

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 6.B – Use of Recorded Music to Accompany Fitness Activities (2023-2027)*

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 Fitness Tariff (2023-2027)*

Effective Period: 2023-01-01 – 2027-12-31

RE:SOUND TARIFF 6.B – USE OF RECORDED MUSIC TO ACCOMPANY FITNESS ACTIVITIES (~~2018-2022~~2023-2027)

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Short Title

1. This tariff may be cited as the *Re:Sound Fitness Tariff, 2023~~18~~-2027~~2~~*.

Definitions

2. In this tariff,

“background music supplier” means a person who provides a paid subscription service of supplying recorded music for performance in public by a fitness venue dealing at arm’s length; (« *fournisseur de musique de fond* »)

“class” means a single instance within a session, programme or course, with a start and end time, on a single day. For example, a fitness or dance class that is held for one hour, once a week, for eight weeks constitutes eight classes; (« *cours* »)

“dance class” means a lesson in dance instruction, whether conducted in a group or individual instruction, whether or not such class is presented live by an instructor or by video instruction, delivered online or otherwise, including without limitation, ballet, jazz, tap and ballroom dance; (« *cours de danse* »)

“fitness activity” means any form of physical exercise, sport or dance, including but not limited to, fitness classes, dance classes, gymnasium workouts, weight training, circuit training, cardio training, running, swimming, martial arts, gymnastics and rock climbing; (« *activité de conditionnement physique* »)

“fitness class” means a structured form of exercise or sport instruction, whether conducted in a group or individual instruction, whether or not such class is presented live by an instructor or by video instruction, delivered online or otherwise ~~conducted in a class environment under the direction of an instructor~~, including, but not limited to, aerobics, gymnastics, circuit training, boot camp, aqua fitness, cardio, flexibility, stretching and abdominal exercises (including

yoga, Pilates and Tai Chi), step, dance exercise (including hip-hop and Zumba), cycling and spinning, strength, toning and resistance exercise, boxing, combat and martial arts activities, age, lifestyle and specialty exercise classes, and swimming and skating lessons; (« *cours d'activité de conditionnement physique* »)

“fitness venue” means an indoor or outdoor venue where a fitness activity is undertaken including, without limitation, fitness centres, gymnasiums, health clubs, leisure and recreation centres, community centres, and aquatic centres; (« *lieu de d'activité conditionnement physique* »)

“member” means a person who is entitled to participate in fitness activity at the fitness venue, whether or not for a fee and includes daily, weekly, bi-weekly, monthly and annual memberships as well as persons who attend on a per visit or class basis or per package of visits or classes; (« *membre* »)

“skating venue” means an indoor or outdoor venue that provides roller or ice skating, excluding skating lessons which fall under the definition of fitness class, and excluding sporting events and ice shows which are subject to Re:Sound Tariff 5 (Use of Music to Accompany Live Events); (« *lieu de patinage* »)

“venue” means a single location and includes a venue operating within a multipurpose facility such as a hotel or campus; (« *endroit lieu* »)

“year” means a calendar year. (« *année* »)

Application

3. ~~(1)~~ This tariff sets the royalties to be paid for the performance in public or the communication to the public by telecommunication, in Canada, for the years 20~~23~~~~18~~ to 20~~27~~~~22~~, of published sound recordings embodying musical works and performers’ performances of such works ~~in the repertoire of Re:Sound~~ (“recorded music”), in all areas within a fitness venue and skating venue and to accompany a fitness activity including fitness classes and dance classes.

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

~~(3) This tariff does not apply to a performance in public or a communication to the public by telecommunication of recorded music that is subject to another Re:Sound tariff, including Tariff 3.B (Background Music), Tariff 5 (Use of Music to Accompany Live Events) and Tariff 6.A (Use of Recorded Music to Accompany Dance).~~

~~(4) This tariff is subject to the exception set out in subsection 69(2) of the Copyright Act, R.S.C., 1985, c. C 42, as modified.~~

Fitness Venues

4. —(1) The royalties payable to Re:Sound for the use of recorded music in all areas within a fitness venue other than during a fitness class or dance class, including in connection with weight training, cardiovascular training, circuit training and other fitness activities, as well as in change

rooms, hallways, offices and lobby areas, are determined as follows:

- (a) if recorded music is provided by a background music supplier, and the background music supplier does not pay royalties on behalf of its subscriber for the performance in public of recorded music under Re:Sound Tariff 3.A (Background Music Suppliers), pursuant to the Re:Sound Background Music Suppliers Tariff, the subscriber pays to Re:Sound ~~3.29.0~~ per cent of the amounts paid by the subscriber for the background music service during the quarter, subject to a minimum of \$~~2,156.80~~ per fitness venue per quarter; and
- (b) if recorded music is not provided by a background music supplier, the royalty payable is an amount based on the number of members of the fitness venue during the relevant calendar year as set forth below:

Number of Members	Annual Royalty
<Less than 1 000	\$ 1 50.00
>Between 1000 and <5 000	\$ 750 250 .00
>More than 5 000	\$ 500 <u>1,500</u> .00

(2) A subscriber making a payment pursuant to paragraph 4(1)(a) shall pay the royalty for that quarter no later than 60 days after the end of the quarter.

(3) For the purpose of calculating the royalties payable pursuant to paragraph 4(1)(b), the number of members of a fitness venue shall be calculated by adding the number of members on the last day of each month during the calendar year and dividing by twelve. A fitness venue that does not track the number of members shall pay \$~~72~~50.00.

(4) The royalties payable pursuant to paragraph 4(1)(b) for any given year are due no later than by January 31 of that the following year and shall be accompanied with a report indicating

- (a) the name and address of the venue as well as the name and contact information of the person operating the venue; and
- (b) an estimate of the number of members of the fitness venue used to calculate the royalties payable ~~under subsection (1)~~.

(5) No later than by January 31 of the following year, a fitness venue that paid royalties under subsection 4(1)(b) shall provide a report of the actual number of members of the fitness venue in the previous year, together with any additional royalties owed as a result of the re-calculation of royalties payable under subsection 4(1)(b). Any overpayments resulting from the recalculation shall be applied as a credit.

Fitness Classes and Dance Classes

5. (1) The royalty payable to Re:Sound for the use of recorded music during fitness classes and dance classes, is determined as follows: for each fitness class and dance class in which recorded music is performed, provided at any time during the particular calendar year, an amount per class multiplied by the number of classes held during the year as follows:

Year	Amount Per Class
2023 ¹⁸	\$1.320.416
2024 ¹⁹	\$1.360.428
2025 ²⁰ 20 ²⁰	\$1.400.441
2026 ²¹	\$1.440.454
2027 ²²	\$1.480.467

Subject to a minimum annual fee of \$250.00 per fitness venue.

(2) Royalties payable in respect of fitness classes and dance classes held within or under the administration of a fitness venue or skating venue are payable by the venue. All other fitness classes and dance classes are payable by the instructor or organization holding or organizing the class.

(3) Royalties payable pursuant to subsection (1) for any given year are due no later than by January 31 of the ~~at e following~~ year and shall be accompanied with a report indicating:

- (a) where royalties are payable by the venue, the name and address of the venue as well as the name and contact information of the person operating the venue;
- (b) where royalties are payable by the instructor or organization other than the venue, the name and contact information of the instructor or organization and the location of the class; and
- (c) an estimate of the number of fitness classes and dance classes used to calculate the royalties payable under subsection (1).

(4) No later than by January 31 of the following year, a venue, instructor or organization subject to subsection (1) shall provide a report of the actual number of fitness classes and dance classes held during the previous year, together with any additional royalties payable as a result of the recalculation of royalties owed under subsection (1). Any overpayments resulting from the recalculation shall be applied as a credit.

Skating Venues

6. (1) The royalty payable to Re:Sound for the use of recorded music in a skating venue, excluding skating lessons which are subject to royalties under subsection 5(1), and excluding ice

shows and sporting events which are subject to Re:Sound Tariff 5 (Use of Recorded Music to Accompany Live Events), is as follows:

- (a) where an admission fee is charged: 10.44 per cent of the gross receipts from admissions, exclusive of sales and amusement taxes, subject to a minimum annual fee of \$160.49.8905; and
- (b) where no admission fee is charged: an annual fee of \$ 16049.8905.

(2) Royalties payable pursuant to subsection (1) for any given year are due no later than by January 31 of ~~the following~~that year. The payment shall be accompanied with a report indicating:

- (a) the name and address of the venue;
- (b) the name and contact information of the person operating the venue; and
- the gross receipts from admissions, exclusive of sales and amusement taxes, for the ~~relevant~~ previous year.

(c)

(3) No later than by January 31 of the following year, a skating venue shall provide a report of the gross receipts from admissions, exclusive of sales and amusement taxes in the previous year, together with any additional royalties payable as a result of the re-calculation of royalties owed under subsection (1). Any overpayments resulting from the re-calculation shall be applied as a credit.

Taxes

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

Records and Audits

8. (1) A person 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 that person's payment under this tariff can be readily ascertained.

(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 person who was the subject of the audit and to any other Canadian collective society with a tariff applicable to fitness venues, skating venues or fitness activities.

(4) If an audit discloses that the royalties owed to Re:Sound during any reporting period have been understated by more than 10 per cent, the subject of the audit shall pay the reasonable costs of the audit to Re:Sound 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.

~~the amount of the understatement and the reasonable costs of the audit within 30 days of the demand for such payment.~~

Confidentiality

9. (1) Subject to subsections (2) and (4), information received pursuant to this tariff shall be treated in confidence, unless the person who supplied the information consents in writing to the information being treated otherwise.

(2) Information received 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;

(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 fitness venues, skating venue or fitness activities;~~

~~(a) SOCAN, subject to confidentiality being preserved;~~

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

(c) with the Copyright Board;

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

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

~~(f)~~ if required by law

~~(g)~~ (f)

(3) Where confidential information is shared with a service provider pursuant to ~~paragraph subsection 9~~ (2)(~~a~~b), that service provider shall sign a confidentiality agreement.

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

Late Payments & Reporting

10.(1) In the event that a person subject to this tariff does not pay the amounts owed or provide the reporting required under the tariff by the due date, the person 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.

(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.

Adjustments

~~110. 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 a person subject to this tariff which occurred more than 12 months prior to notification to Re:Sound. Excess payments are not subject to interest.~~

~~owed (including excess payments), as a result of the discovery of an error or otherwise, shall be made on the date the next royalty payment is due.~~

Interest on Late Payments

~~11. Any amount not received by the due date shall bear interest from that date until the date the amount is received. 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. Any overpayment resulting from an error or omission on the part of Re:Sound shall bear interest from the date of the overpayment until the overpayment is refunded.~~

Addresses for Notices, etc.

12. (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 a person 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

13. (1) A notice may be made by hand, by postage-paid mail, by email, by fax 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). ~~A payment may be made by credit card or by electronic bank transfer (EBT), or be delivered by hand or by postage paid mail.~~ Where a payment is made-delivered by EBT, the associated reporting 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, email, by FTP or by EBT shall be presumed to have been received the day it was transmitted.

Transitional Provision

~~14. Royalties owed on or before September 11, 2020, as a result of this tariff shall be due on December 11, 2020, and shall be increased by using the multiplying interest factor (based on the Bank Rate) set out in the following tables with respect to each period. Information pertaining to that same period shall be filed with the payment and shall be supplied only if it is available. If the number of fitness classes and dance classes is not known or cannot be reasonably determined, a reasonable estimate of the number of classes held will be provided.~~

Multiplying factors applicable to quarterly payments:

Tariff Year	Quarter	Interest Factor
2018	1	1.04227
2018	2	1.03821
2018	3	1.03346
2018	4	1.02820
2019	1	1.02299
2019	2	1.01756
2019	3	1.01172
2019	4	1.00515
2020	1	1.00267
2020	2	1.00142

Multiplying factors applicable to annual payments:

Tariff Year	Interest Factor
2018	1.02987
2019	1.00729