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## CMRRA-SODRAC Inc. Tariff Proposals for 2011

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On July 17, 2010, the Copyright Board published the most recent tariff proposals of CMRRA-SODRAC Inc. (CSI) in the Canada Gazette. They include the proposed tariffs for non-commercial radio stations (2011), online music services (2011), and satellite radio services (2011 - 2013). Each will be addressed below.

CSI incorporated in 2002 to manage the royalty collection and exclusive licensing of music reproduction rights in Canada for CMRRA and SODRAC members. The Canadian Musical Reproduction Rights Agency (CMRRA) represents over 6,000 Canadian and U.S. music publishers who own and administer approximately 75 per cent of the music recorded and performed in Canada. The Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) represents some 6,000 Canadian songwriters and music publishers as well as the musical repertoire of over 89 countries.

### The Objection Period

Now that the Proposed Tariff for 2011 has been published in the Canada Gazette, in accordance with section 83(6) of the *Copyright Act*, any person who wishes to object to the Proposed Tariff has 60 days in which to file written objections with the Copyright Board. This means that any objections to the Proposed Tariff must be received by the Copyright Board by no later than Wednesday, September 15, 2010.

#### 1. CSI Non-Commercial Radio Tariff, 2011

This proposed tariff entitles CSI members to royalties from Canadian non-commercial radio stations' reproduction of music recordings in the CSI repertoire. Non-commercial radio stations are conventional, over-the-air AM and FM stations, other than CBC stations, that are owned or operated by a not-for-profit corporation, with or without advertising revenue.

##### (a) Previous Tariff Proposals

Previously, CMRRA proposed a non-commercial radio station tariff for the period 2008 – 2010. It was published in the Canada Gazette on April 26, 2008, but the Copyright Board has yet to certify it.

##### (b) Proposed Rate

Exclusive of federal, provincial or other governmental taxes, the rates are as follows:

Non-commercial radio station	Low-use, non commercial-radio station
0.63 per cent of the annual gross operating costs for the relevant year.	0.23 per cent of the annual gross operating costs for the relevant year.
	A low-use station is one where broadcasts of repertoire works amount to less than 20 per cent of the station's total broadcast time; makes available to CSI complete recordings of its past 30 broadcast days; and neither makes reproductions onto hard disk or servers nor uses another stations' reproductions.

### (c) Scope of the Proposed Tariff

CSI will grant a non-commercial radio station a non-exclusive and non-transferable licence to reproduce repertoire works, in any medium known or to be developed, including simulcasting. The licence does not authorize the reproduction of a musical work in association with product, service or institutional advertisement. The licence does not extend to other audio services or transmission, such as online transmissions.

### (d) Reporting and Payment Requirements

Royalty payments must be made annually on January 31st of any relevant year. The non-commercial station should include with the payment a written, certified declaration of the actual gross operating costs of the station for the relevant year. Once a year, and upon 30 days' notice, CSI may respond with a request for details about 12 broadcast days (may be non-consecutive). However, if a non-commercial station owes less than 2,000\$/year, it is only liable to report up to 4 broadcast days. Records should be kept for at least 6 months.

### (e) Enforcement

Licensees should keep records going back 6 years as CSI reserves the right to audit stations' accounts and logs at any time during a 6 year period from a relevant year. CSI will give reasonable notice, during business hours, of its intention to audit. The station will receive a copy of the audit report and be liable for any underreporting found. If the underreporting is by more than 10 per cent, the non-commercial station will bear the costs of the audit, plus interest. The station must remit any necessary adjustments within 30 days.

CSI, CMRRA and SODRAC will keep a stations' information and reports confidential, unless it consents to disclosure. However, even without such consent, CSI reserves the right to share the stations' information internally; with the Copyright Board; in connection with proceedings before the Board; in accordance with the distribution of royalties; and by court order.

## 2. CSI Online Music Services Tariff, 2011

This proposed tariff entitles CSI members to royalties when an online music service (OMS) reproduces repertoire works for delivery to online consumers in Canada, or authorizes consumers to reproduce the works for their private use.

### (a) Previous Tariff Proposals

The Copyright Board previously certified CSI's online music services tariff for the period 2005 – 2007 (March 31, 2007). CSI proposed a further tariff for the period 2008 – 2010 that has yet to be certified. The Copyright Board denied CSI's proposal for a new interim online music service tariff in 2008 (April 22, 2008). Thus, the 2007 tariff applies until a new one is certified, which will then be applied retroactively for the years in question. The 2008 – 2010 CSI online music services tariff proceedings were held in June, 2010, jointly with SOCAN's tariff 22.A 2007 - 2010.

### (b) Proposed Rate

There are different royalty rates to be paid for webcasting, on-demand streaming, limited downloads and permanent downloads. As well, each is subject to a minimum rate. Services should consult the tariff proposal to determine their liability.

### (c) Scope of the Proposed Tariff

This tariff makes the following activities compensable to CSI:

- Reproduction of all or parts of repertoire works for the purpose of delivering it online, in a file, to Canadian consumers of an OMS
- To authorize a person to reproduce the work for the purpose of the above delivery through an OMS
- To authorize consumers to reproduce a work obtained through an OMS for private use

Previews of music files of less than 30 seconds are excepted.

The tariff does not authorize the reproductions of works in mashups or sampling, or for use in an advertisement for a product, service or institution. The tariff also specifies that it does not apply to uses falling under other CSI tariffs, such as simulcasting, pay audio or other uses pursuant to agreements between users and CSI (for example, CBC services pursuant to specific arrangements with CSI).

### (d) Reporting and Payment Requirements

Before making the file available to the public, the OMS must report a reproduction to CSI, within 20 days of the end of the month (the first month, if a repeated use) in which the OMS makes a reproduction. The report must contain details of the licensee and file, as outlined in the tariff section 6. Any subsequent changes in the use should be likewise reported.

CSI further requires sales reports for each type of use (webcasting, on-demand streaming etc...). An OMS should refer to the tariff section 7 for the specific contents, by use, of the sales reports. In any event, sales reports are due within 20 days after end of each month of compensable activities.

Where an OMS makes a permanent download in addition to another use, it should submit a sales report specifically as to the permanent download, as per section 7(4), as well as the sales report for the other use.

#### (e) Enforcement

Within 20 days of receiving the reports, CSI will submit to the licensee a report detailing the royalties owing. There is a 20-day period to dispute the bill, but otherwise payment will be due within 30 days after receipt. Any necessary adjustments will be reflected in the next royalty payment. The consequences of late payment beyond five days or non-payment is that the licence is deemed breached and an OMS is precluded from any of the uses this tariff authorizes. Licences may be reinstated upon payment (with interest) on the licenced uses going back to the first day of the month in which an OMS defaulted on reporting/paying.

Licencees should keep records going back 6 years as CSI reserves the right to audit an OMS's accounts and logs at any time during a 6 year period from a relevant month. CSI will give reasonable notice, during business hours, of its intention to audit. The OMS will receive a copy of the audit and be liable for any underreporting found. If the underreporting is by more than 10 per cent, the OMS will bear the costs of the audit, plus interest. Necessary adjustments are due within 30 days of the audit report.

CSI, CMRRA, SODRAC and SOCAN will keep the OMS's information and reports confidential, unless the OMS consents to disclosure. Without such consent, CSI reserves the right to share the information internally; with the Copyright Board; in connection with proceedings before the Board once the licensee has had a reasonable opportunity to request confidentiality orders; with any person presumed to know the information; in accordance with the distribution of royalties; and by court order.

### **3. CSI Satellite Radio Services Tariff, 2011, 2012, 2013**

This proposed tariff entitles CSI members to compensation from satellite radio services for the reproduction of repertoire works in the course of providing content to subscribers.

#### (a) Previous tariff proposals

The Copyright Board previously certified tariffs for the multiple communication rights and reproduction rights of repertoire works through satellite radio services (April 8, 2009). These are: SOCAN 2005-2009; NRCC 2007-2010; CSI 2006-2009.

#### (b) Proposed Rate

There are three rates, depending on the type of reproduction. For all reproductions, the tariff is 1 per cent, subject to a minimum fee of 0.10\$, except for:

- 1.84 per cent, for reproductions involving a receiver with extended buffer and replay functions, subject to a minimum fee of 0.19\$ per subscriber
- 2.90 per cent for reproduction onto individual receivers intended for programming playback by subscribers (MP3-like functionality), subject to a minimum fee of 0.29\$ per subscriber.

#### (c) Scope of the Proposed Tariff

The tariff authorizes licensee satellite radio services to:

- Reproduce and authorize to reproduce all or part of a repertoire work in accordance with delivering the audio content of the subscriptions, via satellite, terrestrial or other means of transmission
- To authorize a person to reproduce a repertoire work in order to deliver the subscription service
- To authorize subscribers to copy the works for private use

The tariff does not apply to commercial subscriptions, nor does it authorize the reproduction of a repertoire work in an advertisement for a product, service or institution.

#### (d) Reporting and Payment Requirements

The service should pay the royalties on the first of every month and provide CSI with sales and usage reports for the reference month (two months prior to the month incurring the payment). Sales reports should include information on subscriptions and revenues (subscription, advertisement, sponsorship and other revenues). Additionally, the service should provide a report including details of the reproductions and

transmissions. Further details are in the tariff at section 6. The service should keep these reports, or the information contained, readily available for 6 months.

### (e) Enforcement

Licencees should keep records going back 6 years as CSI reserves the right to audit the service's accounts and logs at any time during a 6 year period from a relevant year. It will give reasonable notice, during business hours, of its intention to audit. The service will receive a copy of the audit report and is liable for any underreporting found. If the underreporting is by more than 10 per cent, the service will bear the costs of the audit, plus interest. Necessary adjustments are due within 30 days of the audit report.

CSI, CMRRA, and SODRAC will keep the service's information and reports confidential, unless the service consents to disclosure. Without such consent, CSI reserves the right to share services' information internally; with other collective societies subject to this tariff; with the Copyright Board; in connection with proceedings before the Board once the licensee has had a reasonable opportunity to request confidentiality orders; with any person presumed to know the information; in accordance with the distribution of royalties; and by court order.

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