

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2002-12-18

Citation FILE: Educational Rights 2003-2006

Regime Use of Broadcast Programs by Educational Institutions
Copyright Act, section 66.51

Members Justice John H. Gomery
Mr. Stephen J. Callary
Mr. Andrew E. Fenus

**Interim Statement of Royalties to be collected by ERCC from educational institutions in
Canada, for the reproduction and performance of works or other subject-matters
communicated to the public by telecommunication for the years 2003 to 2006**

Reasons for decision

At the request of the Educational Rights Collective of Canada (ERCC), with the concurrence of the Education Coalition, and subject to the outlined changes, the Board adopts, as the interim tariff to be collected by ERCC from educational institutions in Canada, for the reproduction and performance of works or other subject-matters communicated to the public by telecommunication for the period starting January 1, 2003, the text attached to this interim decision.

The interim tariff is identical to the tariff the Board certified on October 26, 2002 for the years 1999 to 2002 in all but two respects. First, some dates pertaining to reporting requirements have been changed. Second, the transitional provisions have been omitted, as they serve no purpose for the period starting January 1, 2003. The interim tariff will remain in force until the final tariff is certified, unless it is modified at some point in time.

A handwritten signature in black ink that reads 'Claude Majeau'.

Claude Majeau
Secretary General

INTERIM STATEMENT OF ROYALTIES TO BE COLLECTED BY THE EDUCATIONAL

RIGHTS COLLECTIVE OF CANADA (ERCC)

for the reproduction and performance in 2003, 2004, 2005 and 2006, of works or other subject-matters that have been communicated to the public by telecommunication by educational institutions or persons acting under their authority.

Notes (these notes are not part of the tariff)

The following notes outline the substance of sections 29.5, 29.6 and 29.7 of the *Copyright Act* as they relate to the following tariff, in an effort to help the reader understand the activities to which the tariff applies.

(1) Subject to note (2), this tariff applies when an educational institution or a person acting under its authority

- a. makes a single copy of a work or other subject-matter protected by copyright at the time that it is communicated to the public by telecommunication, or
- b. performs that copy in public for educational and training purposes on the premises of the institution before an audience consisting primarily of the institution's students.

(2) This tariff does not apply, and no royalties are payable, when an educational institution or a person acting under its authority

- a. performs a sound recording or a work or performer's performance that is embodied in a sound recording on the premises of the institution, for educational or training purposes and not for profit, before an audience consisting primarily of the institution's students, of instructors and of anyone directly responsible for setting a curriculum for the institution;
- b. performs in public a work or other subject-matter at the time it is communicated to the public by telecommunication, for educational or training purposes and not for profit, before an audience consisting primarily of the institution's students, of instructors and of anyone directly responsible for setting a curriculum for the institution;
- c. makes a single copy of a news program or a news commentary program, excluding documentaries, if the copy is destroyed before the expiration of one year after it was made;
- d. performs the copy described in note (2)(c) before the expiration of one year after it was made, before an audience consisting primarily of the institution's students, on its premises, for educational or training purposes;
- e. makes a single copy of a work or other subject-matter at the time it is communicated to the public by telecommunication, if the copy is destroyed within thirty days after it was made and is not performed in public.

Short Title

1. This tariff may be cited as the *Interim Educational Rights Tariff, 2003-2006*.

Definitions

2. (1) Except where otherwise specified, expressions used in this tariff shall have the same meaning as under the *Copyright Act*.

(2) The definitions in this section apply to this tariff.

“educational institution” has the meaning attributed to it in section 2 of the *Copyright Act*, which reads:

“educational institution” means:

(a) a non-profit institution licensed or recognized by or under an Act of Parliament or the legislature of a province to provide pre-school, elementary, secondary or post-secondary education,

(b) a non-profit institution that is directed or controlled by a board of education regulated by or under an Act of the legislature of a province and that provides continuing, professional or vocational education or training,

(c) a department or agency of any order of government, or any non-profit body, that controls or supervises education or training referred to in paragraphs (a) or (b), or

(d) any other non-profit institution prescribed by regulation.” (« *établissement d’enseignement* »)

“pre-school, elementary or secondary FTE student” means two pre-school students or one elementary or secondary level student whose enrolment was reported to the Ministry of Education for the academic year that ends immediately before a calendar year. (« *élève ETP de niveau préscolaire, élémentaire ou secondaire* »)

“other FTE Student” means 3.5 part-time students or one full-time student, other than a pre-school, elementary or secondary FTE student, enrolled in an educational, cultural or recreational activity taking place on the premises of, or being administered or operated by, an educational institution, whose enrolment was reported to Statistics Canada for the academic year that ends immediately before a calendar year. (« *autre élève ETP* »)

“reporting date” means January 31, May 31 or September 30. (« *date de rapport* »)

“reporting period” means January to April, May to August or September to December. (« *période de rapport* »)

Application

3. This tariff applies to all acts that give rise to an obligation to pay royalties under subsections

29.6(2), 29.7(2) or 29.7(3) of the *Copyright Act*.¹

General

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

THE TARIFF

Alternative Tariff Arrangements, Elections and Consequences

5. (1) An educational institution may operate under the comprehensive tariff or under the transactional tariff.

(2) An educational institution operates under the transactional tariff unless it notifies ERCC, before the start of a reporting period, that it has elected to operate under the comprehensive tariff for that and subsequent reporting periods.

(3) An educational institution that has elected to operate under the comprehensive tariff operates under the comprehensive tariff until it notifies ERCC, before the start of a reporting period, that it has elected to operate under the transactional tariff for that and subsequent reporting periods.

(4) An educational institution can elect to operate under a different tariff once per calendar year.

6. (1) A copy made while an institution operated under the comprehensive tariff can be kept and performed as long as an educational institution operates under the comprehensive tariff and, should the institution elect to operate under the transactional tariff, until the later of one year after the election took effect or

- a. two years after the copy was made, in the case of a copy of a news program or a news commentary program, excluding documentaries,
- b. one year after a copy was made, in the case of any other copy.

(2) A copy made while an institution operated under the transactional tariff can be kept and performed for the life of the copy.

7. (1) An educational institution that makes an election pursuant to subsection 5(3) shall pay half the amount set out in section 9 for each copy made under the comprehensive tariff that is not destroyed on or before the later of one year after the election took effect or

- a. two years after the copy was made, in the case of a copy of a news program or a news commentary program, excluding documentaries,
- b. one year after a copy was made, in the case of any other copy.

¹ See notes.

(2) A copy for which royalties are paid pursuant to subsection (1) is deemed thereafter to have been made while the institution operated under the transactional tariff.

Comprehensive Tariff: Royalties

8. (1) Subject to paragraph (2), an educational institution that operates under the comprehensive tariff shall pay the total of

\$1.73 per calendar year per pre-school, elementary and secondary FTE student, and

\$1.89 per calendar year per other FTE student.

(2) An educational institution that commences operation under the comprehensive tariff after the beginning of a calendar year may pro-rate the royalties for that year to the number of days remaining in that calendar year.

(3) For the purposes of subsection (2) and subject to subsection (4), an educational institution commences operation under the comprehensive tariff in a given calendar year on the earlier of

- a. one year after the day on which a copy of a news program or a news commentary program, excluding documentaries, was made under the comprehensive tariff, unless the copy is destroyed before then;
- b. thirty days after the day on which any other copy was made under the comprehensive tariff, unless the copy is destroyed before then;
- c. the day on which any copy referred to in paragraph (b) is performed in public.

(4) For the purposes of subsection (2), an education institution commences operation under the comprehensive tariff on January 1 of a calendar year if it possesses any copy made under the comprehensive tariff for which the day calculated pursuant to subsection (3) falls in a previous calendar year.

Transactional Tariff Royalties

9. (1) An educational institution that operates under the transactional tariff shall pay

- a. for copies intended for pre-school, elementary or secondary students,
 - i. \$0.13 per minute or part thereof if the copy was made from a radio signal,
 - ii. \$1.60 per minute or part thereof if the copy was made from a television signal;
- b. for copies intended for other students,
 - i. \$0.17 per minute or part thereof if the copy was made from a radio signal,
 - ii. \$2.00 per minute or part thereof if the copy was made from a television signal.

(2) For the purposes of subsection (1), if the copy is made from the Internet,

- a. the copy shall be deemed to have been made from a television signal unless there is no visual component to the copy, other than alphanumeric or still images (including graphic images), in which case it shall be deemed have been made from a radio signal; and
- b. the number of minutes it takes to perform the copy shall be the number of minutes used

to determine the amount of royalties.

ADMINISTRATIVE PROVISIONS

10. (1) Subject to subsection (3), for each reporting period during which an educational institution operates under the comprehensive tariff, the institution shall pay one third of the royalties calculated according to subsection 8(1). Payment is due on the next reporting date.

(2) Subject to subsection (3), for each reporting period during which an educational institution operates under the transactional tariff, the institution shall pay royalties calculated according to subsection 7(1) and section 9 in respect of all copies for which royalties became payable during that reporting period. Payment is due on the second subsequent reporting date.

(3) Notwithstanding subsections (1) and (2), royalties are not due until the reporting date following 60 days after an educational institution received an invoice from ERCC indicating the amount of royalties payable in respect of the relevant reporting period.

(4) ERCC may adjust an invoice on a retroactive basis to correct errors or omissions.

11. (1) An educational institution shall provide, on each reporting date, the following information:

- a. the name, address, telephone, facsimile and e-mail contact information for the person whom the institution has designated as its contact for the purposes of all communications with ERCC;
- b. its number of pre-school, elementary or secondary FTE students; and
- c. its number of other FTE students.

(2) An educational institution need not provide information set out in subsection (1) if the information has already been provided and has not changed since then.

Accounts and Records

12. (1) An educational institution shall keep and preserve until December 31, 2012, records from which ERCC can readily ascertain the amounts payable and the information required under this tariff.

(2) ERCC may audit these records at any time until December 31, 2012, on reasonable notice and during normal business hours.

(3) If the audit of an educational institution discloses that royalties have been understated by more than five percent, the institution shall pay the reasonable costs of the audit of the institution within thirty days of the demand for payment being made.

Adjustments

13. (1) Subject to subsection (2), adjustments in the amount of royalties owed (including excess payments), as a result of the discovery of an error or omission, shall be made on the date the next

royalty payment is due.

(2) An educational institution may deduct any amount owed to it from its next royalty payments until no money remains owed to it. If money remains owed after one year, ERCC shall refund the amount still owed no later than thirty days after having received an application for such a refund.

Interest on Late Payments

14. (1) Any amount not received by the due date shall bear interest from that date until the date the amount is received.

(2) Any amount found to be owing, through an audit or otherwise, shall bear interest from the date it was due until the date the amount is received.

(3) Any amount that cannot be delivered at the address referred to in section 15 shall bear interest from the date when the person owing the amount receives notice of the new address to which it should be delivered until the date the amount is received.

(4) Interest shall be calculated daily, at a rate equal to one per cent above the Bank Rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.

Addresses for Notices, etc.

15. (1) Anything that is sent to ERCC shall be sent to P.O. Box 658, 31 Adelaide Street East, Toronto, Ontario, M5C 2J8, e-mail: info@ercc.ca, or to any other address of which the person identified pursuant to paragraph 11(1)(a) has been notified.

(2) Anything that ERCC sends to an educational institution shall be sent:

- a. to the person identified pursuant to paragraph 11(1)(a); or
- b. where no such address has been provided, to any other address where the institution can be reached.

Delivery of Notices and Payments

16. (1) A notice may be delivered by hand, by postage paid mail, by telecopier, by e-mail, or by other mutually agreed means.

(2) A notice or payment mailed in Canada shall be presumed to have been received three business days after the day it was mailed.

(3) A notice sent by telecopier or by e-mail shall be presumed to have been received the day it is transmitted.

17. (1) Any person that ERCC designates to receive on its behalf a payment or notice shall have an address in Canada.

(2) ERCC shall notify the person identified pursuant to paragraph 11(1)(a) at least 60 days in advance of such a designation or of any change therein.