

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 2 - Pay Audio Services (2023–2027)*

For 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 Pay Audio Services Tariff (2023-2027)*

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

RE:SOUND TARIFF 2 – PAY AUDIO SERVICES (2023-2027)

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 Pay Audio Services Tariff (2023-2027)*.

Definitions

2. In this tariff,

“affiliation payments” means the total amounts payable by a distribution undertaking to a programming undertaking for the transmission for private or domestic use of a pay audio signal, including the total amounts payable for all programming and services provided by the programming undertaking in a bundle with the pay audio service, without deduction; (« *paiements d’affiliation* »)

“device” means any device capable of receiving and playing a file, including a computer, digital media player, cellular phone, smartphone, or tablet; (« *appareil* »)

“distribution undertaking” means a distribution undertaking as defined in the *Broadcasting Act*, S.C. 1991, c. 11 as amended; (« *entreprise de distribution* »)

“file” means a digital file of a sound recording of a musical work or a part thereof, whether or not that sound recording has been published, is in the public domain, is eligible to receive equitable remuneration or is within the repertoire of Re:Sound; (« *fichier* »)

“non-interactive stream” means a stream of content provided by a programming undertaking to a distribution undertaking in a bundle with a pay audio service, which is different from the content of the pay audio service (i.e. online-only channels) over which the end-user is unable to exercise any control over the content or the timing of the stream. For example, the end-user cannot skip or pause the communication of a file or influence the content by indicating a preference for a musical genre, artist or sound recording other than by selecting the channel; (« *transmission non interactive* »)

“pay audio signal” includes all programming and services licenced by the CRTC as a pay audio service as well as all programming and services supplied by a programming undertaking in a bundle with a pay audio service, whether or not for a fee and whether or not licenced by the CRTC as a pay audio service; (« *signal sonore payant* »)

“play” means the single communication of a file or a part thereof, to a single person; (« *écoute* »)

“premises” has the same meaning as premises as defined in the *Regulations*, being,

- (a) a dwelling, including a single-unit residence or a single unit within a multiple-unit residence, or
- (b) a room in a commercial or institutional building;” (« *local* »)

“programming undertaking” means a programming undertaking as defined in the *Broadcasting Act*, S.C. 1991, c. 11; (« *entreprise de programmation* »)

“*Regulations*” means the *Definition of “Small Cable Transmission System” Regulations*, SOR/94-755 (*Canada Gazette*, Part II, Vol. 128, page 4096), amended by SOR/2005-148 (*Canada Gazette*, Part II, Vol. 139, page 1195); (« *Règlement* »)

“semi-interactive stream” means a stream of content provided by a programming undertaking to a distribution undertaking in a bundle with a pay audio service, over which the end-user has the ability to exercise some level of control over the content or the timing of the stream, such as by skipping, pausing, rewinding or fast-forwarding the communication of a file or by indicating a preference for a musical genre, artist or sound recording. So long as the possibility of such interaction exists, a stream is considered a semi-interactive stream and not a simulcast, regardless of whether the end-user interacts with the stream or not; (« *transmission semi-interactive* »)

“service area” has the same meaning as service area as defined in the *Regulations*, being:

“service area means an area in which premises served in accordance with the laws and regulations of Canada by a cable transmission system are located;” (« *zone de service* »)

“signal” means a television or audio signal, other than a signal within the meaning of subsection 31(1) of the *Copyright Act*, retransmitted in accordance with subsection 31(2) of the *Copyright Act*; (« *signal* »)

“simulcast” means the simultaneous communication of a pay audio service to which this tariff applies, via the Internet or another digital network, to a device, which is identical to the original signal and over which the end-user is unable to exercise any control over the content or the timing of the communication. For example, the end-user cannot skip, pause, rewind or fast-forward the communication of a file or influence the content of the communication by indicating a preference for a musical genre, artist or sound recording; (« *diffusion simultanée* »)

“Small cable transmission system” has the same meaning attributed to it in the *Regulations*, being:

“3. (1) Subject to subsections (2) to (4) and section 4, ‘small cable transmission system’ means a cable transmission system that transmits a signal, with or without a fee, to not more than 2,000 premises in the same service area.

(2) For the purpose of subsection (1), where a cable transmission system is included in the same unit as one or more other cable transmission systems, the number of premises to which the cable transmission system transmits a signal is deemed to be equal to the total number of premises to which all cable transmission systems included in that unit transmit a signal.

(3) For the purpose of subsection (2), a cable transmission system is included in the same unit as one or more other cable transmission systems where

(a) they are owned or directly or indirectly controlled by the same person or group of persons; and

(b) their service areas are each less than 5 km distant, at some point, from at least one other among them, and those service areas would constitute a series of contiguous service areas, in a linear or non-linear configuration, were it not for that distance.

(4) Subsection (2) does not apply to a cable transmission system that was included in a unit on December 31, 1993.

4. The definition set out in subsection 3(1) does not include a cable transmission system that is a master antenna system located within the service area of another cable transmission system that transmits a signal, with or without a fee, to more than 2,000 premises in that service area;” (« *petit système de transmission par fil* »)

“stream” means the communication in Canada, via the Internet or another digital network, to a device, of one or more files; (« *transmission* »)

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

Application

3. (1) This tariff sets the royalties to be paid for the communication to the public by telecommunication of published sound recordings embodying musical works and performers’ performances of such works, for private or domestic use for the years 2023-2027:

(a) in connection with the transmission by a distribution undertaking of a pay audio signal; and

(b) in connection with the transmission by a distribution undertaking of a simulcast, non-interactive stream or semi-interactive stream, which is only available to end-users by virtue of their subscription to the distribution undertaking as part of a package which includes a pay audio signal.

(2) This tariff does not apply to:

(a) a simulcast, non-interactive stream, or semi-interactive stream distributed otherwise than by a distribution undertaking as part of a package which includes a pay audio signal;

(b) any service provided to commercial subscribers including a background music supply service; or

(c) the performance in public of published sound recordings embodying musical works and performers’ performances of such works.

Royalties

4. (1) Subject to subsection (2), the royalties payable each month to Re:Sound are:

(a) 15 per cent of the affiliation payments payable for that month by a distribution undertaking; plus

(b) \$0.00146 for each play of a file in Canada by simulcast in that month; and

(c) \$0.00183 for each play of a file in Canada by non-interactive stream or semi-interactive stream in that month.

(2) The royalties payable to Re:Sound each year where the distribution undertaking is a small cable transmission system are:

- (a) 7.5 per cent of the affiliation payments payable for that year by a distribution undertaking; plus
- (b) \$0.00073 for each play of a file in Canada by simulcast in that year; and
- (c) \$0.00092 for each play of a file in Canada by non-interactive stream or semi-interactive stream in that year.

Dates of Payments

5. (1) Royalties payable pursuant to subsection 4(1) shall be due on the last day of the month following the month for which the royalties are being paid.
- (2) Royalties payable pursuant to subsection 4(2) shall be due on January 31 of the year following the year for which the royalties are being paid.

Reporting Requirements

6. (1) A programming undertaking that makes a payment shall provide with its payment, for the relevant period and with respect to each distribution undertaking to which it supplied a pay audio signal:

- (a) the name of the distribution undertaking;
- (b) the list of pay audio signals, simulcasts, non-interactive streams and semi-interactive streams the programming undertaking supplied to the distribution undertaking for transmission for private or domestic use;
- (c) the amount of the affiliation payments payable;
- (d) the number of plays of each file by simulcast, by non-interactive stream and by semi-interactive stream;
- (e) the total number of plays of all files by simulcast, by non-interactive stream and by semi-interactive stream; and
- (f) the total simulcast audience relative to the audience of the pay audio signal.

- (2) A distribution undertaking that makes a payment shall provide with its payment, for the relevant period and with respect to each programming undertaking from which it purchased a signal:

- (a) the name of the programming undertaking;
- (b) the list of pay audio signals, simulcasts, non-interactive streams and semi-interactive streams supplied to the distribution undertaking by the programming undertaking for transmission for private or domestic use;
- (c) the amount of the affiliation payments payable;

- (d) the number of plays of each file by simulcast, by non-interactive stream and by semi-interactive stream;
- (e) the total number of plays of all files by simulcast, by non-interactive stream and by semi-interactive stream; and
- (f) the total audience of the simulcast relative to the audience of the pay audio signal.

(3) The following information shall also be provided with respect to any system for which royalties are being paid pursuant to subsection 4(2):

- (a) the number of premises served in the system on the last day of each month for which payment is being made;
- (b) if the system is a master antenna system and is located within the service area of another cable transmission system, the name of that other system and a statement to the effect that the other system transmits a signal, with or without a fee, to not more than 2,000 premises in its service area;
- (c) if the system is included in a unit within the meaning of the *Definition of "Small Cable Transmission System" Regulations*,
 - (i) the date the system was included in the unit,
 - (ii) the names of all the systems included in the unit,
 - (iii) the names of the person or group of persons who own or who directly or indirectly control the systems included in the unit, and
 - (iv) the nature of the control exercised by these persons.

(4) Notwithstanding subsections (1), (2) and (3) above, no later than March 31 of each year, a programming undertaking shall provide Re:Sound with the name of each distribution undertaking to which it supplied a pay audio signal, simulcast, non-interactive stream and semi-interactive stream, for private or domestic use in the previous year. A programming undertaking shall be relieved of this obligation if it has already provided the name of each such distribution undertaking pursuant to its obligations under subsection (1). The programming undertaking shall also indicate who (the programming undertaking or the distribution undertaking) is responsible for paying royalties under this Tariff for each distribution undertaking listed.

Sound Recording Use Information

7. (1) No later than the fourteenth day of each month, a programming undertaking shall provide to Re:Sound, the full sequential lists of all published sound recordings embodying musical works or parts thereof, played on each pay audio signal, by simulcast, by non-interactive stream and by semi-interactive stream during each day of the previous month. For greater clarity, sequential list reporting requires full music use reporting for each day of the month, for 365 days per year. Each entry shall include the following information:

- (a) the date of the broadcast;
- (b) the time of the broadcast;
- (c) the title of the sound recording;
- (d) the name of each performer or group to whom the sound recording is credited;
- (e) the name of the record label or maker that released the sound recording;
- (f) the name of each author of the musical work;
- (g) the International Standard Recording Code (ISRC) assigned to the sound recording;
- (h) the name of the music publisher associated with the musical work;
- (i) the International Standard Musical Work (ISWC) assigned to the musical work;
- (j) if the sound recording was released as part of an album, the name, identifier, product catalogue number and Universal Product Code (UPC) assigned to the album, together with the associated disc and track numbers;
- (k) the Global Release Identifier (Grid) assigned to the sound recording and, if applicable, the Grid of the album or bundle in which the sound recording was released;
- (l) the running time of the sound recording as broadcast, in minutes and seconds;
- (m) the running time of the sound recording as listed on the album, in minutes and seconds; and
- (n) any alternative title used to designate the musical work or sound recording.

(2) The information set out in subsection (1) shall be provided electronically, in Excel format or in any other format agreed upon by Re:Sound and the programming undertaking, with a separate field for each piece of information.

Records and Audits

8. (1) A programming undertaking shall keep and preserve, for a period of six months after the end of the month to which they relate, records from which the information set out in section 7 can be readily ascertained.

(2) Both the distribution undertaking and the programming undertaking shall keep and preserve, for a period of six years after the end of the year to which they relate, records from which a distribution undertaking's affiliation payments to the programming undertaking and the calculation of payments under subsections 4(1)(b), 4(1)(c), 4(2)(b) and 4(2)(c) can be readily ascertained, including the information required under section 6.

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

(4) Re:Sound shall, upon receipt, supply a copy of the report of the audit to the undertaking that was the subject of the audit and to any other Canadian collective society with a tariff applicable to pay audio services.

(5) If an audit discloses that royalties due to Re:Sound have been understated in any month by more than ten per cent, the undertaking that was audited 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

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

(2) Information received from an undertaking 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) with any other Canadian collective society that has a tariff applicable to pay audio services;
- (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 a service provider pursuant to subsection 9(2)(a), 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 the undertaking that supplied the information and who is not under an apparent duty of confidentiality to that undertaking with respect to the supplied information.

Adjustments

10. 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 undertaking which occurred more than 12 months prior to notification to Re:Sound. Excess payments are not subject to interest.

Late Payments and Reporting

11. (1) In the event that an undertaking does not pay the amounts owed under sections 4 and 5 or provide the reporting required under section 6 by the due date, the undertaking 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. 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.

(2) In the event that an undertaking does not provide the music use reporting required by section 7 within 7 days of the due date, upon written notice by Re:Sound, the undertaking shall pay to Re:Sound a late fee based on the number of days from the due date to the date the reporting is received, of:

- (a) \$10.00 per day for the first 30 days after the due date;
- (b) \$20.00 per day for the next 30 days; and
- (c) \$50.00 per day thereafter;

until the reporting is received.

Addresses for Notices, etc.

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

(2) Anything that Re:Sound sends to an undertaking shall be sent to the last address, email or fax number of which Re:Sound has been notified in writing.

Delivery of Notices and Payments

13. (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 shall be provided concurrently to Re:Sound by email.

(2) The information set out in section 7 shall be sent by email.

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

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