

## **NOTICE OF GROUNDS FOR OBJECTION**

Filed by **Hotel Association of Canada and Restaurants Canada**

In relation to proposed tariff *Re:Sound 6.A – Use of Recorded Music to Accompany Dance (2019-2023)*

Filed with the Copyright Board on 2024-03-06 pursuant to Rule 15 of Copyright Board Rules of Practice and Procedure.

### **General Statement of Objection**

The following Notice of Grounds for Objection (the “Notice”) is filed on behalf of the Hotel Association of Canada (HAC) and Restaurants Canada (RC), (together “the Associations”) in respect of Proposed Tariff *Re:Sound 6.A – Use of Recorded Music to Accompany Dance (2019-2023)* filed by Re:Sound on 2024-03-06. This Notice is filed in accordance with Board Order CB-CDA 2024-008 PN 2022-007 rev.1.

The Associations have filed a Notice of Grounds of Objection to Proposed Tariff *Re:Sound 6.A – Use of Recorded Music to Accompany Dance (2024-2028)* which includes detailed objections that relate to this same tariff for future years. The Associations reiterate the contents of that Notice of Grounds insofar as it applies to this tariff generally. Furthermore, The Associations respectfully reserve the right to raise additional substantive points of objection throughout any proceedings relating to the Proposed Tariff.

### **Grounds for Objecting to Royalty Rates in the Proposed Tariff**

Re:Sound is proposing enormous rate increases in this tariff. The highest certified rate for an establishment that is open more than 4 days per week and more than 6 months per year is currently \$629.31, and the proposed rate for the same establishment for the years 2019-2023 is \$7870.00. An increase of this magnitude would be completely untenable for the Associations members. Re:Sound has offered three rationales for these proposed increases: (1) international rates, (2) repertoire increase due to the eligibility of US sound recordings effective July 1, 2020, and (3) generalized inflation.

With respect to the first rationale advanced by Re:Sound, it is not immediately clear why international rates from different marketplaces are a reasonable or relevant proxy or benchmark for the Canadian marketplace. The Associations object to this as a valid justification for a rate increase.

With respect to the second rationale advanced, Re:Sound cannot simply state that it has 100% of SOCAN’s repertoire and expect to be compensated for that new repertoire without providing any justification or documentary evidence to establish that those US sound recordings have properly been brought into repertoire for the rights at issue in this proposed tariff. The Associations appreciate and understand Re:Sound’s position that the amendment to the Ministerial Statement has made US sound recordings *eligible* for remuneration in Canada where they were not before, but it does not follow that those eligible sound recordings are automatically *included* in Re:Sound’s repertoire and are therefore compensable in Canada. When the impact of this position is to exponentially increase the amount payable by restaurants and hotels at a time when the hospitality sector is struggling financially, it is simply not possible for the Associations to accept Re:Sound’s position on repertoire without proof that they must.

With respect to the third rationale, while inflation is a popular justification for widescale price increases in the current economic climate, Re:Sound offers no explanation as to why the factors driving inflationary increases across other sectors of the economy are specifically applicable to works in Re:Sound’s repertoire such that Re:Sound should be entitled to its proposed rate increases. The Associations acknowledge that the Copyright Board has accepted inflation as a justification for price increases in other tariffs but note that the increases being proposed by Re:Sound should not be accepted without substantial supporting economic evidence.

In the context of a weakening economy and reduced discretionary consumer spending, there is no evidence that the value of music has increased on par with inflationary calculations that are based on a measure of a basket of goods that have no correlation with music valuation. In Canada, the “basket” of goods and services used to calculate CPI includes a wide range of items. “Other cultural and recreational services” comprises less than 2% of the value of the basket.<sup>1</sup> “Purchase of digital media” comprises less than 0.2% of the value of the basket. In any event, the overall index, which is overwhelmingly impacted by food, shelter, household operations, furnishings and equipment as well as transportation, is a poor proxy from which to calculate the change in the value of music over time. Absent valid justification, the rate increases should be rejected entirely.

### **Grounds for Objecting to Terms and Conditions in the Proposed Tariff**

Re:Sound proposes to change the certified tariff to limit the time during which a venue may recover overpayments to 12 months. There is no corresponding limit on the time for which Re:Sound may recover royalties. This is unfair. Re:Sound has provided no indication that it has suffered prejudice from the absence of this type of provision. This time limit is unnecessary and unjustified and should not be included in the tariff.

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 venues 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.

### **Other Grounds**

Re:Sound has removed the reference to “works in the repertoire of Re:Sound” on the grounds that it is not necessary and does not affect the scope of the proposed tariff. On the contrary, the scope of a tariff proposed by Re:Sound is inherently tied to the repertoire represented by Re:Sound, particularly where Re:Sound uses the most recently certified SOCAN tariff as the basis for its own proposal. The Copyright Board has long held that the value of the rights represented by SOCAN and Re:Sound is equivalent, and that tariff rates must be adjusted to reflect properly eligible and represented repertoire. In the current proposal, the rates proposed by Re:Sound create a higher payment for Re:Sound than for SOCAN. This is

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<sup>1</sup> <https://www150.statcan.gc.ca/n1/pub/62f0014m/62f0014m2023003-eng.htm>

unprincipled and out of line with the relative value of the repertoires. Furthermore, Re:Sound has offered no evidence to establish that it represents 100% of SOCAN's repertoire, and therefore it is unclear to the objectors why the reference to its repertoire is either unnecessary or unrelated to the scope. The Copyright Board should not approve any tariff for Re:Sound that is not tied to its properly established repertoire.

The Proposed Tariff covers the years 2020 and 2021. The Copyright Board has recognized the need for a pandemic-related adjustment in those years, and adjusted SOCAN Tariff 18 by 50% for 2020 and 2021. The Associations are seeking the same adjustment for this tariff for those years.

Submitted on behalf of the Associations by

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