

## PROPOSED TARIFF

Filed with the Copyright Board by ARTISTI on 2021-10-15 pursuant to subsection 67(1) of the Copyright Act

Proposed Tariff Title: *Statement of Royalties to be Collected From Producers and Record Companies by ARTISTI (2023-2025)*

For the fixation of performances and the reproduction and distribution of performances fixed by performers in the form of phonograms.

Proposed Short Title: *ARTISTI's Phonograms Tariff (2023-2025)*.

Effective Period: 2022-01-01 – 2024-12-31

STATEMENT OF ROYALTIES TO BE COLLECTED FROM PRODUCERS AND RECORD COMPANIES BY ARTISTI FOR THE FIXATION OF PERFORMANCES AND THE REPRODUCTION AND DISTRIBUTION OF PERFORMANCES FIXED BY PERFORMERS IN THE FORM OF PHONOGRAMS FOR THE YEARS 20~~23~~<sup>19</sup> TO 202~~5~~<sup>1</sup>

### *Short title*

1. This tariff may be cited as *ARTISTI's ~~Fixation, Reproduction and Distribution of Performances in the Form of~~ Phonograms Tariff (20~~23~~<sup>19</sup>-202~~5~~<sup>1</sup>)*.

### *Definitions and interpretation*

2. (1) The following definitions apply in this tariff:

“accompanying performer”: the role of a performer who accompanies, in the background, the principal performer; (« *artiste accompagnateur* »)

“audio book”: a recording made up solely of the recitation of a literary work lasting more than 15 minutes; (« *audio livre* »)

“distributor”: a person authorized by a record company to distribute and transfer ownership, through sale or gift, of a phonogram for private use; (« *distributeur* »)

“performance”: the performance of a work by a performer who has entrusted ARTISTI with the management of the copyrights covered by this tariff; (« *prestation* »)

“phonogram”: an exclusively sound-based support, in the form of a tangible object, on which a sound recording is reproduced and from which a performance may be heard; (« *phonogramme* »)

“principal performer”: the role of the performer whose performance is in the foreground of the sound recording; (« *artiste principal* »)

“producer”: a person who fixes a performance on a sound recording; (« *producteur* »)

“record company”: a person authorized by a producer to market a sound recording and who controls its marketing, promotion and the manufacturing of a phonogram on which the sound recording is reproduced, as well as the distribution of the phonogram; (« *maison de disques* »)

“semester”: period during the calendar year lasting six months starting on January 1 or July 1; (« *semestre* »)

“sound recording”: recording consisting of a performance of a single work, fixed in any material form, and used notably for reproduction in the form of a phonogram. (« *enregistrement sonore* »)

(2) In this tariff, the masculine includes the feminine and the singular includes the plural.

#### *Application*

3. (1) This tariff

(a) authorizes the producer, the record company and the distributor who comply with this tariff to, as the case may be

- (i) fix a performance by a performer on a sound recording,
- (ii) reproduce this sound recording in the form of a phonogram, and
- (iii) distribute said phonogram;

(b) sets the royalties owed to ARTISTI in relation to the acts mentioned in paragraph 3(1)(a), the terms and conditions of payment thereof and the reporting obligations pertaining thereto.

(2) This tariff does not apply to audio books.

(3) This tariff does not authorize the modification of a performance or its use in association with a product, a service, a cause or an institution.

#### *Fixing performances on a sound recording*

##### *Request for a licence for fixation of a performance*

4. (1) Before the date on which a performance is to be fixed, the producer shall request, in writing, a licence from ARTISTI. Said request shall identify the producer and indicate for each planned sound recording

- (a) its provisional title;
- (b) the name and surname (and the pseudonym, as the case may be) of the performer or the group of performers associated with the sound recording; and
- (c) the name and surname (and the pseudonym, as the case may be) of each performer whose performance will be fixed on the sound recording.

##### *Royalties for fixing performances on a sound recording*

(2) The producer shall pay ARTISTI the following royalties for the fixation of performances on a sound recording:

(a) For each distinct sound recording of five (5) minutes or less: \$300 per performer, whether it be a principal performer or an accompanying performer.

(i) When more than four principal performers participate in the sound recording, the royalty owed to each principal performer is the higher of

- \$1,200 divided by the number of principal performers; or
- \$200.

(ii) When more than four accompanying performers participate in the sound record-

ing, the royalty owed to each accompanying performer is the higher of

- \$1,200 divided by the number of accompanying performers; or
- \$150.

(b) For each distinct sound recording lasting more than five (5) minutes: \$360 per performer, whether it is a principal performer or an accompanying performer.

(i) When more than four principal performers participate in the sound recording, the royalty owed to each principal performer is the higher of

- \$1,440 divided by the number of principal performers; or
- \$240.

(ii) When more than four accompanying performers participate in the sound recording, the royalty owed to each accompanying performer is the higher of

- \$1,440 divided by the number of accompanying performers; or
- \$180.

#### *Reports for and payment of royalties for fixation*

(3) No later than thirty (30) days following the latest fixation of a performance on a sound recording covered by the licence issued following a request made pursuant to subsection 4(1) of this tariff, the producer shall

(a) pay ARTISTI the royalties owed pursuant to this tariff; and

(b) communicate the following information to ARTISTI regarding the sound recording:

(i) its length,

(ii) the title of the work performed, as well as the name and surname (and the pseudonym, as the case may be) of the author of said work, and

(iii) the name and surname (and the pseudonym, as the case may be) as well as the role of each performer whose performance has been fixed on the sound recording or who participated in the sound recording.

#### *Reproduction and distribution of phonograms involving at least one sound recording*

#### *Request for a licence to reproduce a sound recording in the form of a phonogram, and the distribution thereof*

5. (1) Before the release date of a phonogram on which a sound recording is reproduced, the record company shall request a licence, in writing, from ARTISTI. Said request shall identify the record company and indicate the following information with respect to:

(a) the phonogram

(i) its title,

(ii) the name and surname (and the pseudonym, as the case may be) of the performer or the name of the group of performers associated with the phonogram,

(iii) the scheduled release date, and

(iv) the name of its distributor; and

(b) each sound recording reproduced on the phonogram

(i) its title,

(ii) its length,

- (iii) its International Standard Recording Code (ISRC), and
- (iv) the name and surname (and the pseudonym, as the case may be) and the role of each performer participating in the sound recording.

*Requirements for issuing the licence*

(2) For each licence to be issued or issued pursuant to subsection 5(1) of this tariff, the record company shall respect the following terms and conditions:

- (a) the cover, case or booklet of each copy of the phonogram must bear, for each sound recording reproduced on the phonogram, the name and surname (and the pseudonym, as the case may be) and the role of each performer whose performance is fixed on the sound recording or who participated in the sound recording; and
- (b) a written mandate must be provided by the record company to ARTISTI, allowing ARTISTI to obtain from the distributor the reports on ownership transfers, by sale or gift, for all phonograms in the record company's catalogue.

*Royalties for the reproduction and distribution of phonograms*

(3) (a) For each transfer of ownership, by sale or gift, of a copy of a phonogram on which a sound recording has been reproduced, the record company shall pay ARTISTI the following royalties:

- (i) for each sound recording lasting five (5) minutes or less reproduced on the phonogram: \$0.1539,
- (ii) for each sound recording lasting more than five (5) minutes reproduced on the phonogram:
  - \$0.1539 per reproduction of the first five (5) minutes, and
  - \$0.0308 per reproduction of each additional portion of one minute or less;

(b) When a sound recording reproduced on a phonogram incorporates both a performance and the participation of a performer, the royalties owed to ARTISTI are prorated by taking into account the role of each performer, with the principal performers being entitled to 80 per cent of the royalties related to a reproduction and the accompanying performers to 20 per cent of such royalties.

*Reports and payments of royalties for reproduction and distribution*

(4) (a) No later than 45 days following the end of a semester, the record company

- (i) shall pay to ARTISTI the royalties owed based on this tariff for the semester, and
- (ii) shall communicate to ARTISTI in the manner prescribed by ARTISTI, and for the semester, the following information with respect to each phonogram:

- its title,
- the name and surname (and the pseudonym, as the case may be) of the performer or the name of the group of performers associated with the phonogram,
- its catalogue number,
- its Universal Product Code (UPC),
- the name of its distributor, and
- the total number of copies sold or given; and

(b) Should the record company fail to communicate to ARTISTI the information indicated in paragraph 5(4)(a) within the prescribed delay

- (i) ARTISTI shall request said information from the phonogram distributor,
- (ii) ARTISTI shall establish the royalties owed by the record company and invoice the record company accordingly, and
- (iii) The record company shall pay ARTISTI the invoiced royalties within ten (10) days of receiving the invoice.

#### *Records and verification*

- (5) (a) The record company and the distributor shall keep, at their principal place of business, up-to-date records, allowing the information indicated in paragraph 5(4)a) to be ascertained. These records shall be kept for a six-year period beginning at the end of the month to which they relate;
- (b) ARTISTI may inspect these records at any time during the period covered by paragraph 5(5)(a) during regular business hours and with reasonable prior notice;
- (c) If the inspection reveals that the royalties owed have been underestimated by more than ten (10) per cent for a given semester and that this is not the result of an error or omission by ARTISTI, the record company shall assume the reasonable costs of the inspection.

#### *Confidentiality*

6. (1) Subject to subsections 6(2) and 6(3), ARTISTI shall maintain the confidentiality of the information provided by the producer, record company or distributor pursuant to this tariff, unless said producer, record company or distributor consents otherwise in writing.

(2) ARTISTI may make the information covered by subsection (1) public by communicating the same

- (a) if the record company, the producer or the distributor is in default of its obligations under this tariff;
- (b) to the Copyright Board;
- (c) to any tribunal;
- (d) to any other copyright collective or to a person requesting the payment of royalties, to the extent that such information is necessary in order to perform any allocation; and
- (e) if required by law.

(3) Subsection (1) does not apply to publicly available information or information obtained from a third party who is not subject to a confidentiality obligation in relation thereto.

#### *Licence non transferable*

7. The licences granted pursuant to this tariff are not transferable.

#### *Default and termination*

8. (1) In the case of a failure to perform the obligations provided for in this tariff, and if such failure is not remedied within thirty (30) days following a written notice to this effect given by ARTISTI

- (a) the producer or, as the case may be, the record company or the distributor shall be forbidden from performing any act that would otherwise be allowed pursuant to this

tariff; and

(b) ARTISTI may terminate any licence issued to the producer or to the record company, and may do so without any prejudice whatsoever to ARTISTI's rights.

(2) The producer, record company or distributor which becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of its creditors, files for protection under the *Companies' Creditors Arrangement Act* or other comparable legislation in another jurisdiction, winds up its affairs, ceases to carry on business, or has a receiver/manager appointed for it or a substantial portion of its property is not entitled to do any act described in section 3 as of the day immediately preceding the date of the relevant event.

#### *Payment errors*

9. If the producer, record company or ARTISTI discovers an error with respect to a payment made to ARTISTI pursuant to the tariff

(a) the person discovering the error shall send a written notice to the creditor or debtor of the payment, as the case may be;

(b) the adjustment to correct the error shall be effected within thirty (30) days following said written notice.

#### *Interest and penalties relating to late payments and reports*

10. (1) Any amount owed pursuant to this tariff that is not received by the due date shall bear interest from that date until the date payment is received by ARTISTI. Interest shall be calculated on a daily basis at a rate of one per cent above the prime rate in effect on the last day of the preceding month (as published by the Bank of Canada). Interest shall not compound.

(2) If the record company or, failing which, the distributor, fails to provide any report pursuant to this tariff, the record company shall pay ARTISTI a late payment fee of \$50 per day as of the due date, up to and until the date on which a given report is received by ARTISTI.

#### *Taxes*

11. All royalties payable under this tariff are exclusive of any federal, provincial or other governmental taxes, or levies of any kind.

#### *Addresses for all communication*

12. (1) Communications intended for ARTISTI shall be sent to the following email address: [licence@artisti.ca](mailto:licence@artisti.ca).

(2) Communications with the producer, the record company or the distributor shall be sent to the last known address or electronic address or fax number given to ARTISTI in writing.

#### *Transmission of communications and payments*

13. (1) A payment owing pursuant to this tariff is made through ARTISTI's Paypal account, which can be accessed through its website at [www.artisti.ca](http://www.artisti.ca).

(2) Communications mailed from Canada are presumed to have been received four (4) working days after the date of mailing.

(3) Communications sent by fax or by email are presumed to have been received on the day of transmission.