

## NOTICE OF GROUNDS FOR OBJECTION

Filed by **Stingray Group Inc.**

In relation to proposed tariff *Re:Sound Tariff 8 – Non-Interactive and Semi-Interactive Streaming (2025-2027)*

Filed with the Copyright Board on 2023-12-15 pursuant to Rule 18 of *Copyright Board Rules of Practice and Procedure*.

### NOTICE OF GROUNDS FOR OBJECTION

The following Notice of Grounds for Objection (the “Notice”) is filed on behalf of Stingray Group Inc. (Stingray) in respect of Proposed Tariff *Re:Sound Tariff 8 – Non-Interactive and Semi-Interactive Streaming (2025-2027)* which was filed with the Copyright Board by SOCAN on 2023-10-23 pursuant to Rule 15 of *Copyright Board Rules of Practice and Procedure*. This Notice is filed in accordance with PN 2022-007 rev.1.

#### **1. Any grounds for why the Board should not approve the proposed tariff despite any alteration of royalties or levies or fixation of terms and conditions**

This proposed tariff applies to communication to the public by telecommunication of recorded music by non-interactive streaming and semi-interactive streaming. The proposed tariff does not apply to simulcasting of pay audio signals, but does apply to non-interactive or semi-interactive streaming of programming by a pay audio service. The currently certified tariff applicable to pay audio signals includes semi-interactive streaming of a webcast with programming provided by Stingray whose content is similar to that of the pay audio service. It appears that Re:Sound is now seeking to licence that same content through this proposed tariff at a significantly higher rate. This is unreasonable, unfair and should be rejected.

#### **2. Any grounds for objecting to any royalty or levy rates in the proposed tariff**

Re:Sound points to 2023 Sound Exchange rates for non-subscription commercial webcasters in the United States as a justification for its proposed streaming rates in Canada. It does not provide any details relating to these rates, how they were determined or to whom they apply, nor does it provide any explanation of how or why similar rates in the United States are in any way a reasonable or relevant proxy for the Canadian marketplace.

Relying on this premise, Re:Sound is proposing absurdly high rates. Re:Sound is seeking the greater of 21.75% of gross revenues or \$0.0021 per play, with a minimum fee of \$1000 per channel up to a maximum of \$100,000. This represents an unreasonable increase over the currently certified rates. The certified percentage rate for semi-interactive webcasts of the pay audio signal is 3.51%, so it is absurd that Re:Sound would now be entitled to 21.75% for the same use. Similarly, the current per play rate applicable to Stingray is \$.000229 and the current minimum annual fee is \$100; the proposed rates of \$0.0021 and \$1000 are 10 times higher. These increases are completely unjustified and extremely prejudicial to Stingray.

### **3. Any grounds for objecting to any terms or conditions in the proposed tariff**

In principle, Stingray does not oppose the inclusion of both a percentage of revenue and a per play formula in the tariff. It is the rates that Re:Sound is seeking that are problematic, as noted above.

Re:Sound proposes to reduce the reporting period for music use information from 45 days to 14 days after the end of each month on the basis that it will be more efficient for Re:Sound. While the need for efficiency is appreciated, reducing the window for proper reporting by 30 days is a significant reporting change for the users of this tariff. Re:Sound has provided no indication that it has suffered prejudice because of the certified time frame. Changing this time frame is unnecessary and unjustified and would be prejudicial to Stingray. It should not be included in the tariff.

Re:Sound also proposes to delete the “where available” caveat in the music use reporting requirements. Stingray has long held the position that removing those words does not change the fact that some types of information are simply not available Stingray. Re:Sound has failed to provide any evidence that Stingray is deliberately withholding information in its reporting, and has failed to demonstrate any existing prejudice from the inclusion of the “where available” caveat. It is essential that it be maintained to ensure when Stingray provides all the information it has available to report, it will not be found offside the tariff. To the extent the music use requirements are subject to the “where available” caveat, Stingray does not contest the modifications and will provide any and all available information to assist Re:Sound in its distributions.

Re:Sound proposes to change the certified tariff to limit the time during which Stingray may recover overpayments to 12 months. There is no corresponding limit on the time for which Re:Sound may recover royalties. This is unfair and unnecessary, and should not be included in the tariff. If the Board is to introduce a time limit, it should at least be the same 6-year period offered to the collectives for audit purposes.

Similarly, Re:Sound has proposed what it calls “a financial disincentive” for late reporting. As it notes, the last approved tariff provides for interest payable on late payments which acts as a disincentive for users to miss their payment due date, and Re:Sound is now proposing “a similar disincentive for late reporting which increases Re:Sound’s costs of administering the tariff.” Again, Re:Sound has provided no explanation of the extent to which late reporting has occurred or the supposed increase to its costs for administering the tariff. This provision should not be included in the tariff.

Submitted on behalf of Stingray by

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