



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

CAROLINE RIOUX

PRESIDENT

[crioux@cmrra.ca](mailto:crioux@cmrra.ca), ext. 234

February 9, 2016

**IMPORTANT!**

**This letter contains important information and a deadline related to CMRRA's distribution of COMMERCIAL RADIO BROADCAST MECHANICAL royalties.**

**YOUR RESPONSE IS REQUIRED BY FEBRUARY 26, 2016.**

Dear CMRRA Client,

**Re: March 2016 Commercial Radio Broadcast Mechanical Distribution**

This coming March, CMRRA will undertake its distribution of **Commercial Radio Broadcast Mechanical** royalties for the period of January 1, 2014 to December 31, 2014. For the reasons explained below, CMRRA will only remit these royalties to you if you sign and return the enclosed Commercial Radio Broadcast Mechanical Repayment Undertaking Agreement by **February 26, 2016**.

On November 7, 2012, certain amendments to Canada's *Copyright Act* came into force, introducing a number of new copyright exemptions which the radio broadcasters have claimed eliminate any legal basis for their payment of a reproduction tariff to music copyright owners. CMRRA strongly disagrees with these assertions and vehemently opposed the broadcasters' argument at a hearing held before the Copyright Board of Canada (the "Copyright Board") in October 2013, where the Copyright Board heard evidence from the participants on the applicability of the exemptions to radio broadcasters.

Until a decision is rendered by the Copyright Board, radio stations are required and have continued to pay the existing tariff. However, any decision ultimately made by the Copyright Board will have retroactive effect for the period of November 7, 2012 through until the end of 2013. Moreover, a further hearing before the Copyright Board and subsequent decision will be required before CMRRA can be certain of the legal basis for radio stations' payment of royalties in 2014 and beyond. While we are confident that there is no basis for radio broadcasters to claim exemptions in relation to their reproduction activities, there is always an inherent risk in any legal proceeding. Furthermore, we cannot predict when a decision will be rendered.

Under the circumstances, CMRRA's Board of Directors has agreed to distribute a portion of the royalties collected for the 2014 period on the condition that the music publisher who is entitled to receive such royalties provides a signed undertaking to repay those royalties to CMRRA if the tariff ultimately certified by the Copyright Board requires CMRRA to refund some portion of the royalties to the radio stations, and that amount is greater than the undistributed portion of the royalties collected. 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.

Accordingly, we ask that you provide us with your instructions by completing and signing the form below and, if applicable, the Repayment Undertaking Agreement. Before you provide us with your instructions, we recommend that you consult with a Certified Public Accountant regarding the extent to which you can recognize any royalties paid to you pursuant to the Commercial Radio Broadcast Mechanical Repayment Undertaking Agreement as earned income on your financial statement of operations. You may also choose to have CMRRA hold any Commercial Radio Broadcast Mechanical Royalties payable to you for 2014 until a decision is rendered by the Copyright Board.

**Please note that we must receive your signed Commercial Radio Broadcast Mechanical Repayment Undertaking Agreement (either by email at [membershipservices@cmrra.ca](mailto:membershipservices@cmrra.ca) or by regular mail) by **February 26, 2016** in order for CMRRA to process your royalty payment as part of our upcoming March 2016 distribution.** Should you return your signed Commercial Radio Broadcast Mechanical Repayment Undertaking Agreement after that date, we will process your payment as part of our next distribution.

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 "Commercial Radio 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,



## INSTRUCTION FORM

### Commercial Radio Broadcast Mechanical Distribution for the 2014 Period

Please complete one Instruction Form for each client or payment 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 us, 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 Commercial Radio Broadcast Mechanical Repayment Undertaking Agreement and instruct CMRRA as follows (please select one only):

- I am not signing the Commercial Radio Broadcast Mechanical Repayment Undertaking Agreement. Please do not remit any Commercial Radio Broadcast Mechanical Royalties payable to me for 2014 until such time as a final decision has been rendered on this matter.
- I enclose a signed copy of the Commercial Radio Broadcast Mechanical Repayment Undertaking Agreement. Please do remit to me that portion of the Commercial Radio Broadcast Mechanical Royalties payable to me for 2014 that the CMRRA Board of Directors has authorized for distribution.

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

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

## COMMERCIAL RADIO BROADCAST MECHANICAL REPAYMENT UNDERTAKING AGREEMENT

This Repayment Undertaking Agreement (the "**Agreement**") dated as of February 1, 2016, between

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

**WHEREAS** CMRRA is a music licensing agency which represents the Publisher for the purpose of issuing licenses to users of the right to reproduce works in the Publisher's catalogue by virtue of an agreement between the parties to that effect (the "**Publisher Affiliation Agreement**") and which includes licensing of certain reproductions by commercial radio stations and the collection of broadcast mechanical royalties from such commercial radio stations, as defined in the Publisher Affiliation Agreement (the Broadcast Mechanical Royalties);

**AND WHEREAS** users are challenging CMRRA's entitlement to the collection and distribution of such Broadcast Mechanical Royalties is being challenged (the "**Challenge**"), in a proceeding before the Copyright Board of Canada (the "**Copyright Board**"), with respect to the period starting November 7, 2012 when Copyright Act amendments entered into force (the "**Challenged Period**");

**AND WHEREAS** CMRRA believes that the Challenge has no merit and has made representations to that effect before the Copyright Board;

**AND WHEREAS**, in accordance with the Publisher Affiliation Agreement, CMRRA has collected Broadcast Mechanical Royalties on behalf of the Publisher for the period of January 1, 2014 to December 31, 2014 (the "**Distribution Period**"), which have not yet been distributed;

**AND WHEREAS** CMRRA has determined to distribute to its music publisher clients, including Publisher, a portion of the Broadcast Mechanical Royalties referable to the Distribution 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 CMRRA's request, should a decision of the Board require CMRRA to refund any Broadcast Mechanical Royalties to users, 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 merits of the Challenge;

**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 repay CMRRA, upon CMRRA's request, should the Challenge be successful in whole or in part, any Broadcast Mechanical Royalties distributed by CMRRA to Publisher from time to time and referable to the Challenged Period, up to Publisher's share of the total amount of Broadcast Mechanical Royalties to be reimbursed to users in relation to the Challenged Period, plus interest, if any, set by the Copyright Board of Canada as part of the relevant decision, and a \$25.00 processing fee (the "**Repayment**"). For greater certainty, Broadcast Mechanical Royalties applicable to the Challenged Period include any and all Broadcast Mechanical Royalties distributed to Publisher for the period, 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 a written notice by CMRRA indicating the amounts 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 interest at a rate equivalent to five (5%) per cent per annum in excess of the prime lending rate of a Canadian Bank designated by CMRRA, more commonly known as that bank's "prime rate".
- 1.3 **Right of Set-Off.** CMRRA is entitled to satisfy any amount from time to time owing by it to the Publisher, including royalties payable to Publisher from sources other than Broadcast Mechanical Royalties, 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 distribution to Publisher of any Broadcast Mechanical Royalties for the Distribution Period; (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. 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

