

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Citation *Copibec – Tariff for the Reproduction of Literary Works by Universities (2015-2019)*, 2022 CB 16

Member Nathalie Théberge

**Proposed
Tariff
Considered** COPIBEC University Tariff, 2015-2019

Application for Withdrawal of Proposed Tariff
REASONS FOR DECISION

I. OVERVIEW

[1] On May 16, 2022, pursuant to Section 69 of the *Copyright Act*¹ (the “Act”), Copibec filed an application to withdraw its proposed tariff for universities for the years 2015-2019 (hereafter the “proposed tariff”).

[2] Having examined Copibec’s application, I am of the view that the requirements set out in subsection 69.1(1) of the Act were met and, consequently, I grant Copibec’s application to withdraw the proposed tariff.

II. BACKGROUND

[3] On March 26, 2014, Copibec filed its proposed tariff. On June 28, 2014, the proposed tariff was published in the *Canada Gazette*.

[4] There were no objections to this proposed tariff.

[5] On February 5, 2022, Copibec informed the Board that it intended to file an application to withdraw its proposed tariff, in accordance with Section 69 of the Act. The application was filed on May 16, 2022.

¹ *Copyright Act*, RSC 1985, c C-42.

III. ISSUES

[6] Section 69 of the Act provides that a collective society may, before approval of its proposed tariff, make an application to the Board requesting that the proposed tariff be withdrawn, in whole or in part.

[7] If the Board is satisfied that the requirements set out in paragraphs 69.1(1)(a)-(c) have been met, it must approve the application.

[8] In the current matter, paragraph 69.1(1)(c) does not apply as it is related to cases where an application is made with respect to a portion of the proposed effective period. In this case, however, Copibec asks for the withdrawal of its proposed tariff for the entire application period.

[9] Consequently, only the requirements in paragraphs 69.1(1)(a) and (b) apply, namely:

- Did Copibec provide sufficient public notice of its intention to make the application to withdraw its proposed tariff?
- Have all persons who paid royalties that will not be payable if the application is approved consented to the application, received a refund, or entered into an agreement?

IV. ANALYSIS

A. DID COPIBEC PROVIDE SUFFICIENT PUBLIC NOTICE OF ITS INTENTION TO MAKE AN APPLICATION TO WITHDRAW ITS PROPOSED TARIFF?

[10] In my opinion, the steps taken by Copibec to indicate its intention to apply for the withdrawal constitute sufficient public notice pursuant to the Act.

[11] In its past decisions on applications to withdraw proposed tariffs, the Board concluded that posting a notice on a collective society's website as well as on the Board's website of the intention to withdraw a proposed tariff was an adequate means of providing public notice.²

[12] In these decisions, the Board also found that for a collective society to give notice of its intention to make an application to withdraw a proposed tariff 30 days prior to filing such application was a sufficient period of time.

[13] In my opinion, the approach taken in these decisions applies to this matter.

[14] A notice was published on Copibec's website, in English and French, on March 24, 2022.³ So far, it remains in place. The Board has done the same, on the following April 14. Furthermore,

² See *Artisti – Tariffs for Online Music Services and Phonograms 2016-2021* (11 December 2019), CB-CDA 2019-85; *Artisti – CBC Tariff 2015-2020* (26 June 2020), 2020 CB-CDA 002; *CMRRA Online Music Services Tariff (Music Videos) (2014-2018)* (2 March 2022) 2022 CB-CDA 1 [*CMRRA OMS (2014-2018)*]; *CSI – Online Music Services Tariff (2014-2018)* (25 March 2022), 2022 CB-CDA 3 [*CSI OMS (2014-2018)*].

³ Withdrawal notice of proposed tariff (24 March 2022), online: COPIBEC [Withdrawal notice of proposed tariff \(copibec.ca\)](https://www.copibec.ca).

the application to withdraw the proposed tariff was filed on May 16, 2022, which is more than 30 days after the publication of the notice on Copibec's and the Board's websites. I conclude that sufficient public notice was provided.

B. HAVE ALL PERSONS WHO PAID ROYALTIES THAT WILL NOT BE PAYABLE IF THE APPLICATION IS APPROVED CONSENTED TO THE APPLICATION, RECEIVED A REFUND, OR ENTERED INTO AN AGREEMENT?

[15] Pursuant to paragraph 69.1(1)(b) of the Act, the Board must 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

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

[16] For the above-mentioned reasons, I am of the view that the requirement set out in paragraph 69.1(1)(b) of the Act does not apply.

[17] Copibec asserts that it reached agreements with all universities in Quebec.⁴ It maintains that paragraph 69.1(1)(b) of the Act does not apply in this case since no academic institution paid royalties under the terms of the proposed tariff, but rather under these agreements.

[18] I accept Copibec's statement that no academic institution paid royalties under the terms of the proposed tariff, but rather by virtue of agreements concluded between Copibec and the academic institutions.

[19] I also accept Copibec's reasoning that paragraph 69.1(1)(b) of the Act does not apply. The academic institutions paid royalties to Copibec by virtue of agreements. These royalties are indeed payable, regardless of the status of the proposed tariff. Thus, the approval of the application to withdraw the proposed tariff would have no impact on the payable nature of the royalties. We are not here in the situation described at paragraph 69.1(1)(b) where, if the application were approved, the royalties would not be payable.⁵ This would also have been the case if the Board had approved Copibec's proposed tariff: since agreements prevail over tariffs, the tariff approval would have had no impact on the payable nature of the royalties.⁶

⁴ These agreements have not been filed.

⁵ See *CMRRA OMS (2014-2018)* and *CSI OMS (2014-2018)*, *supra* note 2, at paras 17-18 and 41 respectively.

⁶ Section 74 of the Act.

V. CONCLUSION

[20] Since the requirements related to Subsection 69.1(1) have been met, I approve the application to withdraw the proposed tariff. The proposed tariff will be marked as withdrawn as of the date this decision is issued.