

PROPOSED TARIFF

Filed with the Copyright Board by Re:Sound on 2021-10-14 pursuant to subsection 67(1) of the Copyright Act

Proposed Tariff Title: *Re:Sound Tariff 3.B – Background Music (2023-2026)*

For the performance in public or the communication to the public by telecommunication, in Canada, of published sound recordings embodying musical works and performers' performances of such works.

Proposed Short Title: *Re:Sound Background Music Tariff (2023-2026)*

Effective Period: 2023-01-01 – 2026-12-31

RE:SOUND TARIFF 3.B – BACKGROUND MUSIC (20~~23~~¹⁶-202~~6~~²⁰)

GENERAL PROVISIONS

All royalties payable under this tariff are exclusive of any federal, provincial or other governmental taxes or levies of any kind.

Short Title

1. This tariff may be cited as the *Re:Sound Tariff 3.B – Background Music (20~~23~~¹⁶-20~~26~~²⁰)*.

Definitions

2. In this tariff,

~~“Act” means the Copyright Act, R.S.C. 1985, c. C 42, as amended; (« Loi »)~~

“establishment” means a place to which the public, including employees, -has access, and includes, but is not limited to, a retail store, restaurant, hotel, bar, workplace, park, club or school, as well as a means of public transportation. In the case of a business which has multiple locations, each separate location is a separate establishment; (« *établissement* »)

“recorded music” means published sound recordings embodying musical works and performers' performances of such works; (« *musique enregistrée* »)

“trunk line” means a telephone line, whether digital or analog, linking telephone switching equipment to the public switched telephone network. (« *ligne principale de standard* »)

Application

3. (1) This tariff sets for the years 20~~23~~¹⁶ to 202~~6~~⁰ the royalties to be paid to Re:Sound, for the benefit of performers and makers, for the performance in public or the communication to the public by telecommunication of recorded music ~~in the repertoire of Re:Sound~~ in an establishment, including any use of such recorded music with a telephone on hold.

(2) This tariff does not apply to a performance in public or a communication to the public by telecommunication for which royalties are paid by a background music supplier. ~~under Re:Sound Tariff 3.A.~~

(3) ~~This tariff does not apply to a performance in public or a communication to the public by telecommunication that is expressly covered by another Re:Sound tariff. This tariff is subject to the exception set out in subsection 72.1(1) of the Act.~~

Taxes

~~All royalties payable under this tariff are exclusive of any applicable federal, provincial or other governmental taxes or levies of any kind.~~

ROYALTIES—Royalties Payable

4. (1) For the performance in public or communication to the public by telecommunication of recorded music by telephone on hold, the royalty payable for the relevant year shall be \$140.93 for the first trunk line and \$3.15 for each additional trunk line.

~~(a) for 2016-2019, \$49.85 for the first trunk line and \$1.11 for each additional trunk line; and~~

~~(b) for 2020, \$52.45 for the first trunk line and \$1.17 for each additional trunk line.~~

(2) In addition to any royalty payable under subsection (1), the royalty payable for the relevant year for the performance in public or communication to the public by telecommunication of recorded music in an establishment shall be calculated as follows:

(a) the number of square metres (square feet) of the area to which the public has access multiplied by the number of days of operation during which background music was played, multiplied by 0.9650¢ (0.0889¢);

~~(i) 0.2910¢ (0.0268¢) in 2016-2019, and~~

~~(ii) 0.3062¢ (0.0282¢) in 2020;~~

~~(b) (b) if paragraph (a) does not apply, and the capacity of the establishment can be verified, that number, multiplied by the number of days of operation on which recorded music was played, multiplied by~~

(b) 0.5786¢;

~~0.1745¢ in 2016-2019, and~~

~~0.1836¢ in 2020;~~

(c) ~~(e)~~ if neither paragraph (a) nor (b) applies and the number of admissions, attendees, or tickets sold for days or events during which recorded music was played can be established with certainty, that number multiplied by 0.3088¢;

~~(i) 0.0931¢ in 2016-2019, and~~

~~(ii) 0.0980¢ in 2020; and~~

(d) ~~(d)~~ if paragraphs (a), (b) and (c) do not apply, the royalty payable for the relevant year shall be \$140.93.

~~(i) \$49.85 in 2016-2019, and~~

~~(ii) \$52.45 in 2020.~~

(3) In all cases, the minimum annual royalties for all recorded music uses under subsection (2) shall be \$140.93 per establishment.
~~\$25.00 per establishment for 2016-2019 and \$35.00 per establishment for 2020.~~

TERMS AND CONDITIONS

Reporting Requirements

5. (1) No later than January 31 in the year in which recorded music is played, an establishment making payment pursuant to section 4 shall pay to Re:Sound the estimated royalties payable for that year calculated as follows:

(a) if that establishment played recorded music in the previous year, the establishment shall pay the amount equal to the royalties owed by the establishment to Re:Sound in the previous year; or

(b) if that establishment did not play recorded music in the previous year, the establishment shall provide Re:Sound with an estimate of the number of days of operation that the establishment will play recorded music during the year and shall pay royalties to Re:Sound based on that estimate, calculated in accordance with section 4.

(2) If an establishment making payment pursuant to this section opens after January 31, payment shall be made in accordance with this section no later than 30 days after the date the establishment first opened.

(3) In all cases, the establishment making payment under this section shall report to Re:Sound all information used to calculate the royalty payment.

(4) No later than January 31 of the following year, ~~(in which an establishment makes a payment to Re:Sound pursuant to subsection 5(1)),~~ the establishment shall report to Re:Sound any changes in the actual number of days of operation that the establishment played recorded music in the previous year and any difference in the amount of royalties

payable for that year calculated in accordance with section ~~4.4 (from the amount paid under subsection 5(1))~~.

(5) If the amount owing exceeds the amount previously paid by the establishment to Re:Sound, ~~Re:Sound pursuant to subsection 5(1)~~, the establishment shall provide Re:Sound with a report setting out the actual number of days upon which recorded music was used and shall pay the additional royalties owing to Re:Sound by January 31.

(6) If the amount owing is less than the amount of the payment made by the establishment to Re:Sound in the previous year, the establishment shall provide Re:Sound with a report setting out the actual number of days upon which recorded music was used and Re:Sound shall credit the amount of the overpayment to the establishment against future payments.

Records and Audits

6. (1) An establishment subject to this tariff shall keep and preserve, for a period of six years after the end of the year to which they relate, records from which the calculation of its payment can be readily ascertained, including information used to determine the choice of calculation, and information required to ascertain the days on which recorded music was used.

(2) Re:Sound may audit these records at any time during the period set out in subsection (1), on reasonable notice and during normal business hours.

(3) Re:Sound shall, upon receipt, supply a copy of the ~~report~~ of the audit to the establishment that was subject to the audit, and to any other Canadian collective society with a tariff applicable to background music.

(4) If an audit discloses that royalties due to Re:Sound have been understated during any period by more than 10 per cent, the establishment that was the subject of the audit shall pay

the reasonable costs of the audit within 30 days of the demand for such payment. The amount of any understatement shall be paid within 30 days of the demand for such payment.

Confidentiality

7. (1) Subject to subsections (2) and ~~(43)~~, information received from an establishment pursuant to this tariff shall be treated in confidence, unless the establishment that supplied the information consents in writing to the information being treated otherwise.

(2) Information received from an establishment pursuant to this tariff may be shared

~~(a)~~ with Re:Sound's agents and service providers, to the extent required by the service providers for the service they are contracted to provide;

~~(a)~~

(b) in connection with the collection of royalties or the enforcement of a tariff, with any other Canadian collective society with a tariff applicable to background music;SOCAN;

(c) with the Copyright Board;

(d) in connection with proceedings before the Copyright Board, if it is protected by a confidentiality order;

(e) to the extent required to effect the distribution of royalties, ~~or with any other collecting body, with royalty claimants and their agents;~~

(f) if required by law.

(3) Where confidential information is shared with a service provider pursuant to ~~paragraph subsection 7(2)(a), (2)(a)~~, that service provider shall sign a confidentiality agreement.

(4) Subsection 7(1) does not apply to information that is publicly available, to aggregated information, or to information obtained from someone other than the establishment that supplied the information and who is not under an apparent duty of confidentiality to the establishment with respect to the supplied information.

Adjustments

~~8. (1) An establishment making a payment under this tariff, that subsequently discovers an error in the payment, shall notify Re:Sound of the error and an appropriate adjustment shall be made to the next payment due following notification.~~

~~5. (2) When an error is discovered by Re:Sound, Re:Sound shall notify the establishment to whom the error applies and an appropriate adjustment shall be made to the next payment due following the notification. Adjustments in the amount of royalties owed as a result of the discovery of an error or otherwise, shall be made on the date the next royalty payment is due. No adjustments to reduce the amount of royalties owed may be made in respect of an error discovered by the service which occurred more than 12 months prior to notification to Re:Sound. Excess payments are not subject to interest.~~

~~Interest on Late Payments & Reporting~~

9. (1) In the event that an establishment subject to this tariff does not pay the amounts owed under section 4 or provide the reporting required under section 5 by the due date, the establishment shall pay to Re:Sound interest calculated on the amount payable for the relevant period from the due date until the date both the amount and the report are received by Re:Sound. ~~owed from the due date until the date the amount is received by Re:Sound.~~

(2) Interest shall be calculated daily, at a rate equal to one per cent above the Bank Rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.

Addresses for Notices, etc.

10. (1) Anything addressed to Re:Sound shall be sent to 1235 Bay Street, Suite 900, Toronto, Ontario M5R 3K4, email: licensing@resound.ca, fax number 416-962-7797 or to any other address, email address or fax number of which the sender has been notified in writing.

(2) Anything addressed to an establishment subject to this tariff shall be sent to the last address, email address or fax number of which Re:Sound has been notified in writing.

Delivery of Notices and Payments

11. (1) A notice may be delivered by hand, by postage-paid mail, by fax, by email or by file transfer protocol (FTP). A payment may be made by credit card or delivered by hand, by postage-paid mail, or by electronic bank transfer (EBT). Where a payment is delivered by EBT, the associated reporting required under section 5 shall be provided concurrently to Re:Sound by email.

(2) Anything mailed in Canada shall be presumed to have been received four business days after the day it was mailed.

(3) Anything sent by fax, by email, by FTP or by EBT shall be presumed to have been received the day it was transmitted.

~~Transitional Provisions 12. Any amount owed as a result of differences between this tariff and what an establishment has already paid for the period from January 1, 2020, to December 31, 2020, shall be due on January 31, 2022, and shall be increased by using the interest factors (based on the Bank Rate) set out in the following table with respect to each period. Reports required under section 5 shall also be filed on or before January 31, 2022.~~

Table 1: Interest Factor

Year	Interest Factor
2020	1.0106