

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2005-02-25

Citation Files: Public Performance of Musical Works, 2003-2006 and Public Performance of Sound Recordings, 2003-2006

Regime Public Performance of Music
Copyright Act, section 68(3)

Members Mr. Stephen J. Callary
Mrs. Sylvie Charron
Ms. Brigitte Doucet

Statement of Royalties to be collected by SOCAN and NRCC in respect of pay audio services, 2003-2006

Reasons for decision

On May 11, 2002, the Copyright Board published in the *Canada Gazette* the statement of royalties proposed by the Society of Composers, Authors and Music Publishers of Canada (SOCAN) for the public performance or the communication to the public by telecommunication, in Canada, of musical or dramatico-musical works by pay audio services for 2003, and the statement of royalties proposed by the Neighbouring Rights Collective of Canada (NRCC) for the communication to the public by telecommunication, in Canada, of published sound recordings embodying musical works and performers' performances of such works by pay audio services for 2003. Pay audio services are digital music services offered to direct-to-home satellite or digital cable broadcasting subscribers.

SOCAN proposed a rate of 12.35 per cent of affiliation payments and NRCC, a rate of 7.8 per cent. SOCAN's rate is higher than the one certified for 1997-2002 by an amount equal to the 10 per cent discount the Board applied to account for the fact that it was a new tariff, while NRCC's rate is higher than the non-discounted rate for 1997-2002. For small systems, both collectives proposed a 50 per cent discount.

The proposed tariffs for 2004 were published in the *Canada Gazette* on April 19, 2003 and May 24, 2003 respectively. SOCAN proposed a rate of 16.47 per cent while NRCC maintained its proposed rate at 7.8 per cent.

For the years 2003 and 2004, Bell ExpressVu, CBC/SRC (Galaxie), the Canadian Cable Television Association, Corus Entertainment Inc. (Max Trax) and Star Choice Communications

Inc. objected to both tariffs. In addition, DMX Music Inc. objected to NRCC's tariff for 2004.

For the years 2005 and 2006, SOCAN and NRCC filed a joint statement of proposed royalties which was published in the *Canada Gazette* on April 17, 2004. The two collectives proposed rates of 12.35 and 5.85 per cent respectively, rates that are higher than the ones certified by the Board for 1997-2002 by an amount equivalent to the 10 per cent discount applied by the Board at the time. The rates proposed for small systems were again half of the main rates. The proposed tariffs were not opposed.

On July 23, 2003, NRCC (followed later by SOCAN) offered to objectors for the years 2003 and 2004, rates lower than previously proposed but equal to the ones proposed for 2005 and 2006. NRCC's offer came after the July 17, 2003 decision of the Federal Court of Appeal to dismiss NRCC's application for judicial review which challenged the Board's decision for the 1997-2002 tariffs on two main accounts: the allocation of royalties between SOCAN and NRCC and the certification of a joint tariff.

On January 26, 2004, NRCC informed the Board that an agreement had been reached involving SOCAN and all objectors, except for DMX Music Inc. which, according to NRCC, did not operate a pay audio service in Canada and was not part of the agreement. All objectors have withdrawn their objections, under the condition that the terms and conditions of the tariff certified for the years 2003-2006 be the same as that of the joint tariff proposed for 2005 and 2006.

The tariff the Board certifies for the period 2003 to 2006 is in accordance with the agreement and thus identical to the one proposed for 2005 and 2006. The certified rates are as follows:

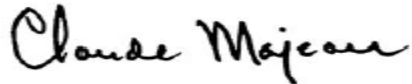
12.35 per cent and 5.85 per cent of affiliation payments for SOCAN and NRCC respectively, and

6.175 per cent and 2.925 per cent of affiliation payments for SOCAN and NRCC respectively, for small systems.

The tariff includes the following changes compared to the one certified for 1997-2002:

1. The 1997-2002 certified tariff modified the wording of the *Definition of "Small Cable Transmission System" Regulations* (SOR/94-755) to take into account the *Exemption Order for Small Cable Undertakings* (Appendix 1, Public Notice CRTC 2001-121, December 7, 2001). As the Board explained in its decision of March 19, 2004 with respect to SOCAN's Tariffs 2.A and 17, this approach creates legal difficulties. The tariff the Board now certifies adopts the approach used for SOCAN's Tariff 17 (*Canada Gazette*, March 20, 2004, section 2): section 3 ensures that systems which may have lost their status as small cable transmission systems as a result of the CRTC exemption order will continue to pay the same amount of royalties as small cable transmission systems. This is the approach proposed by the collectives for 2005 and 2006.
2. A specific reference to NRCC's Tariff 3, which had not yet been proposed at the time of the last certification, has been added to subsection 4(2) which enumerates uses covered by other tariffs and thus not covered by this tariff.

3. Paragraph 10(2)(iii) of the tariff provides that a collective society wishing to share confidential information in connection with proceedings before the Board must first afford the undertaking that provided the information the opportunity to request that it be treated confidentially. Parties have agreed to the addition of this new condition. As this is consistent with its past practices, the Board agrees to include it in this tariff. The Board takes note however that this is a new wording of a paragraph included in many other tariffs. When appropriate, the Board will examine the possibility of modifying the other tariffs in order to ensure consistency.
4. The transitional provisions are no longer relevant and are deleted.

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

Claude Majeau
Secretary General