

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 4*

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, Satellite Radio Services (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 2022-2024

*Tariff No. 4*

USE OF MUSIC BY SATELLITE RADIO SERVICES

GENERAL PROVISIONS

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

*Short Title*

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

*Definitions*

2. In this tariff,

“channel” means an individual programme or playlist which a user selects to initiate a communication of a file. For example, if a service offers 10 different musical genres and within each genre, there are a further 10 sub-genres, the selection of each of which initiates the streaming of a different playlist, the service has 100 channels; (« *chaîne* »)

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

“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* »)

“month” means a calendar month; (« *mois* »)

“number of subscriptions” means the average number of subscriptions during the reference month; (« *nombre d’abonnements* »)

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

“reference month” means the second month before the month for which royalties are being paid; (« *mois de référence* »)

“service” means a multi-channel subscription satellite radio service licensed by the Canadian Radio-television and Telecommunications Commission as well as any similar service

distributed in Canada; (« *service* »)

“service revenue” means all amounts paid by subscribers for a service, advertising revenues, revenues from product placement, promotion and sponsorship, net revenues from the sale of goods or services including hardware and accessories used in the reception of the service, and commissions on third-party transactions. This includes activation and termination fees, as well as membership, subscription and all other access and administrative fees. It excludes advertising agency fees and revenue accruing from any business that is not a necessary adjunct to the distribution of the service or the use of the service’s broadcasting facilities; (« *recettes du service* »)

“simulcast” means the simultaneous communication of a satellite radio broadcast 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 recipient is unable to exercise any control over the content or the timing of the communication. For example, the recipient 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* »)

“simulcasting income” includes all direct and indirect revenues of a service’s simulcasts in Canada, including, but not limited to:

- (a) user revenues, which mean all payments made by, on behalf of, or to enable, users to access the simulcast, including, but not limited to, subscriber fees, connect time charges, access or activation fees and any administrative fees, whether made directly to the service or to any entity under the same or substantially the same ownership, management or control, or to any other person, firm or corporation including, but not limited to, any partner or co-publisher of the service, pursuant to an agreement or as directed or authorized by any agent or employee of the service; and
- (b) sponsor revenue, which means all payments made by or on behalf of sponsors, advertisers, program suppliers, content providers, or others in connection with the simulcast including, but not limited to, advertising included within the simulcast or played upon selecting a link to the simulcast, or on banner adverts on media players and pop up windows associated with media players whilst the media player is delivering the simulcast, payments associated with syndicated selling, on-line franchising, associate or affiliate programs, bounty, e-commerce or other revenue including revenue from the sale, design, development, manufacture, rental or installation of receiving devices and any other hardware and accessories used in the reception of the simulcast and also includes the value of any goods or services received from any source as barter in connection with the simulcast including, but not limited to, barter received in exchange for providing advertising time or space;

For greater certainty, simulcasting income includes all income accruing from any allied or subsidiary business that is a necessary adjunct to the simulcast and which results in the use of the simulcast, including the gross amounts received by the service pursuant to a turn-key contract with an advertiser; (« *revenu provenant de la diffusion simultanée* »)

“subscriber” means a person who is authorized to receive in Canada a signal offered by a service, whether for free or for valuable consideration, excluding a commercial subscriber; (« *abonné* »)

“subscription” means an account tied to a single receiver that authorizes the subscriber to receive in Canada one signal offered by a service, whether for free or for valuable consideration including free trials, previews offered to existing radio owners, prepaid and lifetime subscriptions, excluding commercial subscriptions. Where multiple subscriptions are combined in a single account, each subscription for a separate receiver shall be counted as a separate subscription; (« *abonnement* »)

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

### *Application*

3. (1) This tariff sets the royalties to be paid each month by a service to communicate to the public by telecommunication in Canada, published sound recordings embodying musical works and performers’ performances of such works in connection with the operation of the service and simulcasts, for direct reception by subscribers for their private use.

(2) This tariff does not apply to the communication to the public by telecommunication of sound recordings to end-users via the Internet or another digital network except by simulcast, but does permit the use of wireless functionalities (such as a WiFi or Bluetooth functionality) integrated with a satellite radio receiving device that allows the relay of a satellite radio signal to local speakers for subscribers’ private use. For greater certainty, any online-only channels and streaming or webcasting with any element of customization or interactivity such as the ability to pause, skip, rewind, fast-forward or indicate a preference for musical genres, artists or songs, are not subject to this tariff.

(3) This tariff does not authorize:

- (a) any use of a sound recording by a service in connection with its delivery to a commercial subscriber; or
- (b) any use by a subscriber of a sound recording transmitted by a service other than a use described in subsection (1).

(4) For greater certainty, this tariff does not apply to commercial radio stations, the Canadian Broadcasting Corporation, the supply of background music, the transmission of a pay audio signal or the public performance of sound recordings.

### *Royalties*

4. (1) For the communication to the public by telecommunication in connection with the operation of the service, a service shall pay to Re:Sound, for each month of the tariff term, 15.5 per cent of its service revenue for the reference month, subject to a minimum fee of \$1.50 per subscription.

(2) In addition to the royalties payable under subsection (1), for the communication to the public by telecommunication by simulcast, a service shall pay to Re:Sound, for each month of the tariff term, the greater of:

- (a) 15.5 per cent of its simulcasting income for the reference month; or
  - (b) \$0.00126 for each play of a file in Canada by simulcast;
- Subject to a minimum annual fee of \$500 per channel up to a maximum of \$50,000.

- (3) The royalties payable under subsection (1) shall be calculated and paid as follows:
- (a) For each subscription, including free trials, previews, free, prepaid and lifetime subscriptions, the service shall pay the greater of:
    - (i) 15.5 per cent of the total amounts paid for the subscription (including activation and termination fees as well as membership, subscription and all other access and administrative fees); or
    - (ii) \$1.50 per subscription;
- PLUS
- (b) 15.5 per cent of the total amount of all additional service revenue not included in paragraph (a).

### *Reporting Requirements*

5. No later than on the first day of each month of the tariff term, a service shall pay the royalties owing for that month, calculated based on the reference month, and shall provide for the reference month:
- (a) the total number of subscriptions to the service, broken down into free trials, previews, free subscriptions, prepaid and lifetime subscriptions, and the number of subscriptions at each of the various subscription price points charged by the service during the month;
  - (b) its service revenue, broken down into amounts paid by subscribers for the service, advertising revenues, sponsorship revenues and other revenues;
  - (c) its simulcasting income, including the total number of subscribers (including both free and paid subscriptions) and the total amounts paid by them;
  - (d) the total audience of the simulcast relative to the audience of the over-the-air broadcast;
  - (e) the number of plays of each file by simulcast; and
  - (f) the total number of plays of all files by simulcast.

### *Sound Recording and Musical Work Use Information*

6. (1) No later than the fourteenth day of each month, a service shall provide to Re:Sound the full sequential lists of all published sound recordings embodying musical works or parts thereof, broadcast by satellite radio and simulcast 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 service, with a separate field for each piece of information required in subsection (1).

### *Records and Audits*

7. (1) A service 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 6 can be readily ascertained.

(2) A service 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.

(3) Re:Sound may audit these records at any time during the period set out in subsection (1) or (2), 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 service that was audited and to any other Canadian collective society with a tariff applicable to satellite radio 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 service 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*

8. (1) Subject to subsections (2) to (4), information received from a service pursuant to this tariff shall be treated in confidence, unless the service that supplied the information consents in writing to the information being treated otherwise.

(2) Information received from a service 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 satellite radio 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 section 8(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 service that supplied the information and who is not under an apparent duty of confidentiality to that service with respect to the supplied information.

#### *Adjustments*

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

#### *Late Payments and Reporting*

10. (1) In the event that a service does not pay the amount owed or provide the report required by section 5 by the due date, the service shall pay to Re:Sound interest calculated on the amount owed 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 service does not provide the music use reporting required by section 6 within 7 days of the due date, upon written notice by Re:Sound, the service 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.*

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



(2) Anything addressed to a service 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*

12. (1) A notice may be delivered by hand, by postage-paid mail, by fax, by email 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) The information set out in subsection 6(1) 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, by email, by FTP or by EBT shall be presumed to have been received on the day it was transmitted.