Copyright Board Canada

Commission du droit d'auteur Canada

[CB-CDA 2018-071]

RULING OF THE BOARD – *Erratum*

Proceeding: Online Music Services / Services de musique en ligne [SOCAN: 2007-2018; Re:Sound: 2013-2018; CSI: 2014-2018; Artisti: 2016-2018]

Online Audiovisual Services – Music / Services audiovisuels en ligne – Musique [SOCAN: 2007-2018; CMRRA: 2014-2018; SODRAC: 2014-2018]

April 13, 2018 (revised on April 16, 2018)

I. INTRODUCTION

[1] Part VII of the *Copyright Act* (the "*Act"*) deals with the collective administration of copyright. However, the provisions address only minimally procedural aspects of the certification process. Looking at sections 70.13 to 70.15 could lead a person to believe that this process is a simple matter of a collective filing a proposed tariff, prospective users submitting objections, and the Copyright Board certifying the tariffs as approved, with such alterations as the Board considers necessary.

[2] The reality is significantly more complex. Situations that are not contemplated in the *Act* routinely occur. Resolution of these issues sometimes requires balancing not only the interests of those who appear before the Board, but also of those that do not, but are nevertheless affected thereby.

[3] This is the case in the present matters where questions have arisen as to whether a collective society, after having filed a proposed tariff, may withdraw it; and, if so, under what circumstances. If so, what are the effects of such a withdrawal? If not, how should the Board treat such situations?

[4] In these proceedings, CMRRA seeks to withdraw its proposed Tariff 4 for the year 2018, and its proposed Tariff 7 for the years 2016, 2017, and 2018. CSI seeks to withdraw its proposed Online Music Tariff for the year 2018. They submit that they are entitled to withdraw their proposed tariffs unilaterally, but, if not, that the Board should grant them leave to do so.

[5] For the reasons that follow, we do not accept these submissions. We conclude, first, that a party may not unilaterally withdraw a proposed tariff under the scheme provided for in the *Act*, and secondly, that it is not appropriate in the circumstances of this case to permit CMRRA and CSI to do so. We do not find it necessary in this ruling to determine definitively whether the

Board does or does not have the power to permit the withdrawal of, and not proceed to consider, a proposed tariff because, even if the Board is empowered to grant leave to withdraw in appropriate circumstances, we would not do so here.

[6] The Board will therefore continue to consider CMRRA Tariff 4 for the year 2018 and CSI Online Music Tariff for the year 2018. The Board will also continue to consider CMRRA Tariff 7 for the years 2016, 2017, and 2018, unless all objectors thereto that have not yet done so confirm non-objection to its withdrawal. In such a case, the Board would suspend consideration of the proposed tariff *sine die*.

II. BACKGROUND

Filing of Proposed Tariffs

[7] On March 31, 2015, the Canadian Musical Reproduction Rights Agency (CMRRA) filed a proposed tariff of royalties for the year 2016, for the reproduction of musical works embodied in audiovisual content by a service that delivers audiovisual content to end users as streams, downloads, or both, by any means of telecommunication (CMRRA Tariff 7). It did so again on March 31, 2016, for the year 2017, and on March 31, 2017, for the year 2018. It had not previously filed such a tariff for years prior to 2016.

[8] On March 31, 2017, CMRRA filed a proposed tariff of royalties for the year 2018, for the reproduction of musical works embodied in a music video for the purposes of transmitting the work in a file to end users in Canada via the Internet by a service that delivers on-demand streams, limited downloads, and/or permanent downloads to end users (CMRRA Tariff 4). It had previously filed such a tariff for 2014, 2015, 2016, and 2017.

[9] On March 31, 2017, CMRRA-SODRAC Inc. (CSI) filed a proposed tariff of royalties for the year 2018, for the reproduction of musical works for the purpose of transmitting it in a file to end users in Canada via the Internet by a service that delivers on-demand streams, limited downloads, permanent downloads and/or webcasts to end users, including a music cloud service (CSI Online Music Tariff). It had previously filed such a tariff for 2014, 2015, 2016, and 2017.

[10] Various prospective users filed timely objections in relation to each of the above proposed tariffs (the "Objectors").

[11] Neither CMRRA, CSI (the "Collectives"), nor any of the Objectors sought to commence proceedings in relation to any of the proposed tariffs above.

Commencement of Proceedings and Claims of Withdrawal

[12] On October 6, 2017, in Notice 2017-105, the Board informed parties that it intended to commence proceedings to consider certain proposed tariffs that apply to the use of music by online music services. These proposed tariffs included CMRRA Tariff 4 for the years 2014-2018, and CSI Online Music Tariff for the years 2014-2018.

[13] On the same date, in Notice 2017-106, the Board informed parties that it intended to commence proceedings to consider certain proposed tariffs that apply to the use of music by

online audiovisual services. These proposed tariffs included CMRRA Tariff 7 for the years 2016-2018. Any party wishing to comment on either of these two notices could do so by October 13, 2017.

[14] No party, including the Collectives, sought to exclude CMRRA Tariff 4, CSI Online Music Tariff, nor CMRRA Tariff 7 from consideration in these proceedings.

[15] On October 27, 2017, CMRRA wrote to the Board stating that it withdraws its proposed Tariff 7 for the years 2016, 2017, and 2018. On the same day, CSI wrote to the Board stating that it withdraws its proposed Online Music Tariff for the year 2018. Finally, on October 31, 2017, CMRRA wrote to the Board stating that it withdraws its proposed Tariff 4 for the year 2018.

[16] For clarity, it is understood that neither CMRRA nor CSI are merely claiming the right to cease participating in these proceedings; rather, they are claiming that the proposed tariffs in relation to which withdrawal has been claimed can no longer be considered by the Board—in effect, the proposed tariffs are no longer proposed tariffs.

Questions From the Board

[17] On November 7, 2017, in Notice 2017-138, the Board expressed its preliminary view that if no user or prospective user of a proposed tariff that has been purported to have been withdrawn raised any objections to the withdrawal, that tariff would effectively become abandoned. In such a case, the Board would suspend consideration of that tariff *sine die*. Any party, user, or prospective user of any of the purportedly withdrawn proposed tariffs could comment. The Board asked that such comments address:

- The legal effect of the letters purporting to withdraw the proposed tariffs;

- The Board's jurisdiction to grant a request for a withdrawal;

- The legal status of past acts that would have been covered by the proposed tariffs;

- Whether the Collectives have issued any licences, or reached any agreements, that apply to any of the activities and periods covered by the proposed tariffs; and

- Steps that may be taken, by the Collectives, by the Board, or by others, to ensure that users and prospective users do not suffer prejudice as a result of the purported withdrawals (*e.g.*, a zero-rated tariff; a notice of proposed withdrawal and its effect to be published in the *Canada Gazette* and/or by correspondence to all previous licensees of these tariffs or similar tariffs; suspension of consideration of the proposed tariffs *sine die*).

[18] The Collectives made submissions on these issues. They submit that the *Act* does not prohibit the unilateral withdrawal of a proposed tariff. In the alternative, they submit that the Board should permit the proposed tariffs to be withdrawn. Finally, if the Board concludes that it cannot or should not permit the withdrawal of the proposed tariffs, they request that the consideration of the proposed tariffs be suspended *sine die*.

[19] The Collectives submit that they would suffer prejudice if they had to make retroactive royalty adjustments or through expending significant resources in participating in the consideration of these tariffs.

[20] The following objectors made submissions: Bell Canada, Canadian Broadcasting Corporation, Google, Rogers Communications, Quebecor Media, Shaw Communications, Canadian Cable Systems Alliance, Cogeco, Entertainment Software Association of Canada, TELUS Communications Inc., Canadian Association of Broadcasters, Netflix, and Stingray (the "Replying Objectors").

[21] They argue that there is nothing in the legislation that would allow a collective society to withdraw a proposed tariff or that would give the Board the discretion not to consider a proposed tariff. They also argue that a prospective user is entitled to rely on the presence or absence of a filed proposed tariff in making decisions about its activities in the coming year; and, where applicable, users would suffer prejudice as the withdrawal of these tariffs may deprive them of their right to continue an activity pursuant to s. 70.18 of the *Act*.

[22] As such, the Replying Objectors submit that CMRRA Tariff 4 and CSI Online Music Tariff may not and should not be withdrawn, and that both of these tariffs should be considered by the Board. They do not oppose the withdrawal of CMRRA Tariff 7, but state that in the event that the Board concludes that the tariff cannot be withdrawn, the proposed tariff's consideration should be suspended *sine die,* subject to the right of a user to ask the Board to certify the tariff in the event that CMRRA or any of its members seeks to enforce the rights subject to that tariff for retroactive periods.

III. CAN A PROPOSED TARIFF BE UNILATERALLY WITHDRAWN?

[23] The Collectives submit that they are entitled to withdraw their tariffs unilaterally, if they determine that it is in their best interests to do so. In support of that submission, they argue:

> (a) that the Board's past practice has recognized unilateral withdrawal of proposed tariffs;
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> (b) that once a tariff has been withdrawn, it ceases to be a "proposed tariff" and therefore ceases to be governed by the relevant provisions of the *Act*; and, in any event,
>
> (c) that the unilateral withdrawal of a proposed tariff by a collective is consistent with the collective administration scheme provided for by the *Act*.

[24] We do not accept these submissions.

[25] We first consider the Board's past practice, and then the provisions of the *Act* itself.

The Board's Past Practice

[26] The Collectives state that in the past, the Board has treated previous unilateral declarations of withdrawal as sufficient to withdraw a proposed tariff. They point to the fact that in several previous instances, after receipt of a claimed withdrawal, the Board did not comment or inquire further into the issue and indicated on its website that a proposed tariff has been "withdrawn."

[27] However, the fact that a proposed tariff has been marked as "withdrawn" on the Board's website cannot be determinative of its actual legal status. (See e.g., *Blair v. Canada (Attorney General)*, 2014 FC 861)

[28] The Replying Objectors submit that not only are the Board's previous decisions not binding, but that

> the Board should only treat as persuasive its own prior decision where there is an indication that the prior decision-maker actively turned its mind to the issue and the resolution is not simply inferred from the outcome. In the example cited by the Collectives, it is not clear that the Board actively considered whether or not it had the authority to grant the request to withdraw the tariff since it does not appear as if reasons for the decision were ever issued.

[29] the Board should only treat as persuasive its own prior decision where there is an indication that the prior decision-maker actively turned its mind to the issue and the resolution is not simply inferred from the outcome. In the example cited by the Collectives, it is not clear that the Board actively considered whether or not it had the authority to grant the request to withdraw the tariff since it does not appear as if reasons for the decision were ever issued.

The Provisions of the Act Dealing with the Requirements to Consider and Certify

[30] The Collectives argue that the Board's obligations under the *Act* with respect to the publication (s. 67.1(5)) and consideration (s. 68(1)) of a proposed tariff, along with its eventual alteration and certification (s. 70.15), only exist in relation to a "proposed" tariff, and that a proposed tariff that is subsequently withdrawn is no longer a proposed tariff. The mandatory requirement to "consider" etc. would no longer apply, therefore, to such a withdrawn tariff.

[31] It is true that there is nothing in the *Act* that explicitly prohibits a tariff from being withdrawn. Conceivably then, a proposed tariff may cease to be "proposed" once withdrawn, thus removing the above obligations from the Board. However, there is also nothing in the *Act* that explicitly permits or even appears to contemplate the ability of a collective to unilaterally withdraw a tariff that has been proposed.

[32] Given that this issue is not explicitly addressed in the *Act*, we consider whether the legislative provisions that establish the tariff-setting scheme can be interpreted as permitting unilateral withdrawal. These provisions are to be interpreted in accordance with their text, context and purpose. (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27)

[33] The tariff-setting scheme stands in contrast, for example, to the scheme envisaged for applications under section 70.2, which contains provisions to the effect that, under certain conditions, the parties to a proceeding may cause the Board to no longer proceed with a matter. The presence of such a provision in section 70.2, compared to its absence in the tariff-setting schemes, is one indication that the latter schemes do not permit the parties to unilaterally cause the Board, to no longer be seized of an issue.

[34] The Collectives also submit that the fact that under the "general regime" set forth in section 70.13 of the *Act* a tariff need not be filed tends to suggest that a collective administering

collectively rights governed by that regime may also withdraw a proposed tariff that has been previously filed.

[35] However, the obligatory language, along with the absence of an explicit mechanism to withdraw a proposed tariff from the Board's consideration, is a feature of both the "mandatory" regime of sections 67-68 and the "general regime" of sections 70.1-70.191.

Inconsistency of Unilateral Withdrawal with the Purpose of Collective Administration Provisions

[36] The Replying Objectors raise the issue of the reasonable expectations that users may have in relation to the filing of a proposed tariff, including, where applicable, the continuation of rights provided for in section 70.18 of the *Act*.

[37] The Collectives respond that where a tariff is of first impression, and s. 70.18 of the *Act* would not be applicable, the proposed tariffs do not authorize any acts until they are certified.

[38] In this assertion, the Collectives are technically correct. However, it is important to note that an eventually-certified tariff would retroactively authorize the previously infringing uses covered by such tariff, and no legal proceedings, at least after that point, could be brought against a user who has paid or offered to pay the royalties specified in that tariff (s. 70.17). We think it unlikely that Parliament intended to expose such a user to potential liability by permitting the unilateral withdrawal of the proposed tariff.

[39] In this regard, the Collectives also raise the fact that the Board has, on previous instances, refused to certify certain proposed tariffs. They submit this demonstrates that there can be no real reliance on the existence of a proposed tariff.

[40] In our view, however, the Board's non-certification of a proposed tariff is more indicative of the limits of the Board's jurisdiction than anything else. The Board has refused to certify a tariff where the Board concluded it was unable to carry-out its duty to certify a fair and equitable tariff. This situation may arise, for example, where the legal basis on which the tariff is sought is no longer valid. While there is always some risk that a proposed tariff may not be certified, it is unlikely that the legislative intent would have been to permit a party to unilaterally cause that risk to materialize.

Conclusion on Unilateral Withdrawal

[41] Nothing in the *Act* deals expressly with the unilateral withdrawal of a proposed tariff by a collective. We find nothing that would permit such a withdrawal implicitly, either.

[42] In interpreting legislation, one can assess the likely effects or results of rival interpretations to see which accords most harmoniously with text, context and purpose. (*Schmidt v. Canada (Attorney General),* 2018 FCA 55)

[43] In our view, it would not be consistent with the purpose and intent of the *Act*, or of its provisions dealing with the collective administration of copyright overall, to interpret those provisions dealing with the consideration and certification of proposed tariffs in a way that

would permit unilateral withdrawal of a proposed tariff. Collectives are concerned only with their own interests, and those of the owners of copyright they represent. Parliament cannot have intended to leave it purely to the discretion of a proposing collective to decide if and when the Board will no longer have jurisdiction to consider a proposed tariff, without any regard to the amount and likelihood of potential prejudice to users and potential users that may flow from such a withdrawal.

[44] Whether the Board's position as a regulatory body puts it in a different position, and whether the *Act* permits it to grant leave to withdraw a proposed tariff in appropriate circumstances, as we have said, is a matter to be determined on another occasion, should it arise. We need not make that determination here because, even if we have such jurisdiction, we would not exercise it in these circumstances. We turn to that issue now.

IV. SHOULD THE BOARD PERMIT WITHDRAWAL OF THE PROPOSED TARIFFS?

[45] The Collectives submit that they will suffer prejudice if the proposed tariffs are not withdrawn. We first address this argument.

Retroactive Royalty Adjustments

[46] The Collectives submit that the certification of the CSI Online Music Tariff would be particularly prejudicial, because the fact that the previous tariff is under judicial review, along with the applicability of s. 70.18 to that previous tariff, could result in retroactive royalty adjustments—perhaps twice.

[47] The potential that a judicial review may alter royalties does not appear to be a good reason to permit the withdrawal of a proposed tariff. This is not an unusual situation: every decision of the Board may be subject to an application for judicial review. Successful applications may result in royalty adjustments. Indeed, such a change can occur even outside the context of a judicial review, since the Board has the power, on application, to vary a previous decision respecting royalties under s. 66.52 of the *Act*.

[48] Furthermore, this argument is more closely linked to *when* the Board proceeds with consideration of the proposed tariff, not *whether*. As such, this is not a reason for the Board not to proceed with the consideration of the CSI Online Music Tariff.

Cost Considerations

[49] The Collectives submit that hearing the proposed tariffs will represent a costly exercise for the parties and the Board alike, while serving little to no practical purpose, given that they have entered into direct licensing agreements with major services covered by the tariffs.

[50] We agree with the Collectives that it may be inefficient for the Board to consider a proposed tariff in a case where all users or prospective users have reached an agreement in relation to all acts covered by the proposed tariff. However, this is not the situation for any of the proposed tariffs for which withdrawal is sought.

[51] We first consider CMRRA Tariff 4 (2018) and CSI Online Music Tariff (2018). Given the particular characteristics of proposed CMRRA Tariff 7, and the agreement that has been reached by CMRRA with some users, we consider that tariff subsequently, separately.

[52] We note at the outset, that efficient use of resources is only one consideration. Even where efficiency may weigh in favour of the Board not proceeding with the consideration of a proposed tariff, there may be other factors, such as public interest concerns, leading the Board to conclude that it is nevertheless appropriate to proceed with a proposed tariff.

CMRRA Tariff 4 and CSI Online Music Tariff

[53] In relation to CMRRA Tariff 4 (2018), CMRRA submits that it has entered into two direct licences with online music services, which, to the best of its knowledge, cover the only services engaging in the activities to which CMRRA Tariff 4 (2018) applies.

[54] However, on its face, the wording of proposed CMRRA Tariff 4 authorizes a service that delivers on-demand streams, limited downloads, and/or permanent downloads to end users—without limit—to reproduce a musical work in a music video, for the purposes of transmittal via Internet. This wording is very broad, and appears to apply to any person who provides downloads or streams of music videos. Indeed, objectors to CMRRA Tariff 4 (2018) oppose its withdrawal, and submit that it should remain under consideration by the Board in the present proceeding and be certified with the tariff for the other years in the period under examination.

[55] Similarly, in relation to CSI Online Music Tariff (2018), CSI submits that it has entered into direct licensing agreements with online music services in relation to the uses covered by the proposed tariff. It believes that these services represent all of the major online music services that are currently operating in Canada.

[56] Again, this is not a case where all users have reached an agreement. Objectors to this tariff also oppose its withdrawal, and submit that it should remain under consideration by the Board in the present proceeding and be certified with the tariff for the other years in the period under examination.

[57] In our view, therefore, the Board's consideration of these proposed tariffs, with a view to their certification, *will* serve a practical purpose: establishing the royalties to be paid by all objecting and non-objecting users who have not entered into a direct-licensing agreement. Furthermore, the Board is already seized of CMRRA Tariff 4 for the years 2014-2017 and CSI Online Music Tariff for the years 2014-2017. Any additional costs to the Board and the parties taken on as a result of the Board considering these tariffs for the year 2018 will be quite small.

[58] On the other hand, it appears to us that the potential prejudice (when considering both the magnitude and likelihood of materialization) to users, both objecting and non-objecting, is greater than any relatively small increase in costs related to the consideration of an additional year during these proceedings.

[59] Given the very broad application of these two proposed tariffs, they may apply to an indeterminate number of persons. Not only are there objectors who have not entered into an agreement, there are likely a significant number of non-objecting users who have not done so

either. Users who did not object to the proposed tariff may be said to have nominally acquiesced to the tariff as proposed; or at least can reasonably expect the Board not to certify a tariff with higher royalty rates.

[60] Withdrawal of the proposed tariffs without advance notice to such persons could be unfair. Making changes to business practices, or even entire business lines, cannot be done overnight. Even if users or potential users received some advance notice of withdrawal, this period would likely have to be in-line with the notice notionally contemplated by the statutory deadlines for filing of proposed tariffs in the *Act.*

[61] In this matter, even if potential users had been given notice of withdrawal the very same date as the purported withdrawals, this would have left those potential users with just over two months' notice for CSI Online Music Tariff (2018) and CMRRA Tariff 4 (2018). The reality is that many, if not most, non-objecting users have not received any notice of the withdrawal of those tariffs. And it would not have been possible to provide such users with more than 2 months' notice without entering into the period covered by the proposed tariffs for which withdrawal is sought.

[62] The Collectives state that they are willing to negotiate in order to license such uses. However, the fact that users would suddenly find themselves in a position where acts covered by the now-withdrawn proposed tariffs may potentially constitute infringement, without even an expectation that a tariff would eventually be certified to retroactively authorize those acts, could significantly affect the relative bargaining powers of those users.

[63] We therefore conclude that the prejudice to users and potential users following the withdrawals outweighs the prejudice to the Collectives stemming from the Board's consideration, and it is not appropriate for the Board to permit the withdrawal of CSI Online Music Tariff (2018) and CMRRA Tariff 4 (2018). Conversely, we conclude it is appropriate for the Board to continue to consider these two proposed tariffs in the present proceedings.

CMRRA Tariff 7

[64] Concerns regarding potential unfairness are heightened where the proposed tariffs to be withdrawn are in relation to a past period, where the acts covered thereby have already occurred. This is the case for CMRRA Tariff 7. It is no longer possible for users to adjust to the fact that they will no longer benefit from those tariffs as eventually certified. The prejudice to such users is potentially significant.

[65] The *Act* gives prospective users advance notice of proposed tariffs so that they will have the opportunity to make business decisions such as which, if any, activities covered by the proposed tariff to undertake, which investments to make, what monetary reserves to put aside, etc. These decisions may not be easy to unravel where the proposed tariff is simply withdrawn. Moreover, users who relied on a proposed tariff and carried out acts covered by that tariff may, if the tariff is withdrawn, find themselves in the problematic situation of having carried out acts that may constitute infringement of copyright and face substantial exposure under the statutory damages regime of the *Act*.

[66] Even if such a user is not pursued for infringement, the risk of such litigation would place them in a very uneven bargaining situation.

[67] In relation to CMRRA Tariff 7, the Collectives state that they have reached an agreement with certain users. According to this agreement, CMRRA and the music publishers that it represents in relation to the uses covered by Tariff 7 agree not to enforce their rights against services that engage in Tariff 7 uses during the term of that proposed tariff.

[68] While the Board views this outcome as a constructive approach to address the issue of users or potential users who have not signed an agreement in relation to those uses covered by CMRRA Tariff 7, it is unclear to what extent this agreement is enforceable by a person not party thereto. In any case, it would not be within the power of the Board to enforce such a term.

[69] We therefore conclude that, given the significant potential prejudice to users and potential users of the proposed CMRRA Tariff 7, it is not appropriate to permit its withdrawal. However, given the agreement, we do think it appropriate to consider what, if any, procedural remedy should be granted in lieu of the withdrawal of the proposed tariff.

Suspension Sine Die

[70] In Notice 2017-138, the Board expressed the preliminary view that if no person who is a user or prospective user of a proposed tariff for which withdrawal is sought raised any objections to the fact that the Board would no longer consider that proposed tariff, the Board would suspend consideration of that tariff *sine die*. This would avoid disrupting the application of provisions of the *Act* that refer to situations where a collective has filed a proposed tariff and would permit a non-objecting user that relied in good-faith on a particular proposed tariff to ask the Board to certify that proposed tariff.

[71] While the Board sought input from parties on other alternatives to withdrawal, both Replying Objectors and Collectives responded that in the case that the Board does not accept the withdrawal of the proposed tariffs, suspension *sine die* would be acceptable.

[72] As described above, an agreement among CMRRA, the music publishers that it represents in relation to the uses covered by Tariff 7, and some of the users of Tariff 7, would provide that CMRRA and the publishers would agree not to enforce their rights during the term of the proposed tariff.

[73] For CMRRA Tariff 7, the following objectors currently remain: Apple Canada Inc. and Apple Inc.; Bell Canada; Canadian Association of Broadcasters; Canadian Broadcasting Corporation; Motion Picture Association – Canada; Netflix, Inc.; Rogers Communications Partnership; Shaw Communications Inc.; Stingray Digital Group Inc.; TELUS Communications Inc.; and Videotron G.P.

[74] Some of these objectors do not oppose CMRRA's request to withdraw the proposed tariff, and agree that if the Board concludes that the tariff cannot be withdrawn, that it should be suspended *sine die*. However, Apple Canada Inc. and Apple Inc. remain as objectors, and have not indicated their agreement with the suspension of the consideration of CMRRA Tariff 7.

[75] The Board is ready to suspend indefinitely the consideration of CMRRA Tariff 7, provided that these objectors formally indicate agreement with indefinite suspension of the consideration of this tariff.

V. RULING

[76] Given the above, we rule as follows:

1. The Board will continue to consider the proposed CSI Online Music Tariff for the year 2018.

2. The Board will continue to consider the proposed CMRRA Tariff 4 for the year 2018.

3. The Board will continue to consider the proposed CMRRA Tariff 7, unless it receives confirmation from Apple Canada Inc. and Apple Inc. by no later than **Friday, April 20, 2018**, of their intention to either withdraw or of their consent to indefinitely suspend consideration of this tariff. In the unlikely event that a rights holder would seek to enforce their rights in relation to an act that would have been covered by the proposed tariff, an affected user that relied in good-faith on the proposed tariff could request the Board to terminate the suspension, and proceed with the proposed tariff's consideration and certification.

Giles McDougall
Secretary General