

Copyright Board
Canada



Commission du droit d'auteur
Canada

October 28, 2020

In accordance with section 68.2 of the *Copyright Act*, the Copyright Board hereby publishes the following proposed tariffs:

- **Re:Sound Tariff 1.B – Non-Commercial Radio, 2022-2024**
- Re:Sound Tariff 1.C – CBC Radio and Simulcasts, 2022-2024
- Re:Sound Tariff 4 – Satellite Radio Services, 2022-2024
- Re:Sound Tariff 8 – Non-Interactive and Semi-Interactive Streaming, 2022-2024

By that same section, the Copyright Board hereby gives notice to any person affected by these proposed tariffs that users or their representatives who wish to object to the above-mentioned proposed tariffs must file written objections with the Board, at the address indicated below, no later than the 30th day after the day on which the Board published the proposed tariffs, that is no later than **November 27, 2020**.

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PROPOSED TARIFF

Filed with the Copyright Board pursuant to subsection 67(1) of the *Copyright Act*

2020-10-14

RE:SOUND

Tariff 1.B

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

2022-01-01 – 2024-12-31

Proposed citation:

Re:Sound, Non-Commercial Radio (2022–2024)

STATEMENT OF PROPOSED ROYALTIES TO BE COLLECTED BY RE:SOUND FOR THE COMMUNICATION TO THE PUBLIC BY TELECOMMUNICATION, IN CANADA, OF PUBLISHED SOUND RECORDINGS EMBODYING MUSICAL WORKS AND PERFORMERS' PERFORMANCES OF SUCH WORKS FOR THE YEARS 2022 TO 2024

Tariff No. 1

RADIO

B. Non-Commercial Radio Other than the Canadian Broadcasting Corporation

Note (This note is not part of the proposed tariff)

Subsection 72(3) of the *Copyright Act* provides that, notwithstanding the tariffs approved by the Board, community systems shall pay royalties of \$100 in respect of each year for the communication to the public by telecommunication of performers' performances of musical works, or of sound recordings embodying such performers' performances. Pursuant to this provision, Re:Sound recognizes that, notwithstanding this tariff filed with respect to non-commercial radio stations, community systems are required to pay only \$100 in respect of each year.

Short Title

1. This tariff may be cited as the *Re:Sound Non-Commercial Radio Tariff, 2022-2024*.

Definitions

2. In this tariff,

“gross operating costs” means all direct expenditures of any kind and nature (whether in money or other form) incurred by the non-commercial radio station or on its behalf in connection with the products and services that are subject to this tariff; (« *coûts bruts d'opération* »)

“non-commercial radio station” means any radio station that transmits in analog or digital mode, whether in the A.M. or F.M. frequency band or in any other assigned range other than a Canadian Broadcasting Corporation radio station, that is owned and operated by a not-for-profit organization, including any campus station, community station, native station, or ethnic station owned and operated by a not-for-profit organization, whether or not any part of the station's gross operating costs is funded by advertising revenues, and whether or not the station is licensed by the Canadian Radio-television and Telecommunications Commission; (« *station de radio non commerciale* »)

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

Application

3. (1) This tariff sets the royalties to be paid to Re:Sound by non-commercial radio stations for the communication to the public by telecommunication, in Canada, of published sound recordings embodying musical works and performers' performances of such works, by over-the-air radio broadcasting, for the years 2022 to 2024.

(2) This tariff does not apply to a communication to the public by telecommunication of sound recordings to end-users via the Internet or another digital network, to a device including computers, digital media players, cellular phones, smartphones and tablets. For greater certainty, this tariff does not apply to simulcasts or webcasts/streaming.

(3) This tariff does not apply to a communication to the public by telecommunication by commercial radio stations, the Canadian Broadcasting Corporation or in connection with the transmission of a pay audio signal.

Royalties

4. (1) The royalties payable to Re:Sound by a non-commercial radio station in respect of each year shall be 2 per cent of the non-commercial radio station's annual gross operating costs for that year.

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

Payments and Reporting

5. (1) No later than January 1st of each year, a non-commercial radio station shall pay the estimated fee owing for that year. The fee is subject to adjustment when the actual gross operating costs for the year have been determined and reported to Re:Sound.

(2) With each payment, a non-commercial radio station shall forward to Re:Sound a written certified declaration of the actual gross operating costs of the non-commercial radio station for the previous year.

Records and Audits

6. (1) A non-commercial radio station shall keep and preserve, for a period of six years after the end of the year to which they relate, accounts and records from which the calculation of the station's annual gross operating costs can be readily ascertained.

(2) Re:Sound may audit these accounts and records at any time during the period set out in section 6(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 non-commercial radio station which was the subject of the audit and to any other Canadian collective society with a tariff applicable to non-commercial radio stations.

(4) If an audit discloses that royalties due to Re:Sound have been understated in any year by more than 10 per cent, the non-commercial radio station which 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.

Interest on Late Payments

7. 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.

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 a non-commercial radio station which occurred more than 12 months prior to notification to Re:Sound. Excess payments are not subject to interest.

Confidentiality

9. (1) Subject to sections 9(2) to 9(4), information received from a non-commercial radio station pursuant to this tariff shall be treated in confidence, unless the station consents in writing to the information being treated otherwise.

(2) Information received from a non-commercial radio station 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 non-commercial radio stations;
- (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 section 9(2)(a), that service provider shall sign a confidentiality agreement.

(4) Section 9(1) does not apply to information that is publicly available, to aggregated information, or to information obtained from someone other than the non-commercial radio station that supplied the information and who is not under an apparent duty of confidentiality to that station with respect to the supplied information.

Delivery of Notices and Payments

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

(2) Anything addressed to a non-commercial radio station shall be sent to the last address, email address or fax number of which Re:Sound has been notified in writing.

(3) 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.

(4) Anything mailed in Canada shall be presumed to have been received four business days after the day it was mailed. Anything sent by fax, by email, by FTP or by EBT shall be presumed to have been received the day it was transmitted.