



CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.
AGENCE CANADIENNE DES DROITS DE REPRODUCTION MUSICAUX LTÉE

CAROLINE RIOUX

PRESIDENT

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November 13, 2017

IMPORTANT!

**This letter contains important information
and a deadline related to CMRRA's distribution
of PRIVATE COPYING royalties.**

YOUR RESPONSE IS REQUIRED BY December 1, 2017.

Dear CMRRA Client,

**Re: December 2017 Private Copying Levy Distribution
for the 1999-2004, 2005-2007 and 2008-2009 Periods**

This coming December, CMRRA will undertake a pro rata distribution related to unclaimed private copying levies collected for the 1999-2004, 2005-2007, and 2008-2009 periods. For the reasons explained below, CMRRA will only remit your share of this pro rata distribution to you if you sign and return the enclosed Canadian Private Copying Repayment Undertaking Agreement by **December 1, 2017**.

Regulations established by the Copyright Board of Canada set out the timeframe for the submission of claims by unrepresented eligible music rights holders to the levies collected by the Canadian Private Copying Collective ("CPCC"). The claims submission deadlines for authors and publishers were as follows:

Period	Claim Submission Deadline
1999-2004	February 28, 2014
2005-2007	December 31, 2014
2008-2009	December 31, 2016

As a member collective of CPCC and your representative for the collection of private copying levies, CMRRA has claimed and collected from CPCC the levies related to the songs in your catalogue and distributed those levies to you in accordance with our established distribution schedule and processes. However, despite their best efforts, CPCC and its member collectives were unable to distribute a small portion of the levies collected for these periods as of the applicable deadlines. CPCC has now paid these undistributed levies (the "Close-Out Levies") to its member collectives for subsequent distribution to rights holders.

This coming December, CMRRA will proceed with its third distribution of Close-Out Levies to its clients. This distribution will, as with the previous ones, be performed on a pro rata basis, in proportion to the levy payments that those rights holders have initially received for each of the applicable periods. This third distribution will serve to release any remaining amounts related to the 1999-2004 and 2005-2007



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periods, as well as the total amount available for the more recent 2008-2009 period. For background context, on July 10, 2012 a proposed class action was commenced against CPCC and its member collectives in respect of undistributed private copying levies. CMRRA strongly disagrees with the allegations made against CPCC and its member collectives and will continue to defend itself accordingly.

While we are confident that this proposed class action has no merit, there is always an inherent risk in any legal proceeding. CMRRA's previous Board of Directors, therefore, decided to distribute the Close-Out Levies only on the condition that each music publisher who is entitled to receive a share of that amount provide a signed undertaking to repay the sum in question to CMRRA should a future disposition of the class action require that all or part of that amount be distributed or paid in a different manner, and to indemnify CMRRA fully for any liability it may sustain as a result of such distribution. The undertaking applies to all Close-Out Levies paid to the music publisher, including any amounts associated with musical works no longer owned or administered by the music publisher at the time the repayment may be required.

Accordingly, we ask that you provide us with your instructions by completing and signing the enclosed Instruction Form and, if applicable, the Canadian Private Copying Repayment Undertaking Agreement. You may also choose to have CMRRA hold your pro rata share of the Close-Out Levies until the proposed class action has been disposed of.

Please be advised that as per CMRRA's standard distribution policies, if the amount payable to you is less than \$15.00 CAD (excluding any fees or currency conversion), then you may not receive payment of any Close-Out Levies as part of this distribution even if you sign the attached **Canadian Private Copying Repayment Undertaking Agreement**. However, it's important to note that we have regular processes set up to re-evaluate, for each payee, any amounts that fall below the payment threshold, in order to calculate if the total of all unpaid royalties accumulates to more than \$15.00 CAD in future quarters, so that those royalties can then be paid. Having your signed Repayment Undertaking Agreement in place will ensure that any amounts that may be withheld from distribution due to this \$15.00 payment threshold will be included in this ongoing re-evaluation process.

CMRRA previously circulated a **Canadian Private Copying Repayment Undertaking Agreement** for an initial distribution of a portion of the Close-Out Levies for the 1999-2004 and 2005-2007 periods. If you signed the previous Repayment Undertaking Agreement and received royalties from CMRRA pursuant to that document, then please be advised that this new Repayment Undertaking Agreement will subsume and replace the original agreement. The attached Canadian Private Copying Repayment Undertaking Agreement will apply for all distributions by CMRRA of unclaimed private copying levies collected for the 1999-2004, 2005-2007, and 2008-2009 periods.

Please note that we must receive your signed Canadian Private Copying Repayment Undertaking Agreement (either by email at membershipservices@cmrra.ca or by regular mail) by December 1, 2017, in order for CMRRA to process your share of the Close-Out Levies as part of our upcoming **December 2017 distribution. Should the signed Canadian Private Copying Repayment Undertaking Agreement be returned to CMRRA after that date, we will process your payment as part of our next distribution, which will take place in 2018.**



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I thank you for your attention to this important matter. Should you have any questions, please do not hesitate to contact us at membershipservices@cmrra.ca. To expedite your inquiry, please use the subject line “Private Copying RUA Instructions” in your email. Telephone inquiries can be directed to **Marianne Anderson**, Manager of Client Relations, at 416-926-1966 ext. 261.

Yours truly,

A handwritten signature in black ink, appearing to read 'M. Anderson', is placed below the text 'Yours truly,'.



CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.
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INSTRUCTION FORM
Private Copying Levy Distribution
for the 1999-2004, 2005-2007, and 2008-2009 Periods

Please complete one Instruction Form for each client or payee account you have registered with CMRRA, in order for us to ensure royalties are released in accordance with the payment instructions you have previously provided to us. Completed forms may be sent to CMRRA either by email at membershipservices@cmrra.ca or by regular mail.

You can identify payment accounts as those which you have instructed us as requiring their own cheque or direct deposit payment. If you are unsure how to identify the payment accounts you have registered with CMRRA, please contact us.

Publisher Name:	
CMRRA Account Number (if known):	
Name of Authorized Signatory:	
Email Address:	

I have read and I understand the Canadian Private Copying Repayment Undertaking Agreement and instruct CMRRA as follows (please select one only):

- ☐ I am not signing the Canadian Private Copying Repayment Undertaking Agreement. Please do not remit to me my pro rata share of the Close-Out Levies at this time. I instruct CMRRA to refrain from distributing these levies until such time as the proposed class action, *Pouyat v. Canadian Private Copying Levy et al.*, Court file No. CV-12-458469CP, has been disposed of or until I provide revised instructions in this regard.
- ☐ I enclose a signed copy of the Canadian Private Copying Repayment Undertaking Agreement. Please do remit to me my pro rata share of the Close-Out Levies as approved by CMRRA's Board of Directors.

DATE: _____

SIGNATURE: _____

CANADIAN PRIVATE COPYING REPAYMENT UNDERTAKING AGREEMENT

This Repayment Undertaking Agreement (the “**Agreement**”) dated as of November 13, 2017, between

[Please indicate the name / entity you used to affiliate with CMRRA]

(“**Publisher**”)

- and -

Canadian Musical Reproduction Rights Agency Ltd,
a corporation formed under the laws of Canada

(“**CMRRA**”).

WHEREAS the Canadian Private Copying Collective (“**CPCC**”), the designated collecting body for the private copying levy under Part VIII of the *Copyright Act*, has collected private copying levies for the periods 1999-2004, 2005-2007, and 2008-2009 (the “**1999-2004 Author Levies**” and the “**2005-2007 Author Levies**” and the “**2008-2009 Author Levies**”, respectively, and collectively the “**Author Levies**”) on behalf of eligible authors entitled to payment of those levies;

AND WHEREAS CMRRA is a music licensing agency that represents Publisher and others in respect of possible claims by them, as or on behalf of eligible authors of musical works, to payment of private copying levies collected by CPCC, including the Author Levies;

AND WHEREAS SOR/2013-143, *Regulations Establishing the Periods Within Which Eligible Authors, Eligible Performers and Eligible Makers not Represented by Collective Societies Can Claim Private Copying Remuneration* (the “**Regulation**”), established a deadline of December 31, 2013 for unrepresented eligible authors to exercise their entitlement to payment of the 1999-2004 Author Levies, a deadline of December 31, 2014 for unrepresented eligible authors to exercise their entitlement to payment of the 2005-2007 Author Levies, and a deadline of December 31, 2016 for unrepresented eligible authors to exercise their entitlement to payment of the 2008-2009 Author Levies (collectively the “**Claims Deadlines**”);

AND WHEREAS, despite the efforts of CPCC and its member collectives, including CMRRA, to identify and process claims to the Author Levies on behalf of eligible authors, a portion of each of the 1999-2004 Author Levies, the 2005-2007 Author Levies, and the 2008-2009 Author Levies remained undistributed as of each of the respective Claims Deadlines;

AND WHEREAS a proposed class action, *Pouyat v. Canadian Private Copying Collective et al.*, Court File No. CV-12-458469CP, has been commenced in the Ontario Superior Court of Justice in respect of undistributed private copying levies, including the undistributed Author Levies (the “**Class Action**”);

AND WHEREAS CPCC has paid to CMRRA a portion of the undistributed Author Levies (the “**Close-Out Levies**”);

AND WHEREAS CMRRA has determined to distribute a portion of the Close-Out Levies to its music publisher clients, including Publisher, on a pro rata basis according to the private copying levy payments that they have previously received for each of the 1999-2004, 2005-2007, and 2008-2009 periods (the “**Pro Rata Payment**”), subject to the undertaking of each of those publishers to repay to CMRRA (or

otherwise as it may direct) the amounts so paid, upon CMRRA's request, should a future disposition of the Class Action (the "**Class Action Disposition**") require that all or part of the Close-Out Levies be distributed or paid in a different manner, and to indemnify CMRRA fully for any liability it may sustain as a result of the Pro Rata Payment;

AND WHEREAS certain publishers had entered into a repayment undertaking agreement with CMRRA with an effective date of January 13, 2016, pursuant to similar terms to those set out in this Agreement and for a prior distribution of portions of each of the 1994-2004 Author Levies and the 2005-2007 Author Levies (the "**Prior RUA**");

AND WHEREAS the undertakings so required are without prejudice to the position of CMRRA with respect to the validity of the Pro Rata Payment;

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

ARTICLE 1 – REPAYMENT

- 1.1 **Repayment.** Publisher hereby agrees and undertakes, should the Class Action Disposition so require, to repay CMRRA, upon CMRRA's request, any Close-Out Levies distributed by CMRRA to Publisher, plus any applicable interest as may be required by the Class Action Disposition, and a \$25.00 processing fee (the "**Repayment**"). For greater certainty, the Repayment shall include any and all Close-Out Levies distributed to Publisher, whether or not any or all of such Close-Out Levies are associated with musical works that are owned or administered by Publisher at the time Publisher is required to render the Repayment to CMRRA.
- 1.2 **Delay.** Publisher shall effect the Repayment within thirty (30) days of the receipt of a written notice by CMRRA indicating the amount owed to CMRRA pursuant to the terms hereof, and such notice shall be deemed evidence of the amount actually owed by Publisher, absent manifest error. All payments in arrears shall bear interest at the Interest Rate from the date on which the same became due until the date of payment. "**Interest Rate**" means a rate equal to five (5%) per cent per annum in excess of the prime lending rate of a Canadian Bank designated by CMRRA, now more commonly known as that bank's "prime rate".
- 1.3 **Right of Set-Off.** CMRRA will be entitled to satisfy any amount from time to time owing by it to the Publisher, including royalties payable to Publisher from sources other than private copying levies, by way of set-off against any amount from time to time owing by the Publisher to CMRRA, including any amounts owing to CMRRA pursuant to the obligations of Publisher hereunder.

ARTICLE 2 – INDEMNITY

- 2.1 **Indemnity.** Publisher hereby irrevocably and unconditionally agrees to indemnify CMRRA from time to time, upon request by CMRRA, from and against any loss whatsoever, whether direct or indirect, including expenses, costs, damages, judgments, penalties, fines, charges, claims, demands, liabilities and any and all reasonable legal and other professional fees and disbursements related thereto, incurred by CMRRA as a result of: (i) the Pro-Rata Payment or the distribution of any portion thereof to Publisher; (ii) any breach or alleged breach by the Publisher of its obligations under or pursuant to this Agreement; (iii) any of the obligations of Publisher under or pursuant to this Agreement being or becoming void, voidable, unenforceable or ineffective, or (iv) any legal proceedings (whether successful or unsuccessful) arising out of a claim, demand or allegation in respect of any of the foregoing or the enforcement of this Agreement.

ARTICLE 3 – OTHER PROVISIONS

- 3.1 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any previous discussions, undertakings, or agreements in relation to its subject matter. For greater certainty, this Agreement supersedes any Prior RUA between Publisher and CMRRA. There are no representations, covenants, or terms other than those set out in this Agreement.
- 3.2 **Successors and Assigns.** This Agreement is binding upon and shall enure to the benefit of Publisher and CMRRA and their respective successors and permitted assigns.
- 3.3 **Governing Law and Jurisdiction.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, excluding any rule or principle of conflicts of law that may provide otherwise. The parties irrevocably attorn to the jurisdiction of the courts of Ontario with respect to any matter arising out of this agreement.
- 3.4 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which is an original, and all of such counterparts taken together shall be deemed to constitute one single document.
- 3.5 **Effective Date.** This Agreement is effective as of the date shown at the top of the first page, even if any signatures are made after that date.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective authorized officers as of the date first written above. Please sign and return one copy of this Agreement and keep a signed copy for your records.

On behalf of Publisher, name, title and signature of authorized signing officer:

Name & Title: _____

Signature: _____

Canadian Musical Reproduction Rights Agency Ltd.

Caroline Rioux, President

