

Copyright Board  
Canada



Commission du droit d'auteur  
Canada

**Date** 2020-06-26

**Citation** *Artisti – CBC (2015-2020)*, 2020 CB 002

**Member** Adriane Porcin

**Proposed** Artisti – CBC Tariff (2015-2017)  
**Tariffs** Artisti – CBC Tariff (2018-2020)  
**Considered**

## **Withdrawal of Proposed Tariffs**

### **REASONS FOR DECISION**

#### **I. INTRODUCTION**

[1] Artisti seeks to withdraw proposed tariffs Artisti – CBC Tariff, 2015-2017 and Artisti – CBC Tariff, 2018-2020 (the Proposed Tariffs). The Proposed Tariffs are for the reproduction of performers' performances made by the Canadian Broadcasting Corporation (the CBC) in connection with its over-the-air radio broadcasting, its simulcasting of an over-the-air radio signal and its webcasting activities on its "webradios".

[2] On March 19, 2020, Artisti filed an application to withdraw the Proposed Tariffs. In its application for withdrawal, Artisti states that it has come to an agreement with the CBC on the rates to be paid by the CBC to Artisti for the years 2015-2020.

[3] For the following reasons, we find that Artisti's withdrawal application should be approved.

#### **II. OVERVIEW**

[4] Artisti filed both Proposed Tariffs in March 2014 and 2017 respectively.

[5] On December 30, 2019, the CBC signed an agreement with Artisti under subsection 67(3) of the *Copyright Act* (the Act).

[6] On February 6, 2020, Artisti published a *Notice of Intent to Withdraw Proposed Tariffs by Artisti* based on section 69 of the Act on the “News” section of its website.<sup>1</sup> The notice reads as follows:

Notice of Intent to Withdraw Proposed Tariffs by ARTISTI

Please be advised that ARTISTI intends to make, on March 19, 2020, an application under section 69 of the Copyright Act to withdraw the following proposed tariffs:

- Statement of Proposed Royalties to be Collected by ARTISTI for the Reproduction of Performer’s Performances Made by the CBC, in Canada, in Connection with its Over-The-Air Radio Broadcasting, its Simulcasting of an Over-The-Air Radio Signal and its Webcasting Activities on the Webradios of Espace.Mu, for the Years 2015-2017;
- Statement of Proposed Royalties to be Collected by ARTISTI for the Reproduction of Performer’s Performances Made by the CBC, in Canada, in Connection with its Over-The-Air Radio Broadcasting, its Simulcasting of an Over-The-Air Radio Signal and its Webcasting Activities on its Webradios, for the Years 2018 To 2020.

This constitutes a public notice under s. 69.1 of the *Copyright Act*.

[7] On February 7, 2020, Artisti’s notice was published on the Board’s website as notice CB-CDA 2020-011.

[8] On March 19, 2020, Artisti filed its application to the Board under section 69 of the Act requesting that the Proposed Tariffs be withdrawn.

[9] In its application, Artisti indicated it had not received any objection to the withdrawal of the Proposed Tariffs. The Board has neither received such objection.

### III. ISSUE

[10] Whether Artisti’s application meets the criteria set in section 69.1 of the Act to withdraw the Proposed Tariffs.

### IV. ANALYSIS

[11] Subsection 69.1(1) of the Act provides that the Board shall approve an application made under section 69 if it is satisfied that three conditions are met. Each condition is addressed below.

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<sup>1</sup> *Notice of Intent to Withdraw Proposed Tariffs by Artisti*, February 6, 2020, Artisti’s website: <https://www.artisti.ca/en/notice-of-withdrawal-of-proposed-tariffs-by-artisti-2/>

**A. WHETHER THE COLLECTIVE SOCIETY HAS PROVIDED SUFFICIENT PUBLIC NOTICE OF ITS INTENTION TO MAKE THE APPLICATION:**

[12] In *Artisti Phonograms and Online Music Services – Withdrawal* [CB-CDA 2019-085], the Board clarified what constitutes “sufficient public notice” under section 69.1(1) of the Act: publication of the withdrawal notice on both a Collective’s and the Board’s website constitutes adequate public notice of the proposed withdrawal<sup>2</sup>, and a notice period of 30 days is adequate.<sup>3</sup>

[13] We note that Artisti’s notice was posted on both its own website and on the Board’s website for more than 30 days. As a result, we are satisfied that Artisti has provided sufficient public notice of its intention to make the application and that the condition in subsection 69.1(1)(a) of the Act is met in the present case.

**B. WHETHER EVERY PERSON WHO, IN RESPECT OF THE PROPOSED EFFECTIVE PERIOD, HAS PAID ROYALTIES THAT WOULD NOT BE PAYABLE IF THE APPLICATION WERE APPROVED, HAS CONSENTED TO THE APPLICATION, RECEIVED A REFUND OR ENTERED INTO AN AGREEMENT UNDER SUBSECTION 67(3) OF THE ACT.**

[14] The CBC, who is the only person affected by this criteria, entered into an agreement with Artisti under subsection 67(3) of the Act. As a result, we are satisfied that the condition in subsection 69.1(1)(b) of the Act is met.

**C. WHETHER THE APPLICATION IS NOT MADE FOR THE PURPOSE OF IMPROPERLY CIRCUMVENTING THE REQUIRED MINIMUM EFFECTIVE PERIOD.**

[15] Finally, with respect to the subsection 69.1(1)(c) condition, we agree that it does not apply since the withdrawal application is not for a partial withdrawal that falls under section 69(b) of the Act.

**V. CONCLUSION**

[16] For the foregoing reasons, we conclude that the public notice, in its various forms as outlined above, satisfies the requirements of subsection 69.1(1)(a) of the Act and, accordingly, we approve Artisti’s application made under section 69 of the Act to withdraw the Proposed Tariffs.

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<sup>2</sup> *Artisti Phonograms and Online Music Services – Withdrawal* [CB-CDA 2019-085] (December 11, 2019) Copyright Board at para 17.

<sup>3</sup> *Artisti Phonograms and Online Music Services – Withdrawal* [CB-CDA 2019-085] (December 11, 2019) Copyright Board at para 18.