

NOTICE OF GROUNDS FOR OBJECTION

Filed by Google Inc., Spotify AB, and Amazon.com.ca Inc. (the “Fasken Objectors”)

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

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

General Statement of Objection

This is the Notice of Grounds for Objection of Google Inc., Spotify AB, and Amazon.com.ca Inc. to the *Statement of Proposed 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 in 2025-2027* (the “Statement of Proposed Royalties”) filed by Re:Sound and published on the Copyright Board website on November 15, 2023 pursuant to the provisions of section 68.2 of the *Copyright Act*.

The Fasken Objectors respectfully reserve the right to rely upon objections raised by other parties to the proceedings, *mutatis mutandis*. The Fasken Objectors also reserve their right to raise additional substantive points of objection throughout the proceedings related to the Statement of Proposed Royalties.

These objections are filed in accordance with the *Copyright Act* and the Practice Notice on the Filing of Grounds for Objection.

Grounds for Objecting to Royalty Rates in the Proposed Tariff

The Fasken Objectors object to the rates set out in section 4 of the Statement of Proposed Royalties for the following reasons:

- Said proposed fees do not reflect the fair, reasonable, and appropriate value of the communication to the public by telecommunication of works in Re:Sound’s repertoire.
- Said proposed fees do not reasonably reflect either the amount or the type or the impact of such communication by a licensee.
- Said proposed fees include revenues that are unconnected to the use of musical works.
- Said proposed fees do not reflect the fact that in many cases users have already acquired the reproduction rights directly from the copyright owners.
- Said proposed fees do not adequately reflect the principle of technological neutrality (as discussed in *Canadian Broadcasting Corp v SODRAC 2003 Inc*, 2015 SCC 57) in that it seeks to collect higher royalty rates from prospective users of the *Re:Sound Tariff 8* licence than from other users who make substantially similar uses of music.

- Said proposed fees are “based on international best practices, primarily the rates which apply to non-interactive and semi-interactive music streaming services in the United States under SoundExchange’s 2023 Non-Subscription Commercial Webcaster rates,” as is stated in Re:Sound’s Notice of Grounds, despite the Board having ruled multiple times that it is trite law that importing rates from other countries will rarely yield fair and equitable results in the public interest.
- Said proposed fees use the “greater of” royalty structure that has been discouraged multiple times by the Board.

Grounds for Objecting to Terms and Conditions in the Proposed Tariff

The Fasken Objectors object to the reporting and auditing provisions contained in the Statement of Proposed Royalties in sections 6, 7, and 10. Said provisions are intrusive and require the disclosure of potentially sensitive confidential information. The fact that the Statement of Proposed Royalties requires licensees to retain records for a period of six years at section 10(1) is also unreasonable and places a disproportionate burden on licensees. It is similarly unreasonable for the reporting deadline to be shortened to 14 days, as is the shortened payment deadline at section 5. Finally, the fact that services are required to pay for audit costs as per section 10(4) is also not standard.

The Fasken Objectors object to the interest on late payments and reporting provision at section 12. In particular, they object to the late fees due if reporting is not provided by the due date at section 12(2). This provision enforces an onerous surcharge and offers very little time for dispute or the retrieval of additional information before the surcharge begins to accumulate if the licensee believes that they have appropriately provided the requested information but Re:Sound disagrees.

The Fasken Objectors object to the adjustments at section 9. The “time bar” preventing users from recovering from overpayments is a harsh and unnecessary addition that is not in other tariffs. As well, as the Board has repeated many times, the removal of interest payment liability from collectives for overpayments is unfair and unequitable when collectives request interest on underpayments as Re:Sound has done in this Statement of Proposed Royalties.

Additional Grounds for Objecting to the Proposed Tariff

The Fasken Objectors object to the fact that the Statement of Proposed Royalties does not adequately reflect the risk and investment by users in new technology, as discussed in *Canadian Broadcasting Corp v SODRAC 2003 Inc*, 2015 SCC 57.