

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Citation Files 1991-13, 1992-PM/EM-1, 1994, 1995, 1996, 1997, 1998

Regime Public Performance of Music
Copyright Act, Section 67.2

Members Michel Héту, Q.C.
Ms. Adrian Burns
Mr. Andrew E. Fenus

Statement of Royalties to be collected for the performance or communication by telecommunication, in Canada, of musical or dramatico-musical works in 1992, 1993, 1994, 1995, 1996, 1997 and 1998

Reasons for decision

I. GENERAL INTRODUCTION

Pursuant to section 67 of the *Copyright Act*, the Society of Composers, Authors and Music Publishers of Canada (SOCAN) filed with the Board a statement of proposed royalties for the public performance, or the communication to the public by telecommunication, in Canada, of musical or dramatico-musical works in 1996, 1997 and 1998. Similar filings were made for the years 1992 to 1995.

The statement was published in the *Canada Gazette* on September 30, 1995. At the same time, the Board gave notice to users of their right to file objections to the proposed tariff no later than October 28, 1995. Statements filed for 1992 to 1995 had been published in a similar fashion.

The following gives reasons for the general provisions and for Tariff 6 (for 1992 to 1998). The other tariffs will be disposed of later.

II. GENERAL PROVISIONS

In its proposed statement, SOCAN asks for modifications to the general provisions of the tariff. Most of these simplify the reading of the tariff. One is a substantive change to the current situation.

SOCAN asks that late payments bear interest at a rate of one per cent above the Bank Rate (as published by the Bank of Canada). A similar provision already exists in the retransmission tariff.

For reasons that have already been expressed in its retransmission decisions, the Board agrees with this measure. However, it wishes to limit its effect to the future. Therefore, only royalties that become due on or after January 1, 1996 will be subject to this provision.

III. TARIFF 6 (MOTION PICTURE THEATRES)

A tariff for the public performance of music in movie theatres, based on their seating capacity, has existed since the Copyright Appeal Board first set tariffs in 1937. In 1981, when the Composers, Authors and Publishers Association of Canada (CAPAC) and the Performing Rights Organization of Canada (PROCAN) began using the same tariff formula, the combined rates were between 25¢ and 50¢ (with a minimum of \$25); they increased progressively to between 36.05¢ and 72.30¢ (with a minimum of \$36.25) in 1990. The tariff set the seating capacity of drive-in theatres at three times the number of cars that could be accommodated. Venues operating no more than three days a week paid half the rate. Those not operating year-round received a discount of one twelfth of the rate for each month they were inactive.

In 1991, CAPAC and PROCAN merged. The rates were set between 36.85¢ and 73.90¢ (with a minimum fee of \$37.10). In its decision of July 31, 1991, the Board expressed uneasiness about the apparent lack of coherence among the tariffs. At that time, the revenue generated by the cinema tariff was about 170 times less than the revenue generated by the commercial television tariff, and the Board did not understand why such a large disparity existed.

In September 1991, SOCAN filed its proposed statement of royalties for 1992. In it, it asked that the rate for the cinema tariff be set at 3 per cent of gross receipts from ticket sales, with a minimum fee of \$60. Furthermore, SOCAN asked that the licence cover only performances of music embodied in motion pictures; other uses of music (e.g. background music in the lobby or between performances) would trigger payments under other tariffs. The Board estimated that the amount raised under Tariff 6 would have increased from approximately \$160,000 in 1991 to more than \$10 million in 1992. SOCAN's statements of proposed royalties under Tariff 6 for the years 1993-1995 were identical, except that the requested minimum fee was increased to \$60.78. In its reply to objections, SOCAN stated that the proposed tariff more accurately reflected the value of access to and the use of SOCAN's repertoire for movie theatre operators and would result in fair and equitable royalties.

The Motion Picture Theatre Associations of Canada (MPTAC), representing 95 per cent of the motion picture theatre owners and operators in Canada, including independent theatres, objected to the 1992 proposal. It objected to both the increase in the rate and the reduction in the scope of the licence. The Canadian Motion Picture Distributors Association (CMPDA) asked for leave to intervene. Warner Bros. Entertainment also requested leave to intervene in the proposal for 1995.

The matter was delayed pending an application made to the Trial Division of the Federal Court, requesting that the Board be prohibited from granting intervenor status to anyone who was not a music user, or a representative of a music user. On February 12, 1993, this application was denied. An appeal from this decision was withdrawn in October 1994.

SOCAN and MPTAC informed the Board, by letter dated October 13, 1994, that they had reached an agreement on Tariff 6 on September 21, 1994. The agreement would keep the rates at their 1991

levels for 1992 and 1993. From 1994 to 1998, a single rate would be set, rising from 88¢ to \$1.01 per seat per year over that period. A minimum fee would also be set, which would increase from \$88 to \$101 over the same period. The 1991 provisions dealing with drive-in theatres, theatres operating no more than three days a week and theatres operating for only part of the year would be reinstated. Finally, the licence would again cover "operations of a motion picture theatre" instead of only performances of music embodied in motion pictures. CMPDA and Warner Bros. Entertainment expressed their support to the terms of the agreement.

On March 13, 1995, the Board addressed questions to all participants it wished be answered before deciding whether to approve the agreement.

The Board finds that the answers supplied by the participants are satisfactory. Accordingly, it certifies Tariff 6 for the years 1992 to 1998 so as to reflect the terms of the agreement. The tariff will be published shortly in the *Canada Gazette*.

A handwritten signature in cursive script that reads "Claude Majeau".

Claude Majeau
Secretary to the Board