

Copyright Board
Canada



Commission du droit d'auteur
Canada

FACT SHEET

Re:Sound Tariff 6.B – Use of Recorded Music to Accompany Physical Activities, 2008-2012

July 6, 2012

1. What is the Copyright Board of Canada?

The Copyright Board of Canada is an independent, quasi-judicial tribunal created by the *Copyright Act* to establish the royalties to be paid for the use of works, sound recordings or other matter protected by copyright, when the administration of these rights is entrusted to a collective society.

2. What is Re:Sound and who will benefit from the royalties?

Re:Sound Music Licensing Company (Re:Sound) is the Canadian, private, not-for-profit collective society authorized under the *Copyright Act* to administer the performance rights of performers and record labels in their sound recordings. Re:Sound will collect the royalties payable under Tariff 6.B and distribute them equally (50/50) between performers (singers, musicians) and makers (record labels).

3. What are the activities covered by the tariff?

Re:Sound Tariff 6.B covers all physical activities during which recorded music that is part of Re:Sound's repertoire is being used. This includes fitness classes, workout areas where background music is being played, dance instruction and skating.

4. What are the rates set by the decision?

The Board certified the following rates:

- A fitness club that plays sound recordings in Re:Sound's repertoire during **fitness classes** will pay a fee of \$105.74 per year.
- A fitness club that plays sound recordings in **workout areas** will pay according to the existing Re:Sound background music tariff, which is based on either attendance,

capacity or floor area. Assuming attendance can be measured, it will pay 0.08¢ per attendee.

- A **skating venue** will pay 0.44 per cent of its revenues from admission, with a minimum fee of \$38.18 per year. Venues with no admission revenues will pay the minimum fee.
- A venue that offers **dance instruction** or any other physical activity will pay a fee of \$23.42 per year.

5. How much will these venues pay?

- A small fitness centre with about 200 members and no fitness classes should pay about \$16 per year if background music is played in its workout area.
- A large fitness centre with 2,000 members that plays sound recordings both in its classes and as background music in its workout areas should pay about \$280 per year.
- Skating venues with admission revenues will pay on average royalties of \$60 per year. Venues with no admission revenues will pay the minimum fee of \$38.18 per year.
- A dance instruction venue and any other physical activity venue will pay \$23.42 per year.

6. How many fitness clubs are there in Canada and what are the revenues of the fitness club industry?

According to the evidence filed, there are 5,047 fitness clubs in Canada. The total revenues of the fitness club industry were estimated at about \$2 billion in 2008.

7. What was the process leading to the certification of this tariff?

The decision follows a public hearing that lasted 11 days where the Board heard expert and other evidence from both Re:Sound and the potential music users who objected to the proposed tariff. The Board also addressed a number of questions to all parties.

8. When does the tariff start to apply?

Re:Sound Tariff 6.B starts to apply on January 1, 2008. Re:Sound is entitled by the *Copyright Act* to collect royalties set in a tariff from the date on which the tariff takes effect. That date is determined by the time at which the proposed tariff is filed, not by when the final tariff is certified. Re:Sound is required to file a proposed tariff by March 31st of the year before it takes effect. Since Re:Sound filed its proposed Tariff 6.B in March 2007, it is entitled to collect royalties starting in 2008.

9. Is this tariff a tax?

No. Taxes are introduced by government, collected by government and spent for government purposes. This tariff is a royalty, paid for the use of someone else's intellectual property, to be collected by a not-for-profit collective and distributed to individual rights holders. The purpose of such royalties, established under the *Copyright Act*, is to provide fair compensation to performers and record labels for the use of their sound recordings.

10. Why did the Board certify a tariff at all?

Artists and labels are entitled by the *Copyright Act* to be paid royalties for the use of their sound recordings. Once a tariff is proposed by a collective society for a use protected under then *Act*, and where there is proper and reliable evidence, the Board is required to certify a fair and equitable tariff and has no discretion in this respect.

11. Can the Board create exemptions from the tariff?

No. The right of performers and record labels to royalties for the public performance of their sound recordings is established by the *Copyright Act*. The Board cannot alter the requirements of the *Act* by creating exemptions.

Note: The reasons and the certified tariff can be found on the Board's website under "What's New – Recent decisions" at the following address: <http://www.cb-cda.gc.ca/home-accueil-e.html>.