

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2008-03-20

Citation File: Public Performance of Musical Works

Regime Collective Administration of Performing Rights and of Communication Rights
Copyright Act, subsection 68(3)

Members Mr. Stephen J. Callary
Mrs. Francine Bertrand-Venne
Mrs. Sylvie Charron

**Proposed
Tariffs
Considered** 17 – Pay, Specialty and Other Television Services (2005-2008)

Statement of Royalties to be collected by SOCAN for the communication to the public by telecommunication, in Canada, of musical or dramatico-musical works

Reasons for decision

[1] In March of 2004, 2005, 2006 and 2007, the Society of Composers, Authors and Music Publishers of Canada (SOCAN) filed, pursuant to subsection 67.1(1) of the *Copyright Act*, proposed statements of royalties to be collected for the communication to the public by telecommunication, in Canada, of musical and dramatico-musical works in its repertoire by pay, specialty and other television services (Tariff 17) in 2005, 2006, 2007 and 2008. The proposed tariffs were published in the *Canada Gazette* on May 1, 2004, May 14, 2005, May 20, 2006 and June 23, 2007. Prospective users and their representatives were advised of their right to object to the proposals.

[2] Tariff 17 for 2001 to 2004 was certified on March 20, 2004. The rate set was less than what SOCAN had asked. The proposed statement for 2005 had to be filed by the end of March, before the deadline to seek judicial review of the Board's decision expired. For that reason, the proposed statement for 2005 was in the same format as that approved by the Board, but for a higher rate. However, the statement invited prospective users to consider extending the terms of the 2001-2004 tariff to 2005. No one asked the Federal Court of Appeal to review the Board's decision.

[3] Bell ExpressVu LP, the Canadian Association of Broadcasters, the Canadian Broadcasting Corporation, the Canadian Cable Television Association (CCTA), Fairchild Television, Pelmorex Communications and Star Choice Television Network Incorporated objected to the 2005 proposal.

[4] The proposed statement for 2006 was identical to the 2001-2004 tariff. No one objected to it. On August 17, 2005, SOCAN informed the Board that it was prepared to have Tariff 17 certified for 2005 and 2006 in the same format and at the same rates as for 2001-2004. All objections to the 2005 proposal were withdrawn in correspondence filed between August 17, 2005 and January 30, 2007. CCTA pointed out that effective May 17, 2005, the *Definition of "Small Cable Transmission System" Regulations*¹ had been modified to "adapt these Regulations to respond to recent changes that the Canadian Radio-television and Telecommunications Commission (CRTC) has started to implement in the way it licenses, or exempts from licensing, small distribution systems ..." ² CCTA noted that the tariff would have to be changed to reflect this modification.

[5] The proposed statement for 2007 also was identical to the 2001-2004 tariff. The Canadian Cable Systems Alliance, Cogeco Cable Inc., Rogers Communications Inc., SaskTel Communications Company, Shaw Cablesystems G.P., Star Choice Television Network Incorporated, Telus Communications Company and Vidéotron Limited filed objections. All withdrew them after the Board asked, in an email dated January 19, 2007, if, and how they intended to proceed in this matter. No one objected to the proposed statement for 2008 which again, is identical to the 2001-2004 tariff.

[6] We certify, for 2005 to 2008, two tariffs that are identical in essence to the 2001-2004 tariff. Subparagraphs 9(2)(ii) and 10(2)(ii) of the 2001-2004 tariff were meant to apply only in 2001; they have been deleted. The tariff for 2005 reflects the changes to the *Definition of "Small Cable Transmission System" Regulations*. The fact that this change occurred in the middle of the application period of the tariff adds to the wording a level of complexity that is required only in that year; for that reason, we certify a separate, simpler tariff for 2006-2008. The confidentiality provision has been modified to provide for an opportunity to seek a confidentiality order before information is disclosed in connection with proceedings before this Board. Finally, small changes have been made to make the wording more uniform and the tariff more legible.

[7] Most systems will continue to pay 1.9 per cent of their income. Those who use SOCAN's repertoire for less than 20 per cent of their air time will pay at a rate of 0.8 per cent. Small systems will continue to pay \$10 per year. This is expected to generate royalties of approximately \$40 million in 2005.

¹ SOR/94-755, (*Canada Gazette*, Part II, Vol. 128, at page 4096).

² See SOR/2005-148, (*Canada Gazette*, Part II, Vol. 139, at page 1195), and the accompanying regulatory impact analysis statement, at page 1191 of SOR/2005-147.

A handwritten signature in black ink, reading "Claude Majeau". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Claude Majeau
Secretary General