; and
- (e) (2a 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 <u>applicable to wireless transmission</u> <u>systems or community systems</u> set out in section <u>68.172</u> of the Act.

#### ROYALTIES Non-commercial Webcasters

- 3. (1) The royalties payable for all webcasts carried out by a non-commercial webcaster shall be \$25 per year.
- (2) The payment made pursuant to subsection (1) shall be accompanied by a description of the webcast services the webcaster offers or intends to offer.
- (3) Except to the extent required by subsection (2), a webcaster that is subject to this section is not subject to section 9. Canadian Broadcasting Corporation (CBC)
- 4. The royalties payable for any given month by CBC for non-interactive and semi-interactive webcasts subject to this tariff shall be \$0.000131 per file included in a webcast, subject to a minimum of \$100 per year.

Non-interactive and Semi-interactive Webcasts, other than by CBC and Non-commercial Webcasters

- 5. \_\_\_The royalties payable for any given month by a webcaster, other than CBC or a non-commercial webcaster, for any non-service including the CBC, shall be the greater of:
  - (a) 21.75 per cent of its gross revenues for that month; or
  - (b) \$0.0021 for each play of a file in Canada in that month by non-interactive orstream, semi-interactive webcast shall be \$0.000102 per file included in a

webcast, stream, and by simulcast (except a simulcast excluded under section 3(1)(a));

subject to a minimum annual fee of \$1,000 per channel up to a maximum of \$100 per year,000.

## Date Payable

- 6. Unless otherwise provided, all royalties 5. (1) Royalties payable under section 4 are due 4514 days after the end of the relevant periodmonth for which they are being paid.
  - 7.(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 14<sup>th</sup>, 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

#### **Webcaster** Service Identification

- 8.6. No later than 4514 days after the end of the first month during which a webcasterservice carries out a webcaststream pursuant to section 23, the webcasterservice shall provide to Re:Sound the following information:
  - (a) (a) the The name of the webcaster service, including:
    - (i) (i) the name of the corporation or other entity, its jurisdiction of incorporation, the names of its principal officers and any other trade name under which it carries on business; or
    - (ii) (iii) the name of the proprietor of an individual proprietorship;

- (b) (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) (e) 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) (d) the name and address of any authorized distributor;
- (e) (e) the name and Uniform Resource Locator (URL) from which the webcaststream is or will be offered; and
- (f) (f) whether the stream is non-interactive and/or semi-interactive or both;
- <u>(g)</u> the date(s) of its first non-interactive and/or semi-interactive <u>webcaststream</u> in Canada; and
- (f)(h) the number of channels.

#### Music Use Information

9.7. (1) No later than 4514 days after the end of each month, a webcaster that is required to pay royalties pursuant to sections 4 or 5 service shall provide to Re: Sound, in relation to each file or part thereof included in a non-interactive or or and semi-interactive webcast,

# (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) (b) the name of each performer or group to whom the sound recording is credited;
- (c) (e) the name of the record label or maker that released the sound recording; and, if available,
- (d) (d) the name of each author of the musical work;
- (e) (e) the International Standard Recording Code (ISRC) assigned to the sound recording;

- (f) (f) the name of the music publisher associated with the musical work;
- (g) (g) the International Standard Musical Work Code (ISWC) assigned to the musical work;
- (h) (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 (GRidGrid) assigned to the sound recording and, if applicable, the GRidGrid of the album or bundle in which the file was released;

- (i) (j) the running time of the sound recording as webcastwas released;
- (i)(j) the running time of the sound recording as streamed, in minutes and seconds;
- (i) (k) (k) the running time of the sound recording as listed on the album, in minutes and seconds;
- (k)(l) (l) any alternative title used to designate the musical work or sound recording; and
- (h) (m) in the case of syndicated programming, the cue sheet, with the relevant music use information inserted into the Excel report.
- (2) A <u>webcasterservice</u> shall provide, <u>withas part of</u> the information set out in subsection (1), a report setting out, for that month<sub>5</sub>:
  - (a) (a) the number of plays of each file; and
  - (b) (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 an Excel format or in any other format agreed upon by Re:Sound and the webcasterservice, with a separate field for each elementpiece of information required in paragraphs subsection

(1(a)) other than the cue sheets which are to (1). be used to insert the relevant music use information into each field of the report.

# Adjustments

- 10.8. Adjustments to any information provided pursuant to section 8 or 97 shall be provided with the next monthly report dealing with such information provided pursuant to section 7.
- 11. (1) Subject to subsection (2), adjustments 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.
- (2) Any excess payment resulting from a webcaster providing incorrect or incomplete information about a file shall be deducted from future amounts owed for the use of sound recordings owned by the same person as the sound recording in that file.

## Accounts and Records and Audits

- 12. (1) A webcaster, to which section 9 applies, 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 webcaster'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 webcasterservice 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 <u>service that was the</u> subject of the audit shall pay the <u>amount of the understatement and the</u> 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

- 13. 11. (1) Subject to subsections (2) and (3), Re:Sound shall treat in confidence to (4), information received from a service pursuant to this tariff shall be treated in confidence, unless the person whoservice that supplied the information consents in writing to the information being treated otherwise.
- (2) Re:Sound may share information referred to in subsection (1)
  (a) (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;
  - (a)(b) in connection with the collection of royalties or the enforcement of a tariff, with SOCAN any other Canadian collective society that has a tariff applicable to non-interactive streams, semi-interactive streams or simulcasts;
  - (b)(c) (b) with the Copyright Board;
  - (c)(d) (c) in connection with proceedings before the Copyright Board, if Re:Sound has first provided a reasonable opportunity for the person that supplied the information to request it is protected by a confidentiality order;
  - (d)(e) (d) to the extent required to effect the distribution of royalties, with its royalty claimants; or
  - (e)(f) (e) if required by law.

<del>(3</del>

- (3) Where confidential information is shared with a service provider pursuant to subsection 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 a person subject to this tariff the service who supplied the information and who is not under an apparent duty of confidentiality to that personthe service with respect to the supplied information.

#### Interest on Late Payments and Reporting

## 14. Any amount

- 12. (1) In the event that a service does not received pay the amounts owed under section 4 or provide the reporting required under subsection 7(2) by the due date, the service shall bearpay to Re:Sound interest from that calculated on the amount payable for the relevant period from the due date until the date both the amount is 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.

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

licensing@resound.ca, fax number 416-962-7797, or to any other address, email address or fax number of which the sender has been notified in writing.

(2) Anything addressed to a webcasterservice shall be sent to the last address, or email address or fax number provided by that person toof which Re:Sound has been notified in writing.

Delivery of Notices and Payments

16.14. (1) A notice may be delivered by hand, by postage-paid mail, by email or by fax. file transfer protocol (FTP). A payment must be made by credit card or delivered by hand

or, 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) A document(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 three four business days after the day it was mailed.
- (3) A document(4) Anything sent by fax or email, by FTP or by EBT shall be presumed to have been received the day it was transmitted.

#### **Transitional Provisions**

17. (1) In the event that a webcaster, other than a non-commercial webcaster, has not implemented technology to track plays for any month during the term of the applicable tariff, the webcaster shall pay royalties to Re:Sound for that month calculated as follows:

#### $A \times B \times C$

#### where

A is the number of ATH for that month, B is the per-play rate: \$0.000131 for CBC and \$0.000102 for

other webcasters, and C is the average number of plays per hour: 3.0 if the webcaster's music use is 20 per cent or less, 12.0 if the webcaster's music use is more than 20 but less than 80 per cent, and 15.0 if the webcaster's music use is 80 per cent or more.

- (2) The royalties calculation formula provided under subsection (1) shall be applicable for all relevant reporting periods under section 9 during the term of this tariff and be available to a webcaster until the earlier of
- (a) the end of the month when the webcaster started tracking plays in Canada; and
- (b) six months after certification of this tariff.
- (3) A webcaster using the formula provided under subsection (1) to calculate royalties shall provide, for that month,
- (a) the ATH;
- (b) the total number of programming hours;
- (c) the total number of listeners; and, if available, all the information set out in section 9.

18. Any amount that would otherwise be payable pursuant to this tariff on or before December 31, 2012, shall be paid no later than December 31, 2014, and shall be increased by using the relevant multiplying interest factor (based on the Bank Rate) set out in the following tables with

respect to each period. Information pertaining to that same period shall be filed with the payment.

Multiplying interest factors applicable to monthly payments

Month	<del>2009</del>	<del>2010</del>	<del>2011</del>	<del>2012</del>
January	1.0624	1.0560	1.0474	1.0349
February	1.0614	1.0555	1.0464	1.0339
March	1.0603	1.0551	1.0453	1.0328
April	1.0597	1.0547	1.0443	1.0318
May	1.0593	1.0543	1.0433	1.0308

Multiplying interest factors applicable to yearly payments—

<del>Year</del>	<del>2009</del>	<del>2010</del>	<del>2011</del>	<del>2012</del>
	1.0510	1.0445	1.0360	1.0235