

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.A - Background Music Suppliers (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 Suppliers Tariff (2023-2026)*

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

RE:SOUND TARIFF 3.A - BACKGROUND MUSIC SUPPLIERS (2023-2026)

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 Background Music Suppliers Tariff (2023-2026)*.

Definitions

2. In this tariff,

“background music supplier” means a person who provides a service of supplying recorded music for performance in public by an establishment dealing at arm’s length. Related persons shall be deemed not to deal with each other at arm’s length, unless the related person who provides a service of supplying recorded music for the performance in public by an establishment (the “Related Music Supplier”):

(a) also provides that service to the public and not only to related persons; and

(b) the amount that the Related Music Supplier charges related persons for that service is no less than the lowest amount that the Related Music Supplier charges the public for a similar service; (« *fournisseur de musique de fond* »)

“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* »)

“quarter” means from January to March, from April to June, from July to September and from October to December; (« *trimestre* »)

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

“revenues” means the total gross revenues of the background music supplier including, but not limited to, all subscription fees and advertising revenues; (« *recettes* »)

“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.

(a) Where a cable transmission system is included in the same unit as one or more other cable transmission systems (excluding a cable transmission system that was included in a unit on December 31, 1993), 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.

(b) A cable transmission system is included in the same unit as one or more other cable transmission systems where:

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

(ii) 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.

(c) The definition of “small cable transmission system” excludes a cable transmission system that is a master antenna system if it is 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.

(d) For the purposes of this definition, “premises” means

(i) a dwelling, including a single-unit residence or a single unit within a multiple-unit residence, or

- (ii) a room in a commercial or institutional building.
- (e) For the purposes of this definition, “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; (« *petit système de transmission par fil* »)

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

Application

3. This tariff sets for the years 2023-2026, the royalties to be paid to Re:Sound, for the benefit of performers and makers, by a background music supplier, for the communication to the public by telecommunication of recorded music and for the performance in public by an establishment of recorded music supplied by the background music supplier, including any use of such recorded music with a telephone on hold.

Royalties Payable

4. (1) Subject to subsection (5), a background music supplier who communicates recorded music during a quarter shall pay to Re:Sound 2.7 per cent of revenues received during the quarter, subject to a minimum fee of \$2.00 per subscriber per establishment per quarter.

(2) Subject to subsection (5), a background music supplier who pays on behalf of subscribers the royalties for the performance in public of recorded music by the subscribers shall pay to Re:Sound 9.0 per cent of revenues from those subscribers during the quarter, subject to a minimum fee of \$6.80 per subscriber per establishment per quarter.

(3) Where a background music supplier pays on behalf of a subscriber the royalties for the performance in public referred to in subsection (2), that subscriber is not required to pay royalties pursuant to Re:Sound Tariff 3.B (Use of Background Music) or Re:Sound Tariff 6.B (Use of Recorded Music to Accompany Fitness Activities) for that performance in public of recorded music supplied by that background music supplier.

(4) For the purpose of calculating minimum fees under subsections (1) and (2), the number of subscribers per establishment per quarter is the total number of individual subscribers for all establishments to which the background music supplier supplied recorded music at any time during the quarter.

(5) Royalties payable by a small cable transmission system are reduced by half.

Reporting Requirements

5. (1) No later than 30 days after the end of the quarter, a background music supplier making a payment pursuant to section 4 shall pay the royalty for that quarter and shall report the information used to calculate the royalty.

(2) A background music supplier subject to subsection 4(1) shall provide with its payment, the full sequential lists of all published sound recordings or parts thereof communicated during the relevant quarter. Each entry shall include:

- (a) The date and time of transmission;
- (b) the title of the sound recording;
- (c) the name of each performer or group to whom the sound recording is credited;
- (d) the name of the record label or maker that released the sound recording;
- (e) the name of each author of the musical work;
- (f) the International Standard Recording Code (ISRC) assigned to the sound recording;
- (g) 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;
- (h) the running time of the sound recording as listed on the album, in minutes and seconds; and
- (i) any alternative title used to designate the sound recording.

(3) A background music supplier subject to subsection 4(2) shall provide with its payment the name of each subscriber and the address of each establishment for which the background music supplier is making a payment.

(4) Information provided pursuant to subsections 5(1) and 5(3) shall be delivered electronically, in plain text format or in any other format agreed upon by Re:Sound and the background music supplier. Information provided pursuant to subsection 5(2) shall be delivered electronically, in Excel format or in any other format agreed upon by Re:Sound and the background music supplier, with a separate field for each piece of information required in (a) to (i).

Records and Audits

6. (1) A background music supplier shall keep and preserve, for a period of six years after the end of the year to which they relate, records from which its revenues and number of subscribers can be readily ascertained, including the subscription rates payable to subscribe to the background music service, a list of the subscribers for which payments are made and copies of background music subscriber invoices.

(2) A background music supplier shall keep and preserve, for a period of six months after the end of the month to which they relate, the information required under subsection 5(2).

(3) Re:Sound may audit these records at any time during the period set out in subsection (1) and (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 background music supplier that was subject to the audit and to any other Canadian collective society with a tariff applicable to background music suppliers.

(5) If an audit discloses that royalties owed to Re:Sound during any period have been understated by more than 10 per cent, the background music supplier that was 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) to (4), information received pursuant to this tariff shall be treated in confidence, unless the background music supplier that supplied the information consents in writing to the information being treated otherwise.

(2) Information received from a background music supplier 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 that has a tariff applicable to background music suppliers;
- (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 7(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 background music supplier

who supplied the information and who is not under an apparent duty of confidentiality to the background music supplier with respect to the supplied information.

Adjustments

8. 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 background music supplier which occurred more than 12 months prior to notification to Re:Sound. Excess payments are not subject to interest.

Late Payments and Reporting

9. (1) In the event that a background music supplier does not pay the amounts owed under section 4 or provide the reporting required under subsections 5(1) and 5(3) by the due date, the background music supplier 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. 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 a background music supplier does not provide the reporting required by subsection 5(2) within 7 days of the due date, upon written notice by Re:Sound, the background music supplier 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 by Re:Sound 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.

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 a background music supplier 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

Published by the Copyright Board of Canada, in accordance with section 68.2 of the *Copyright Act*, on 3 November 2021

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.