

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2008-06-20

Citation Files: Media Monitoring 2006, 2007-2008

Regime Collective Administration in Relation to Rights Under Sections 3, 15, 18 and 21
Copyright Act, subsection 70.15(1)

Members Mr. Justice William J. Vancise
Mr. Stephen J. Callary
Mrs. Sylvie Charron

Statement of Royalties to be collected by CBRA for the fixation and reproduction of works and communication signals, in Canada, by commercial and non-commercial media monitors for the years 2006 to 2008

Reasons for decision

[1] In March 2005, pursuant to section 70.13 of the *Copyright Act* (the “Act”), the Canadian Broadcasters Rights Agency (CBRA) filed proposed statements of royalties for the fixation and reproduction of the programs and communication signals of Canadian private broadcasters by commercial and non-commercial media monitors for 2006. The proposed statements were published in the *Canada Gazette* on May 7, 2005. Proposed statements for the same uses in 2007 and 2008 were filed in March 2006 and published on April 29, 2006.

[2] Prospective users were advised of their right to object to the proposals. No one challenged the proposed commercial tariffs. The Deputy Attorney General of Canada, acting on behalf of a number of federal departments and agencies, the governments of Alberta and Ontario, the Canada Science and Technology Museum Corporation and the Canadian Museum of Civilization Corporation took issue with one or both proposed non-commercial tariffs. All ultimately withdrew their objections, some as a result of having reached an agreement that will trump the tariff we certify today.¹ The Canadian Broadcasting Corporation (CBC) asked to intervene in relation to the proposed tariffs for 2007-2008. That application became moot when CBC, who only wished to file

¹ See section 70.191 of the *Act*.

comments, was informed that anyone could comment in writing on any aspect of the proceedings. J&A Media Services filed a letter of comment asking, among other things, a reduction of the rate to 3 to 5 per cent and less restrictive conditions of use.

[3] The proposed tariffs contained a significant number of differences when compared with the *CBRA Commercial Media Monitoring Tariff 2000-2005* and the *CBRA Non-Commercial Media Monitoring Tariff 2001-2005* (“the 2000-2005 tariffs”). Once all objections were withdrawn, CBRA proposed, and the Board accepted, to examine these differences according to a simplified, written process. CBRA filed a detailed explanation of the changes it sought; it also asked for two additional changes that were not in the proposed tariffs. The Board examined these proposals and asked CBRA for further clarification. CBRA responded and were further consulted on some of the issues; a revised proposal was submitted for certification. That revised proposal is the tariffs we now certify. The following changes require our comments.

[4] First, CBRA asked that the tariffs be increased to reflect the fact that owners of other works used by media monitors often charge a premium for multiple uses of the same item by the same customer. However, rather than further adding to reporting requirements by adopting the sometimes complex formulas used to calculate these additional payments, CBRA suggested it would be more efficient to simply increase the overall rate from 9 to 10 per cent in 2007-2008. We note J&A Media Services’ complaint that the tariff rate is already too high. However, given that no other commercial media monitor objected to the increase and that those who filed objections to the increase in the non-commercial media monitoring tariff all withdrew them, we certify the tariffs at the rates CBRA proposed.

[5] Second, in response to requests made to it after the proposed tariffs for 2007-2008 were filed, CBRA asked that the tariffs be extended to some forms of downloads of excerpts, which were not allowed pursuant to the 2000-2005 tariffs. This proposal is permissive and is entirely to the benefit of media monitors. Furthermore, CBRA seeks no increase in its royalty rate to account for this amendment. Making the change cannot result in any unfairness to media monitors; the certified tariffs incorporate it.

[6] Third, we have merged the 2006 and 2007-2008 tariffs. There were only two significant differences between the proposed tariffs. The first was the increase in the rate, which the relevant provisions reflect. The second was CBRA’s request to allow some downloads in 2007-2008. CBRA agreed to extend the measure to 2006, which made the merger of the two tariffs possible.

[7] Fourth, the tariffs we certify no longer requires CBRA to provide monthly paper updates of the list of CBRA’s signals: see subsections 18(1) of the commercial tariff and 19(1) of the non-commercial tariff. Paper updates need only be provided upon request. CBRA will be dispensed from providing paper updates if the information is available on a website that is updated at least once a month (if required).

[8] Fifth, the non-commercial tariff has been broadened so as to apply to municipal governments.

[9] Finally, we made a number of changes to the wording of the tariffs. Some standardize the expressions used. In other cases, words that are not necessary strictly speaking are nevertheless added to avoid any possible confusion: such is the case in paragraphs 8(2)(vi) and 11(2)(ii) of the commercial tariff and paragraphs 8(2)(iv) and 12(2)(ii) of the non-commercial tariff, which specify that communication includes broadcast, download, email or transmit. At least one other change deals with an apparent contradiction in what monitors and their clients could or could not do. Paragraphs 11(2)(ii) of the commercial tariff and 12(2)(ii) of the non-commercial tariff referred to a customer being allowed to internally circulate CBRA items, while paragraphs 8(2)(vi) and 8(2)(iv) of the same tariffs appeared to require media monitors to forbid their customers from doing precisely this. The wording has been adjusted so that media monitors are not under the impression that they are required to stop their customers from internally circulating CBRA items.

A handwritten signature in black ink, reading "Claude Majeau". The signature is written in a cursive, flowing style.

Claude Majeau
Secretary General