



May 25, 2017

[*CB-CDA 2017-059*]

File: Re:Sound Tariff 6.B – Fitness Venues, 2013-2017

NOTICE OF THE BOARD

On July 10, 2015, Re:Sound wrote to the Board on behalf of itself, GoodLife Fitness Centres Inc. (GoodLife), the Fitness Industry Council of Canada, Zoom Media Inc., and Mood Media Corporation requesting that the Board certify Tariff 6.B for the years 2013-2017 in the form and content as set out in a settlement tariff (the “Settlement Tariff”).

On April 18, 2017, the Board issued [Order 2017-025](#), ordering Re:Sound to answer several questions regarding the Settlement Tariff. The Board received a response from Re:Sound on April 25, 2017 (attached). GoodLife provided its reply to Re:Sound’s response on May 10, 2017 (attached).

The Board has reviewed Re:Sound’s response and GoodLife’s reply and has the following additional questions:

Q1. The Settlement Tariff provides that it

[...] sets the royalties to be paid for the performance in public or the communication to the public by telecommunication [...] of published sound recordings [...] in all areas within a fitness venue and skating venue and to accompany a fitness activity including fitness classes and dance classes.

Several objectors to these proceedings provide background music. Is the Settlement Tariff intended to apply to these objectors? If not, what activity is considered to constitute a communication to the public by telecommunication?

Q2. How are royalties determined when recorded music is provided by a background music supplier, but where the payment for the performance is made by the fitness venue?

Subsection 4(2) of the Settlement Tariff would appear not to apply, as this would not be a case where “recorded music is not provided by a background music supplier.” Subsection 4(1) appears to only contemplate the background music supplier paying royalties. Please comment on this interpretation.

If this interpretation is correct, what amendments should be made?

Q3. Subsection 4(1) of the Settlement Tariff provides that

[n]otwithstanding subsection 4(3) of Re:Sound Tariff 3.A (Background Music Suppliers), a background music supplier who authorizes a subscriber to perform in public recorded music in the repertoire of Re:Sound in a fitness venue, skating venue, or to accompany a fitness activity, is not required to pay the royalties set out in subsection 4(2) of Tariff 3.A to the extent that the subscriber complies with the Re:Sound Fitness Tariff, 2013-2017.

On May 17, 2017, the Board issued [Notice 2017-046](#) in the Re:Sound Tariff 3.A – Background Music Suppliers (2010-2013) file. In the Notice, it proposed text that included a reference to Tariff 6.B, such that the royalties payable by a background music supplier would be lower in the case where their subscriber pays the royalties under the tariff applicable to them. This reference to Tariff 6.B had been requested by GoodLife as part of its withdrawal of objections to Tariff 3.A and Tariff 3.B – Background Music (2010-2015).

If this reference to Tariff 6.B is maintained in the certified Tariff 3.A, would the text from subsection 4(1) of the Settlement Tariff still be necessary or would any amendments to it be required?

Parties may provide answers to the questions above by no later than **Thursday, June 8, 2017**.

If any Parties are already discussing such issues with a view to providing an amended Settlement Tariff, they are to provide an update of these discussions by this same date.

Parties may respond thereto by no later than **Tuesday, June 13, 2017**.



Gilles McDougall
Secretary General