

NEIGHBOURING RIGHTS: LATEST SETTLEMENT AGREEMENT WITH RE:SOUND

Town hall jointly hosted by CAPACOA, CLMA and CAFE

March 27, 2024



CANADIAN ASSOCIATION
FOR THE PERFORMING ARTS
ASSOCIATION CANADIENNE
DES ORGANISMES ARTISTIQUES



TIMELINE

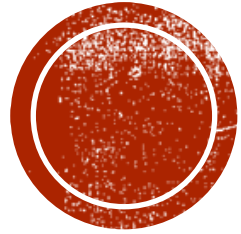
- This round of negotiations began in 2019.
- Agreement in principle reached in June 2023.
- Settlement Agreement signed in January 2024.



GUIDING PRINCIPLES IN THE NEGOTIATIONS

- Right holders are entitled to equitable remuneration
- Tariffs must take into account the realities of performing arts organizations
- Simple, flexible and affordable tariffs mean efficiency for both music users and Re:Sound
- Harmonization of Re:Sound and SOCAN tariffs = streamlined reporting





ABOUT NEIGHBOURING RIGHTS



WHOSE RIGHT IS THIS?

- Neighbouring rights:
 - The rights of performers (musicians and vocal artists) AND producers (record companies) of *published* sound recordings
- Distinct from Copyright:
 - The right of composers and music publishers



WHERE DOES IT COME FROM?

- First acknowledged in the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.
- Subsequent treaties defined mechanisms for collecting and distributing royalties across countries.



NEIGHBOURING RIGHTS IN CANADA

- Copyright Act of Canada was amended in 1997 to integrate neighbouring rights.
- Re:Sound was formed in 1997 (originally as NRCC) following this amendment.
- Re:Sound is designated by the Copyright Board of Canada as the sole collective society authorized to collect neighbouring right royalties on behalf of member organizations.



NEIGHBOURING RIGHTS IN THE UNITED STATES

- In 2018, the United States adopted the *Music Modernization Act*, implemented a neighbouring rights regime and created a collective licensing organization.



CANADA

Trade-Related Aspects of Intellectual Property Rights (TRIPS)

1995

Rome Convention

1996

Amendment to the Copyright Act

1997

2002

WIPO Performances and Phonograms Treaty

First Re:Sound live events tariffs

2008

Music Modernization Act

2018

CUSMA

2020

USMCA

Trade-Related Aspects of Intellectual Property Rights (TRIPS)

U.S.A.

IMPACT OF CUMSA

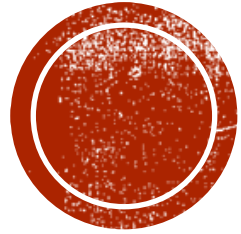
- **Prior to CUMSA:**
 - Canadian performers and producers were not receiving royalties for the use of their recordings in the United States;
 - Canadian music users didn't have any royalties to pay for the use of sound recordings from the United States;
 - Neighbouring rights rates in Canada were therefore half of the equivalent copyright rates (referred to as the "repertoire adjustment").



IMPACT OF CUMSA

- CUSMA has set the terms for collecting and distributing royalties across borders.
- Sound recordings produced in the United States are now subject to neighbouring rights.
- Neighbouring rights fees are no longer subject to a “repertoire adjustment”. They are effectively doubling.



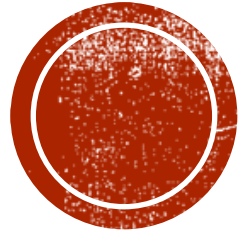


SETTLEMENT AGREEMENT WITH RE:SOUND

PARTIAL WAIVING

- The fee change further to the repertoire adjustment is effective retroactively as of July 1, 2020.
- **CAPACOA and CLMA negotiated a waiving of fees owed between July 1, 2020 and August 31, 2022.**
- You are only expected to pay the difference between the old rates and the adjusted rates as of September 1, 2022.





OTHER NOTEWORTHY CHANGES

PERFORMANCE USE — TARIFF 5.A

- Applies to the use of a sound recording as part of theatrical, dance, acrobatic arts, integrated arts, contemporary circus arts or other live performances
- Does not apply to productions that use no recorded music as part of the performance;
- Does not apply to productions where recorded music was commissioned and no published recording is available.



PERFORMANCE USE — TARIFF 5.A

- **Tariff 5. - Recorded music accompanying live entertainment**
 - Tariffs 5.A and 5.K merged to simplify and reduce the number of tariffs.
 - You may continue to use it for theatrical, dance, acrobatic arts, integrated arts, contemporary circus arts or other live performances.
 - Report using the [Excel reporting form](#).
 - No equivalent SOCAN Tariff. Do not report online to avoid accidentally reporting twice to Re:Sound.



CONCERTS — TARIFF 5.J

- Only applies if background music is not already licenced under another tariff (for example, 5.A or 5.D).



CONCERTS — TARIFF 5.J

- Tariff 5.J (Concerts) now includes an **annual fee**, which makes it more affordable to provide background music before concerts and during intermission.
- Report using the [Excel reporting form](#).



CONCERTS — TARIFF 5.J

Before

- You could be subject to cumulative \$15 minimum fees for each concert where background music was played before, after or during intermission.

Now

- You can now pay a single annual fee of \$60.
- If your total concert attendance for the year exceeds 16,000, you will be expected to pay $0.3761¢ \times$ total capacity/admissions.



FESTIVALS, EXHIBITIONS AND FAIRS — TARIFF 5.D

- Blanket tariff that accounts for both performance use and background use.
- If a music festival sells individual tickets for each concert, it may be considered a concert series; in such cases, Re:Sound 5.J applies.



FESTIVALS, EXHIBITIONS AND FAIRS — TARIFF 5.D

- **Tariff 5.D incorporates additional rate tiers to reduce the gap between pre-existing tiers, thus making the transition from one tier to another much smoother for festival organizers.**
- **Events with daily attendance between 5,000 and 15,000 may find these new tiers advantageous. They should report using the Excel reporting form.**
- **Others may continue to report online.**



RECEPTIONS — TARIFF 5.B

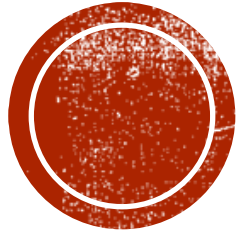
- Applies to receptions (including weddings), conventions, video game events, assemblies and fashions shows
- You should pass it on to your rental clients as a distinct line item on their invoices:
 - “Neighbouring rights royalties for the use of recorded music during a reception, as per Re:Sound Tariff 5.B”



RECEPTIONS — TARIFF 5.B

- The Excel form enables you to report 5.B licenses, but it is preferable to report online to avoid accidental double Re:Sound reporting.





REPORTING

THE REPORTING FORM

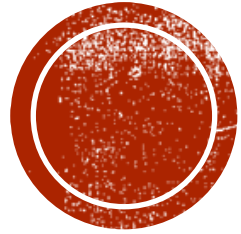
- The new Re:Sound reporting form is available at:
 - <https://bit.ly/resound2024>
- [CAPACOA's reporting guidance](#) explains how to report (with the form or online) depending on the use of recorded music.



PAYING ADDITIONAL ROYALTIES

- If you already remitted your 2023 royalties (as you should have), wait for Entandem to send you an invoice for the difference between the old rate and the adjusted rate for the period of September 1, 2022 to December 31, 2023.
- In either scenario, additional royalties are payable by May 1st, 2024.





ADDITIONAL INFORMATION



RESOURCES

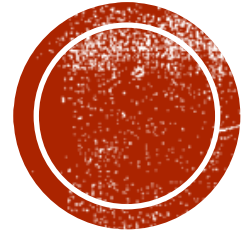
- [CAPACOA's Copyright and Neighbouring Rights pages](#)
- [Memo to Members of CAPACOA, CAFE and CLMA Regarding Re:Sound](#)
- [Re:Sound Tariffs 5.ABDEFGIJ – 2016-2025](#)
- [Guidance for neighbouring rights and copyright reporting](#)



RESOURCES

- If you have any questions, please do not hesitate to contact Re:Sound's Licensing department:
 - 1-877-309-5770
 - licensing@resound.ca





INTEGRATING RE:SOUND IN YOUR DAY-TO-DAY OPERATIONS



WHO IS RESPONSIBLE TO PAY?

- All parties involved (presenter, rental client, venue, producer) have a joint liability
- Many factors may be taken into account:
 - Who has access to the information required for licensing?
 - Who is likely to remit the most licence fees (cost-efficiency)?
 - Who has the primary business relationship with the audience?



WHO IS RESPONSIBLE TO PAY?

- Usually, it's more efficient for all parties if reporting is done by the venue manager.



INTEGRATING RE:SOUND IN THE DAY-TO-DAY

Administration/invoicing

- Pass on Re:Sound royalties to your rental clients (especially for 5.B, and perhaps also for other tariffs based on the rental activity)

Accounting

- Add a "Royalties" expense account to your charter of accounts (or if you already have an account for SOCAN, you may use the same)
- If you have rental activities, add "Royalties payable – Re:Sound" liability account
- Keep track of all activities where Re:Sound licences are required and document the billable information (i.e., total attendance)

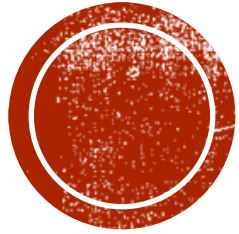


INTEGRATING RE:SOUND IN THE DAY-TO-DAY

Presenting contracts

- Add a neighbouring rights clause in your contracts to identify:
 - If published sound recordings are to be performed as part of the performance;
 - If so, for how long in total duration and as a percentage of total performance time; and,
 - Who is responsible for remitting payment for Re:Sound royalties.





QUESTIONS?

SUPPORT CAPACOA

- Become a member
 - Member of affiliate networks are entitled to a discount of \$100.
- Make a donation
 - A donation of \$25 may not be much, but it sends a strong signal that you value the advocacy we do on your behalf.
- Subscribe to CAPACOA's All Access newsletter

