

NOTICE OF GROUNDS FOR PROPOSED TARIFF

Filed with the Copyright Board by Re:Sound on 2024-03-06 pursuant to Rule 15 of *Copyright Board Rules of Practice and Procedure*

RE:SOUND TARIFF 6.A – USE OF RECORDED MUSIC TO ACCOMPANY DANCE (2019-2023)

1. Uses Covered by the Proposed Tariff

The proposed tariff applies to the performance in public or the communication to the public by telecommunication in Canada, of published sound recordings of musical works and performers' performances of such works, in any indoor or outdoor venue, including nightclubs, dance clubs, bars, restaurants, hotels, halls, clubs, schools, and campuses, for the purposes of dancing or any similar activity. In simpler terms, the proposed tariff applies to the use of recorded music for the purpose of dancing by customers/patrons/attendees in commercial establishments such as nightclubs or bars and restaurants with dancing.

The proposed tariff does not apply to:

- (a) any venue operated by a not-for-profit religious institution or not-for-profit educational institution, if the dancing is primarily made available to participants under the age of 19. In simpler terms, the proposed tariff does not apply to youth school or church dances;
- (b) adult entertainment venues, which are subject to Re:Sound Tariff 6.C instead;
- (c) dancing to recorded music at receptions (including weddings), conventions, assemblies or fashion shows, which are subject to Re:Sound Tariff 5.B instead;
- (d) dance performances which are subject to Re:Sound Tariff 5.K instead; or
- (e) dance or fitness instruction, which is subject to Re:Sound Tariff 6.B instead.

2. Basis for proposed royalty rates

The proposed rate structure is based on the last approved tariff, which in turn, is based on SOCAN Tariff 18. The proposed rates are based on international best practices, including the rates applicable in the United Kingdom for similar activities under the applicable PPL Tariff at the time the proposed tariff was filed in 2018. The proposed rates also provide for a repertoire adjustment of 100% (reflecting the increase to Re:Sound's repertoire due to the eligibility of U.S. sound recordings effective July 1, 2020) and estimated inflationary adjustments to the end of 2023.

3. Description of the group of users intended to be covered by the proposed tariff

The proposed tariff is intended to cover nightclubs, dance clubs and any other commercial establishment offering dancing to recorded music for its customers/patrons/attendees such as bars, restaurants, hotels, halls, schools and campuses, excluding the uses noted above.

4. Explanation of how the information that would be collected by Re:Sound pursuant to the proposed tariff would be used

The information to be collected under section 5 of the proposed tariff is the same information required under the previously approved tariff. It would be used by Re:Sound to identify the venue for which royalties are being paid, ensure Re:Sound has up-to-date contact information for the venue, and to calculate and verify the venue's royalty payments.

5. Identification and explanation of changes from the previously approved tariff

Application (s.2)

The words, "in the repertoire of Re:Sound" are deleted from section 2(1) as they are not necessary and do not affect the scope of the proposed tariff. The words "and performers' performances" were deleted for the purpose of simplicity, without affecting the scope of the proposed tariff. These words were re-added in the 2024-2028 proposed tariff 6.A.

Royalties (s.3)

The proposed rates are increased for the reasons outlined above.

Records and Audits (s.6)

Section 6(3) is revised to require Re:Sound to share the results of an audit with other Canadian collective societies with tariffs applicable to the same uses as the proposed tariff in order to increase efficiencies and reduce the need for multiple audits of the same venue by different collective societies.

Confidentiality (s.7)

Section 7 is revised based on similar proposed confidentiality provisions at the time the proposed tariff was filed in 2018. Most of these proposed changes were removed in the 2024-2028 proposed tariff 6.A to reflect current confidentiality clauses. Section 7(2)(b) is revised to allow Re:Sound to share information in connection with the collection of royalties or enforcement, not just with SOCAN, but with any other Canadian collective society with a tariff applicable to the same uses as the proposed tariff. This proposed revision would increase efficiencies and allow for potential joint enforcement practices.

Adjustments (s.8)

Section 8 has been revised to impose a 12 month limit on adjustments on account of overpayments made by a venue. As a self-reporting tariff, the accurate calculation of royalties owing rests solely on the venue. In order to be able to make timely and accurate distributions to rights holders, Re:Sound cannot be subject to unlimited adjustments on account of retroactive overpayments, based on information that is solely in the hands of a venue.

Late Payments and Reporting (s.9)

Section 9 has been revised to include a financial disincentive for late reporting under the proposed tariff. The last approved tariff provides for interest payable on late payments which acts as a disincentive for venues to miss their payment due date. The proposed revision would provide a similar disincentive for late reporting which increases Re:Sound's costs of administering the tariff.