



May 17, 2017

[CB-CDA 2017-046]

File: Re:Sound Tariff 3.A – Background Music Suppliers, 2010-2013

NOTICE OF THE BOARD

The settlement agreement submitted by Re:Sound on July 22, 2014 (the “Agreement”) between itself and DMX Music Canada Inc., *Totem Médias Inc.*, Stingray Digital Group Inc., Rogers Communications Partnership, Shaw Communications Inc., Cogeco Cable Canada G.P. Inc., and Bell Canada (the “Parties”) makes significant modifications to sections 3 and 4 of the proposed tariffs for the years 2010 to 2013, as published in the *Canada Gazette*. Notably, section 3 of the Agreement now refers to “royalties to be paid [...] by a background music supplier, for [...] the authorization of a subscriber to perform in public recorded music in the repertoire of Re:Sound.” Section 4 now sets out the royalties to be paid for such an act of authorization.

Unlike owners of copyright in musical works, owners of copyright in sound recordings do not have a right of authorization associated with their performance. While it may not have been the intention of the Parties, the Agreement—on its face—purports to set a royalty in relation to an activity for which the *Copyright Act* sets out neither an exclusive right nor a right to equitable remuneration. Preliminarily, the Board views this as an undesirable basis for a certified tariff.

If the intention of the Parties to the Agreement is for the background music supplier to pay $(0.97\% + 3.2\%) = 4.17\%$ of its revenues as royalties to Re:Sound unless a subscriber complies with Tariff 3.B (or Tariff 6.B), the following text may be a possible means of achieving this result:

4. (1) Subject to subsections (2) and (3), a background music supplier who communicates recorded music in the repertoire of Re:Sound during a quarter pays to Re:Sound 4.17 per cent of revenues received during the quarter, subject to a minimum fee of \$2.79 per subscriber per establishment per quarter.

(2) Despite subsection (1), and subject to subsection (3), a background music supplier who communicates recorded music in the repertoire of Re:Sound during a quarter where the receiving subscriber complies with Tariff 3.B (*Use of Background Music, 2010-2015*), or Tariff 6.B (*Use of Recorded Music to Accompany Fitness Activities, 2013-2017*) pays to Re:Sound 0.97 per cent of revenues received during the quarter, subject to a minimum fee of \$0.64 per subscriber per establishment per quarter.

(3) Royalties payable by a small cable transmission system are reduced by half.

We note that consequential amendments may be required to the reporting requirements in section 5 of the Agreement. We also note that the reference to Tariff 6.B has been requested by GoodLife as part of its withdrawal of objections to Tariff 3.A and Tariff 3.B.

Parties to the Tariff 3 proceedings (listed in Annex A) shall provide comments on the text above and alternative wording, if any, by no later than **Thursday, May 25, 2017**. Parties may respond thereto by no later than **Wednesday, May 31, 2017**.

Parties to the Tariff 6.B proceedings (listed in Annex B) have been copied for their information.

A handwritten signature in black ink, appearing to read 'Gilles McDougall', written in a cursive style.

Gilles McDougall
Secretary General

ANNEX A

Parties to the Tariff 3 proceedings

Association des restaurateurs du Québec

Bell Canada

Cogeco Cable Canada G.P. Inc.

Country Magazine & Breakaway

DMX Music Canada Inc.

GoodLife Fitness Centres Inc.

Hotel Association of Canada

iSun Music Services Inc.

La Place des Arts

Life Time Fitness Inc.

Professional Association of Canadian Theaters

Québecor Média Inc. (Vidéotron G.P.)

Restaurants Canada

Re:Sound

Retail Council of Canada

Rogers Communications Partnership

Shaw Communications Inc.

Sony Centre for the Performing Arts

Stingray Digital Group Inc.

The Canadian Arts Presenting Association

The Corporation of Roy Thompson Hall and Massey Hall

The Fitness Industry Council of Canada

The National Arts Centre

The Royal Conservatory of Music (in respect of Koerner Hall in Toronto)

Totem Médias Inc.

ANNEX B

Parties to the Tariff 6.B proceedings

Canadian Dance Teachers' Association of Canada – Alberta Branch
Federation of Calgary Communities
GoodLife Fitness Centres Inc.
Life Time Fitness Inc.
Mood Media Corporation
Re:Sound
The Fitness Industry Council of Canada
Zoom Media Inc.