



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

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CAROLINE RIOUX

PRESIDENT

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November 20, 2017

**IMPORTANT!**

**This letter contains important time sensitive information  
related to CMRRA's distribution  
of Online Music Services royalties.**

**YOUR RESPONSE IS REQUIRED**

Dear CMRRA Client,

**Re: Online Music Services Hold-Back Distribution  
For the January 1, 2013 to September 30, 2015 Period**

Beginning December, CMRRA will undertake its distribution of **Online Music Services** royalties that have been held back for the period from January 1, 2013 through September 30, 2015 (the "Holdback Period"). For the reasons explained below, CMRRA will remit these held-back royalties to you only if you sign and return the enclosed Online Music Repayment Undertaking Agreement.

On November 7, 2012, certain amendments to Canada's *Copyright Act* came into force, including the introduction of the making available right into Canadian law. Certain parties have suggested that the introduction of the making available right could affect the royalties payable to owners of the reproduction right in relation to downloads. CMRRA strongly disagrees with that suggestion and made arguments to this effect in proceedings before the Copyright Board of Canada (the "Copyright Board") in 2013 and 2014.

While awaiting a decision by the Copyright Board as to the reproduction rights royalties to be paid for downloads in the years 2011 through 2013, CMRRA continued to collect royalties in accordance with the provisions of the *CSI Online Music Services Tariff, 2008-2010*, which remained in effect on an interim basis by operation of law. While CMRRA remained confident that there is no legal basis for any royalty reduction, there is always an inherent risk in any legal proceeding. For that reason, in case the Copyright Board determined that the recent changes to the *Copyright Act* should result in a reduction of reproduction rights royalties, CMRRA held back 20% of all royalties for downloads during the Holdback Period (the "Hold-Back Royalties"). CMRRA did so because of the risk that an adverse decision by the Copyright Board could have retroactive effect for the period of November 7, 2012 through the end of 2013, then remain in effect on an interim basis until the Copyright Board set a tariff for subsequent years.

On August 25, 2017, the Copyright Board rendered its decision certifying the *Online Music Services Tariff, 2011-2013* (the "Tariff Decision"), along with a separate decision concerning the scope of the making available right (the "Making Available Decision"). As CMRRA expected, the Board did not reduce the royalty rates for the reproduction of musical works in downloads (the "Download Rates"). However, CMRRA has serious concerns with other aspects of the Tariff Decision and has therefore supported an



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application by CSI for judicial review of that decision by the Federal Court of Appeal. SOCAN has likewise applied for judicial review of the Tariff Decision, while several users have applied for judicial review of the Making Available Decision. If any or all of these applications are successful, the matter could be remitted to the Copyright Board for redetermination in whole or in part. That process could take a number of years.

None of the parties to these judicial review proceedings have argued that the Download Rates should be reduced. For that reason, and in light of the reasoning in the Tariff Decision itself, CMRRA feels confident that both the Download Rates and the methodology used by the Copyright Board to set them have been established reliably for past periods. Consequently, CMRRA has decided to distribute the Hold-Back Royalties collected for the Holdback Period, subject to the conditions outlined in the next paragraph.

Because this matter is subject to ongoing litigation, and because of the risk inherent in any legal proceeding, CMRRA must continue to take steps to protect itself, and the music publishers it represents, from the possibility of an adverse decision. Accordingly, we ask that any music publisher who wishes to receive a distribution of Hold-Back Royalties provide a signed Online Music Repayment Undertaking Agreement, under which it undertakes to repay the Hold-Back Royalties to CMRRA if the Download Rates for the Holdback Period are reduced for any reason. The undertaking applies to all royalties paid to the music publisher, including any royalties associated with musical works no longer owned or administered by the music publisher at the time the refund is required to be paid.

CMRRA asks that you provide us with your instructions by completing and signing the form below and, if applicable, the Online Music Repayment Undertaking Agreement. Before you provide us with your instructions, we recommend that you consult with your financial advisor regarding the extent to which you can recognize any royalties paid to you pursuant to the Online Music Repayment Undertaking Agreement as earned income on your financial statement. You may also choose to have CMRRA hold any Hold-Back Royalties payable to you for any period up to September 30, 2015 until the issues raised by the Tariff Decision and the Making Available Decision are resolved by a final, non-appealable decision of a relevant court or, if applicable, of the Copyright Board.

We are prepared to release payment beginning December 1, 2017; therefore, we ask that you sign and return the appropriate form(s) as soon as possible, particularly if you would like to receive payment before the end of the year. Completed Instruction Forms and Online Music Repayment Undertaking Agreements can be delivered by email to [membershipservices@cmrra.ca](mailto:membershipservices@cmrra.ca) or by regular mail.

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](mailto:membershipservices@cmrra.ca). To expedite your inquiry, please use the subject line "Online Music RUA Instructions" in the subject of 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 "A. Lion", is placed below the "Yours truly," text.



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**INSTRUCTION FORM**  
**Online Music Services Distribution**  
**For the January 1, 2013 to September 30, 2015 Period**

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](mailto: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.

<b>Publisher Name:</b>	
<b>CMRRA Account Number (if known):</b>	
<b>Name of Authorized Signatory:</b>	
<b>Email Address:</b>	

**I have read and I understand the Online Music Repayment Undertaking Agreement and instruct CMRRA as follows (please select one only):**

- ☐ I am not signing the Online Music Repayment Undertaking Agreement. Please do not remit to me the Hold-Back Royalties at this time. I instruct CMRRA to refrain from distributing these Hold-Back Royalties payable to me for any period up to September 30, 2015 until the issues raised by the Tariff Decision and the Making Available Decision are resolved by a final, non-appealable decision of a relevant court or, if applicable, of the Copyright Board, or until I provide revised instructions in this regard.
- ☐ I enclose a signed copy of the Online Music Repayment Undertaking Agreement. Please do remit to me my Hold-Back Royalties.

**DATE:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**ONLINE MUSIC  
REPAYMENT UNDERTAKING AGREEMENT**

This Repayment Undertaking Agreement (the “**Agreement**”) dated as of November 30, 2017 between

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[Please indicate the name / entity you used to affiliate with CMRRA]  
(the “**Publisher**”)

- and -

Canadian Musical Reproduction Rights Agency Ltd.,  
a corporation formed under the laws of Canada  
(“**CMRRA**”).

**WHEREAS** the Publisher is the owner or administrator of copyright in musical works in CMRRA's repertoire;

**AND WHEREAS** CMRRA is a music licensing agency which, pursuant to an agreement between the parties to that effect (the “**Publisher Affiliation Agreement**”), issues licenses on behalf of the Publisher for the reproduction of musical works by online music services in Canada and collects royalties from such online music services in relation to such reproduction (the “**Online Music Royalties**”);

**AND WHEREAS** the royalty rates for the reproduction of musical works as downloads provided by online music services (the “**Download Rates**”) during the years 2011 through 2013 were set by the Copyright Board of Canada (the “**Copyright Board**”) in a decision dated August 25, 2017 (the “**Tariff Decision**”) certifying the *Online Music Services Tariff, 2011-2013* (the “**Tariff**”), which remains in effect on an interim basis for subsequent years;

**AND WHEREAS**, although the Tariff Decision and a related decision of the Copyright Board are subject of several applications for judicial review by the Federal Court of Appeal, no party has argued, in relation to those applications, that the Download Rates should be reduced, and CMRRA sees no legal or evidentiary basis for any such reduction;

**AND WHEREAS**, in accordance with the Publisher Affiliation Agreement, CMRRA has collected Online Music Royalties, issued online Licenses and collected monies on behalf of the Publisher for the period beginning January 1, 2013 and ended September 30, 2015 (the “**Holdback Period**”), a portion of which have not yet been distributed;

**AND WHEREAS** CMRRA has determined to distribute to its music publisher clients, including Publisher, the remainder of the Online Music Royalties referable to the Holdback Period, subject to the undertaking of each of those publishers to repay to CMRRA (or otherwise as it may direct) the amounts so paid, upon demand by CMRRA, should any decision of the Copyright Board or a court of competent jurisdiction (an “**Adverse Decision**”) require CMRRA to refund any Online Music Royalties to any other party, and to fully indemnify CMRRA thereof in the event of default;

**AND WHEREAS** the undertakings so required are without prejudice to the position of CMRRA with respect to the Tariff Decision or the judicial review thereof;

**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 irrevocably agrees and undertakes to pay to CMRRA, upon demand by CMRRA after the issuance of an Adverse Decision, (i) an amount equal to any Online Music Royalties referable to the Holdback Period that are or have been distributed by CMRRA to Publisher from time to time, up to Publisher's pro-rata share of the total amount of Online Music Royalties to be reimbursed by CMRRA in relation to the Distribution Period plus interest, if any, set by the Copyright Board or the court, as the case may be, in relation to the Adverse Decision; and (ii) a \$25.00 processing fee (the "**Repayment**"). For greater certainty, Online Music Royalties referable to the Distribution Period include any and all Online Music Royalties that are collected by CMRRA in relation to the Holdback Period and distributed to Publisher, whether or not any or all of those royalties are associated with musical works that are owned or administered by Publisher at the time Publisher is required to repay such royalties to CMRRA.

1.2 **Delay.** Publisher shall effect the Repayment within thirty (30) days of the receipt of written notice by CMRRA indicating the amounts owed to CMRRA pursuant to the terms hereof, and such notice shall be deemed a conclusive statement 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 interest at a rate per annum that is five (5%) percentage points greater than the prime lending rate of a Canadian bank designated by CMRRA in its sole discretion, sometimes referred to as that bank's "prime rate".

1.3 **Right of Set-Off.** CMRRA is entitled to satisfy any amount owed by it to the Publisher from time to time, including royalties payable to Publisher from sources other than Online Music Royalties, by way of set-off against any amount owed by the Publisher to CMRRA from time to time, including any amounts owed to CMRRA under this Agreement.

## 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 legal and other professional fees and disbursements related thereto, incurred by CMRRA as a direct or indirect result of: (i) the distribution to Publisher of any Online Music Royalties in relation to the Holdback Period; (ii) any breach or alleged breach by the Publisher of its obligations under this Agreement; (iii) any of the obligations of Publisher under this Agreement being or becoming void, 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. 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 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.

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 and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

**Canadian Musical Reproductions Rights Agency Ltd.**  
Caroline Rioux, President

