

Copyright Board  
Canada



Commission du droit d'auteur  
Canada

**Date** 2022-03-02

**Citation** *CMRRA Online Music Services Tariff (Music Videos)(2014-2018)*, 2022 CB 1

**Member** Nathalie Théberge

**Proposed Tariffs Considered** CMRRA Online Music Services Tariff (Music Videos), 2014  
CMRRA Online Music Services Tariff (Music Videos), 2015  
CMRRA Online Music Services Tariff (Music Videos), 2016  
CMRRA Online Music Services Tariff (Music Videos), 2017  
CMRRA Online Music Services Tariff (Music Videos), 2018

### **Application to Withdraw Proposed Tariffs**

#### **REASONS FOR DECISION**

##### **I. OVERVIEW**

[1] The Canadian Musical Reproduction Rights Agency Ltd. (“CMRRA”) has made an application under section 69 of the *Copyright Act* (“the Act”) to withdraw the following 5 proposed tariffs: *CMRRA Online Music Services Tariff (Music Videos)* for the years 2014, 2015, 2016, 2017, and 2018 (the “Proposed Tariffs”).

[2] The Proposed Tariffs are currently under consideration in the *Online Audiovisual Services – Music (2007–2018)* proceeding.

[3] I am satisfied that the criteria in subsection 69.1(1) have been met, and I grant the application.

##### **II. ISSUES**

[4] Section 69 of the Act permits a collective management society (“collective society”) that has filed a proposed tariff to make an application that the proposed tariff be withdrawn, in whole or in part.

[5] The Board must grant such an application if it is satisfied that the conditions enumerated in paragraphs 69.1(1)(a)–(c) are met.

[6] However, paragraph 69.1(1)(c) does not apply in respect of this application, since it only applies in cases where the application is made with respect to a portion of the proposed effective period. Here, the CMRRA has applied to withdraw the Proposed Tariffs for their entire effective period.

[7] As such, I only need to consider the requirements in paragraphs 69.1(1)(a) and (b). Namely:

1. Has the CMRRA provided sufficient notice?
2. Have all persons who paid royalties been addressed?

### **III. HAS THE CMRRA PROVIDED SUFFICIENT NOTICE?**

[8] Paragraph 69.1(1)(a) requires that the Board be satisfied that the collective society has provided sufficient public notice of its intention to make the application.

[9] After having considered the following, I am satisfied that the CMRRA has provided sufficient notice:

1. According to the CMRRA, it posted its Notice of Intention to Withdraw Proposed Tariffs on its website <cmrra.ca> on December 3, 2021, in English, and on December 7, 2021, in French. At the request of the CMRRA, the Board posted the English and French versions of the Notice on December 8, 2021.
2. The CMRRA states that it has emailed all objectors, whether participating in the consideration of the Proposed Tariffs or not.
3. The CMRRA states that it has not received any comments or objections to the Notice.

[10] My decision also considers the Board's previous decisions on applications to withdraw a proposed tariff, which have held that the posting of a notice on a collective societies' and the Board's website is an adequate means of providing public notice. Furthermore, these decisions have held that doing so for 30 days or more, was a sufficient period of time.<sup>1</sup>

[11] The CMRRA filed its application to withdraw the Proposed Tariffs on January 11, 2022. This means that, on both its own website and that of the Board, a public notice was available for more than 30 days at the time the CMRRA made its application.

[12] I agree with the reasoning of the Board in *Artisti (2019)*, and find that, in this case, the means and duration of the notice was adequate.

---

<sup>1</sup> See *Artisti - Tariffs for Online Music Services and Phonograms, 2016-2021*, CB-CDA 2019-085 (withdrawal of proposed tariffs) [*Artisti (2019)*]; *Artisti - CBC Tariff, 2015-2020*, 2020 CB 002 (withdrawal of proposed tariffs).

#### **IV. HAVE ALL PERSONS WHO PAID ROYALTIES BEEN ADDRESSED?**

[13] Paragraph 69.1(1)(b) of the Act requires that the Board be satisfied that :

every person who, in respect of the proposed effective period, has paid royalties that would not be payable if the application were approved has:

- a. consented to the application;
- b. received a refund of the royalties; or
- c. entered into an agreement under subsection 67(3) that covers the act, repertoire or proposed effective period that is the subject of the application.

[14] Having considered the following, I conclude that the requirement under paragraph 69.1(1)(b) is not applicable.

[15] According to the CMRRA, it has received royalties that could fall within the scope of the Proposed Tariffs from only four users. For each of these users, the CMRRA has a direct licence agreement under which it has collected royalties. All royalties were paid after the execution of, and pursuant to, the terms of these licence agreements.

[16] I accept the CMRRA's statement as factual.

[17] The CMRRA submits that since the payments it has received would be payable whether or not the application to withdraw is granted, they are not payments contemplated in paragraph 69.1(1)(b).

[18] I agree with the reasoning of the CMRRA: royalties under an agreement are typically payable regardless of the status of a proposed tariff covering the same uses as that agreement. Even were the Board to eventually approve the Proposed Tariffs, the agreement would take precedence (s. 74).

[19] I therefore conclude that, in this case, there is no person that meets the description in paragraph 69.1(1)(b), and therefore this requirement does not apply.

#### **V. CONCLUSION**

[20] I am satisfied that the requirements in subsection 69.1(1) are met in this case. I therefore approve the application to withdraw the Proposed Tariffs. The Registry shall mark the Proposed Tariffs as withdrawn as of the date this decision is issued.

[21] As such, the Proposed Tariffs are no longer under consideration in the *Online Audiovisual Services – Music (2007–2018)* proceeding.