

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Citation File: Retransmission of Distant Television Signals, 2009-2013

Regime Retransmission of Distant Television Signals
Copyright Act, section 66.51

Members Mr. Justice William J. Vancise
Mr. Claude Majeau
Mr. J. Nelson Landry

Interim tariff for the retransmission of distant television signals as of January 1, 2013

Reasons for decision

I. INTRODUCTION

[1] The retransmission tariffs for 2009-2013 have yet to be certified.

[2] On December 19, 2008, the Board issued the *Interim Television Retransmission Tariff, as of January 1, 2009* (the “*Interim Television Tariff, 2009*”). The decision extended on an interim basis the *Television Retransmission Tariff, 2004-2008*, subject to a few changes, pending the certification of the 2009-2013 tariff.

[3] On December 20, 2010, the nine retransmission collective societies and retransmitter objectors agreed on the amounts of the royalties to be paid under the 2009-2013 tariff. There is reason to believe that most retransmitters, if not all, have paid royalties pursuant to this agreement since.

[4] On November 9, 2012, the collective societies reached an agreement on the allocation of those royalties. Retransmitters continue to allocate royalties pursuant to the *Interim Television Tariff, 2009*.

[5] On December 6, 2012, the Canadian Broadcasters Rights Agency Inc. (CBRA) and the Canadian Retransmission Collective (CRC), asked the Board to initiate steps to finalize and certify the tariff. Collectives have agreed on most terms and conditions pertaining to the agreed allocation. CBRA and CRC raise that some issues remain including whether interest should be

payable on the sums to be reallocated among collectives for the period 2009-2012 so as to reflect the new allocation. The Board was asked to establish a process to resolve these matters.

[6] Crucially, these collectives wish that retransmitters start paying at the new royalty rates, as per the agreed allocation, as of January 1, 2013. In order to do so, the Board was asked to certify the tariff as soon as possible. The Board informed the parties that this would not be possible within the timelines proposed by the collectives.

[7] On December 14, 2012, CBRA and CRC filed an application for an interim decision in order to:

- approve the royalty rates agreed to between the collective societies and retransmitter objectors;
- approve the allocation of royalties agreed to by the collective societies;
- order retransmitters to pay collective societies in accordance with the newly agreed allocation and rates as of January 1, 2013;
- initiate a process to deal with outstanding issues that must be addressed before a final decision can be issued.

[8] The collectives wish that retransmitters start paying at the new royalty rates, as per the agreed allocation, as of January 1, 2013. As formulated, the application asks for measures which are unnecessary to achieve this purpose and which will require more time than is available if the purpose is to be achieved. The Board cannot give final approval to rates and allocation without consultations on a number of issues, including the very framework of those consultations. On the other hand, both the agreed royalties and the agreed allocation seem reasonable. Requiring retransmitters to pay royalties accordingly starting January 1, 2013 also seems reasonable, and probably will considerably simplify the transition from the previous royalty and allocation regime to the new.

[9] The Copyright Collective of Canada (CCC) and the Canadian Retransmission Right Association (CRRA) oppose the application. They argue that CBRA and CRC seek to alter the allocation agreement by asking that the Board formalize one aspect (allocation) but not another (interests on reallocations of royalties). They ask that the allocation agreement be approached as a whole and that the current allocation continue to apply until all issues are resolved.

[10] This opposition is ill-founded. The interim decision does not prejudice the issues that will be addressed in the final decision. More importantly, to the extent a dispute exists on the issue of inter-collective interests, it is most probably preferable to deal with it through the imposition (or non-imposition) of interests, after seeking evidence on the collectives' intention in this respect. If there is an issue with interests, changing the royalty allocation is not the way to deal with it.

II. DECISION

[11] The application for an interim decision is allowed in part. The *Interim Television Retransmission Tariff, as of January 1, 2009* is amended as follows.

[12] Section 1 of the tariff shall now read *Interim Television Retransmission Tariff, as of January 1, 2013*.

[13] The table in Section 9 is replaced by the following:

Number of premises	Monthly rate for each premises receiving one or more distant signals (cents)
Up to 1,500	41
1,501-2,000	46
2,001-2,500	52
2,501-3,000	58
3,001-3,500	63
3,501-4,000	69
4,001-4,500	75
4,501-5,000	81
5,001-5,500	86
5,501-6,000	92
6,001 and over	98

[14] Section 15 is replaced by the following:

15. Retransmitters shall pay to the collective societies the following portions of the royalty:

1. BBI:	0.96 per cent
2. CBRA:	13.50 per cent
3. CCC:	53.38 per cent
4. CRC:	14.85 per cent
5. CRRRA:	9.76 per cent
6. DRTVC:	0.70 per cent
7. FWS:	3.25 per cent
8. MLB:	0.80 per cent
9. SOCAN:	2.80 per cent



Gilles McDougall
Secretary General