

## PROPOSED TARIFF

Filed with the Copyright Board by Re:Sound on 2022-10-13 pursuant to subsection 67(1) of the Copyright Act

Proposed Tariff Title: Re:Sound Tariff 6.C – Use Of Recorded Music To Accompany Adult Entertainment (2024-2028)

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 Adult Entertainment Tariff (2024-2028)

Effective Period: 2024-01-01 – 2028-12-31

RE:SOUND TARIFF 6.C — USE OF RECORDED MUSIC TO ACCOMPANY ADULT ENTERTAINMENT (2024-2028)

### *Short Title*

1. This tariff may be cited as the Re:Sound Adult Entertainment Tariff 6.C (2019-2023)(2024-2028).

### *Definitions*

2. In this tariff,

“capacity” means the number of persons that can occupy the establishment (seating and standing), authorized under the establishment’s liquor licence or any other document issued by a competent authority for this type of establishment; (« *capacité* »)

“day” means any period between 6:00 a.m. on one day and 6:00 a.m. the following day during which the establishment operates as an adult entertainment club; (« *jour* »)

“establishment” means a single location where adult entertainment is performed and includes an adult entertainment club, nightclub, dance club, bar, or hotel;  ~~(« *établissement* » )~~

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

### *Application*

3. 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 ~~2019-2024~~ to ~~2023-2028~~, of published sound recordings embodying musical works and performers’ performances of such works to accompany adult entertainment.

### *Royalties*

4. (1) The annual royalty fee payable by the establishment is ~~found by multiplying the rate~~ ~~(€10.1¢ per day)~~, multiplied by the establishment’s capacity.

**Table 1: royalty rates**

<b>year(s)</b>	<b>rate</b>
<del>2019</del>	<del>2.70¢</del>
<del>2020</del>	<del>3.88¢</del>
<del>2021-2023</del>	<del>5.06¢</del>

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

#### *Royalty Payments and Reporting Requirements*

5. (1) No later than January 31, the establishment shall pay the estimated royalties for that year calculated as follows. If the establishment operated in the previous year, the payment will be calculated based on the establishment's capacity and the days of operation during the previous year. If the establishment did not operate during the previous year, or if it was only open for part of the previous year, the payment will be calculated based on the capacity and estimated days of operation for the current year. If an establishment opens after January 31, payment shall be made no later than 30 days after the date the establishment first opened.

(2) Together with the payment and report under subsection (1), the establishment shall provide:

- (a) the name and address of the establishment;
- (b) the name and contact information of the person operating the establishment;
- (c) the capacity of the establishment, with supporting documentation; and
- (d) the days of operation, as used to calculate the royalties.

(3) No later than January 31 of the following year, the establishment shall provide Re:Sound with a report of the actual days of operation during the previous year and an adjustment of the royalties payable shall be made accordingly. All additional monies owed shall be paid to Re:Sound by January 31. If the royalties due are less than the amount previously paid, Re:Sound shall credit the amount of the overpayment against future payments. No interest is payable with respect to overpayments or underpayments..

#### *Records and Audits*

6. (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 the information set out in section 5 can be readily ascertained, including the capacity and days of operation used to calculate the royalties payable.

(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 that was the subject of the audit and to SOCAN any other Canadian collective society with a tariff applicable to adult entertainment.

(4) If an audit discloses that royalties owed to Re:Sound during any 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.

### *Confidentiality*

7. (1) Subject to subsections (2), (3) 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 ~~that the execution of their mandates requires it~~ 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 ~~the~~ tariff, with ~~SOCAN~~ any other Canadian collective society that has a tariff applicable to adult entertainment;
- (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
- (f) if required by law.

(3) Where confidential information is shared with service providers as per ~~paragraph~~ subsection (2)(a), those service providers 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 the person who supplied the information and who is not under an apparent duty of confidentiality to that person with respect to the supplied information.

### *Adjustments*

~~Subject to subsection 5(3), adjustments 8.~~ Adjustments in the amount of royalties 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. ~~Overpayments and underpayments are not subject to interest.~~ No adjustments to reduce the amount of royalties owed may be made in respect of an error discovered by the person subject to this tariff which occurred more than 12 months prior to notification to Re:Sound.

### *~~Interest on~~ Late Payments and Reporting*

9. (1) In the event that a person subject to this tariff does not pay the amount owed under the tariff by the due date, the person shall pay to Re:Sound interest calculated on the amount owed from the due date until the date the amount is received by Re:Sound.

~~(2)~~

(2) In the event that a person subject to this tariff does not provide the reporting information required under the tariff by the due date, Re:Sound may provide notice of that default ("Default

Notice”). If the person does not cure the default within 30 days of receipt of a Default Notice by providing the reporting information that is past due and that is specified in the Default Notice, the person shall pay to Re:Sound interest calculated on the amount payable in respect of the period for which the reporting information is due, from the due date to the date that the reporting information is received by Re:Sound, less any interest paid pursuant to subsection (1).

(3) 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~~licensing@resound.ca, or to any other address, ~~or~~ or 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, ~~or~~ or 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 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). 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 Provision*

~~8. Royalties owed on or before February 27, 2021, as a result of this tariff shall be due on May 31, 2021, and shall be increased by using the multiplying interest factor (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 May 31, 2021.~~

**Table 2: multiplying Factors Applicable to Annual Payments**

<b>year</b>	<b>interest Factor</b>
<del>2019</del>	<del>1.00711</del>
<del>2020</del>	<del>1.00042</del>

