



File / Dossier : Re:Sound Tariff 7 – Motion Picture Theatres and Drive-Ins (2012-2013) /
Tarif 7 de Ré:Sonne – Cinémas et cinémas en plein air (2012-2013)

May 11, 2018

[CB-CDA 2018-104]

RULING OF THE BOARD

Re:Sound filed its proposed *Tariff No. 7 – Motion Picture Theatres and Drive-Ins* for the years 2012 and 2013 (Tariff 7 (2012-2013)) on March 31, 2011. It was published by the Board in the *Canada Gazette* on June 4, 2011. The proposed tariff sets royalties for the performance in public of sound recordings of musical works embodied in motion pictures.

Re:Sound had previously filed such a proposed tariff for the years 2009 to 2011 (Tariff 7 (2009-2011)). However, on September 16, 2009, the Board concluded that:

When a television program is broadcast or a movie is shown, all sounds embodied in the soundtrack, whether or not they come from a pre-existing sound recording, are communicated or performed. However, neither the soundtrack nor any of its constituent parts are a “sound recording” when they are communicated or performed with the program or movie. (Decision of the Board at para 7)

That conclusion was grounded on the interpretation of the definition of a sound recording pursuant to s. 2 of the *Copyright Act*. As such, the Board declined to certify the proposed tariff, and struck it.

An application for judicial review by the Federal Court of Appeal was denied (2011 FCA 70). An appeal therefrom was subsequently dismissed by the Supreme Court of Canada (2012 SCC 38).

On March 16, 2018, in Notice 2018-052, the Board stated that unless Re:Sound objects, it intends to strike Tariff 7 (2012-2013) on the same grounds as it struck Tariff 7 (2009-2011). Re:Sound did not object to the Board proceeding in that manner.

The Board concludes that for the same reasons as enunciated in the Board’s decision of September 16, 2009, in respect of Tariff 7 (2009-2011), there is no legal foundation for the proposed Tariff 7 (2012-2013). As such, this tariff shall be struck from the Statement of Proposed Royalties as published in the *Canada Gazette*, Part I, dated June 4, 2011.