Copyright Board Canada


Commission du droit d'auteur Canada

**Date** 2013-11-29

**Citation** File: Retransmission 2009-2013

**Regime** Retransmission of Distant Television and Radio Signals
*Copyright Act*, section 73(1)

**Members** The Honourable William J. Vancise
Mr. Claude Majeau
Mr. J. Nelson Landry

**Statements of Royalties to be collected for the retransmission of distant television and radio signals for the years 2009 to 2013**

**Reasons for decision**

## I. INTRODUCTION

[1] On March 31, 2008, the Border Broadcasters Inc. (BBI), the Canadian Broadcasters Rights Agency Inc. (CBRA), the Canadian Retransmission Collective (CRC), the Canadian Retransmission Right Association (CRRA), the Copyright Collective of Canada (CCC), the Direct Response Television Collective Inc. (DRTVC), FWS Joint Sports Claimants Inc. (FWS), the Major League Baseball Collective of Canada Inc. (MLB) and the Society of Composers, Authors and Music Publishers of Canada (SOCAN) (the "Collectives") jointly filed, pursuant to subsection 71(1) of the *Copyright Act*[1] (the "*Act*"), a proposed tariff for the retransmission of distant television signals for 2009 to 2013. SOCAN, CBRA and CRRA also filed a proposed tariff for the retransmission of distant radio signals for 2009 to 2011. The proposed tariffs were published in the *Canada Gazette* on June 28, 2008. On March 31, 2011, SOCAN, CBRA and CRRA filed a proposed radio retransmission tariff for 2012 and 2013. That proposed tariff was published in the *Canada Gazette* on June 11, 2011.

[1] R.S.C. c. C-42.

[2] Bell ExpressVu, Canadian Cable Systems Alliance Inc., Cogeco Cable Inc., Eastlink, Rogers Communications Inc., Shaw Communications, TELUS Communications Company and Videotron Ltd. (the "Objectors") filed timely objections to all three tariffs.

[3] Retransmission tariffs set the amount (or quantum) of royalties to be paid by retransmitters (e.g. cable, satellite) for the communication by telecommunication of the works embedded in the distant, over-the-air radio and television signals they retransmit to their customers. These tariffs also allocate royalties among the collectives entitled to share in them.

[4] On July 18, 2013, the parties informed the Board that they had agreed on both the amount of radio retransmission royalties and their allocation among the relevant collectives and filed a copy of a memorandum of agreement and a draft of the radio tariff reflecting this agreement. The agreement is identical in all relevant respects to the *Radio Retransmission Tariff, 2004-2008*.[2] We certify a radio tariff that reflects the parties' agreement. We estimate that the total amount of royalties the tariff will generate is about $1.1 million for 2013.

[5] With respect to the television retransmission tariff, both quantum and allocation were at issue.

## II. CHRONOLOGY OF THE TELEVISION TARIFF

[6] The chronology of events is as follows.

[7] Hearings into this matter were not scheduled immediately by reason that the parties were attempting to agree on the quantum of the television retransmission royalties, as had happened with the 2004-2008 tariff.[3]

[8] On December 19, 2008, at the request of the Collectives, the Board extended, indefinitely and on an interim basis, the application of the *Television Retransmission Tariff, 2004-2008* subject to a few changes, pending the certification of the 2009-2013 tariff.[4] The quantum and allocation of royalties remained the same.

[9] On December 20, 2010, the parties agreed on rate increases to be phased in over the life of the tariff (the "quantum agreement"). The Objectors agreed to pay at the new rates without

---

[2] Copyright Board Tariff (13 December 2008).
[3] *Retransmission of Distant Television and Radio Signals, in Canada, for the Years 2004 to 2008* (12 December 2008) Copyright Board Decision at paras. 11 and 13. [*Retransmission (2008)*]
[4] *Interim Television Retransmission Tariff, as of January 1, 2009*.

waiting for the Board to certify a tariff. Even though this requirement was not binding on other retransmitters,[5] virtually all complied with it.

[10] On October 11, 2011, CBRA and CRC advised the Board of the quantum agreement without filing it. They also asked that the Board adopt a schedule of proceedings to deal with the allocation of royalties. On December 15, 2011, the Board approved the Collectives' joint proposal for a timetable leading to hearings starting on November 13, 2012.

[11] On June 22, 2012, CCC, on behalf of all parties, filed with its statement of case the quantum agreement and a revised draft of the television tariff (the "2012 draft tariff") reflecting the agreement. By early November, 2012, all Collectives had filed their statements and evidence in preparation for the hearings.

[12] On November 9, 2012, four days before the start of the hearings, counsel to CRC, on behalf of all the Collectives, advised the Board that they had agreed on the allocation of royalties (the "allocation agreement") and requested that the hearings be adjourned. The application was granted.

[13] On December 6, 2012, CBRA and CRC advised the Board that a few issues relating to allocation remained. The most important among those was whether the (significant) sums to be reallocated among the Collectives for the period 2009-2012 (the "allocation adjustments") should attract interest. Other remaining issues were: whether and how to require retransmitters to apply the allocation agreement starting January 1, 2013; the timetable for allocation adjustments; arbitration principles for the resolution of eventual disputes on allocation adjustments; whether the allocation adjustment timetable should be held in abeyance in case of arbitration; and, dovetailing allocation adjustments with the certification of the tariff. CBRA and CRC asked that the Board establish a process to address these matters expeditiously, to ensure that retransmitters be required to start paying at the new royalty rates and according to the agreed allocation as of January 1, 2013.

[14] On December 13, 2012, the Board advised the parties that it would not be possible to certify a final tariff by the end of that month. However, it would be possible to ensure that retransmitters be required to start paying at the new royalty rates and according to the agreed allocation as of January 1, 2013 through an interim decision, if applied for.

[15] On December 14, 2012, CBRA and CRC filed an application for an interim decision. The application asked that the Board: approve the rates and allocation found in the quantum agreement and the allocation agreement; order retransmitters to pay royalties according to these

---

[5] *Retransmission (2008)*, *supra* note 3 at para.

agreements as of January 1, 2013; and initiate a process to deal with all remaining issues and leading to a final decision.

[16] FWS supported the application. CCC and CRRA opposed it, arguing that CBRA and CRC were seeking to alter the allocation agreement by asking that the Board formalize one aspect (allocation) but not another (interest on allocation adjustments). They asked that the allocation agreement be approached as a whole and that the 2004-2008 allocation continue to apply until all issues were resolved.

[17] On December 21, 2012, the Board granted the application in part.[6] The interim tariff required retransmitters to pay royalties according to the new rates and allocation as of January 1, 2013. It left open all other pending issues, including interest.

[18] On February 28, 2013, CCC, CRRA, BBI and DRTVC asked that the Board set in motion a process leading to a final decision. In an order dated March 15, 2013, the Board identified the outstanding issues that needed to be addressed before a tariff could be certified as follows: whether the Board should arbitrate disputes on allocation adjustments; dovetailing allocation adjustment dates and potential disputes on adjustments; interest; and retransmitter compliance with the quantum agreement. The Board informed the Collectives that it would not arbitrate any dispute pertaining to the amount, timing or other issue concerning allocation adjustments. The tariff would provide for the adjustments (but not their amount) and set the dates by which they would be payable. The rest would be up to an arbitrator or the courts. The Board proposed a process to deal with the interest issue, to which the Collectives subsequently agreed. Finally, the Board inquired about the extent to which retransmitters had continued to pay royalties pursuant to the *Interim Television Tariff, as of January 1, 2009* instead of the quantum agreement: this matter is addressed in paragraph [65] below, as part of the transitional provisions.

[19] The record of these proceedings was perfected on April 26, 2013, when an application by CCC to file a reply submission was dismissed.

## III. SHOULD ALLOCATION ADJUSTMENTS ATTRACT INTEREST?

[20] Pursuant to the allocation agreement, CBRA, CRC and FWS (the "Receiving collectives") are entitled to a greater share of royalties than in 2004-2008, while BBI, CCC, CRRA, DRCTV, MLB and SOCAN (the "Paying collectives") are entitled to less. The allocation agreement applies as of January 1, 2009. Until December 31, 2012, retransmitters allocated royalties (in the amount provided in the quantum agreement) pursuant to the *Television Retransmission Tariff, 2004-2008*. From that date, retransmitters allocated royalties pursuant to the allocation

---

[6] *Interim tariff for the retransmission of distant television signals as of January 1, 2013* (21 December 2012) Copyright Board Interim Decision.

agreement. All Collectives agree that the Receiving collectives are entitled to allocation adjustments from the Paying collectives for the relevant period. They also agree on how money should flow among them. They do not agree on whether allocation adjustments should attract interest.

### A. POSITION OF THE RECEIVING COLLECTIVES

[21] The Receiving collectives ask for interest on allocation adjustments. They rely on textual arguments to conclude that in this instance, the absence of an express agreement among the Collectives disposing of the issue should lead us to conclude that the issue can properly be addressed by the Board.

[22] The Receiving collectives argue that it was to be expected that the issue of interest on allocation adjustments would not be discussed before the allocation agreement was reached. The purpose of the agreement was to settle the allocation of royalties among the Collectives: everything else, including interest, was ancillary and remained to be dealt with. This explains why the issue was not raised until November 14, 2012, in the context of negotiating a formal written agreement.

[23] According to the Receiving collectives, the November 9, 2012 email notifying the Board of the allocation agreement was clear. Its intent was to advise the Board that there were no outstanding issues that required maintaining the November 13, 2012 hearing date. The email also asked that the hearings be adjourned, not cancelled, so that they could be rescheduled later on "in the event that some procedural or other matters require it." Clearly, they argue, some issues remained to be addressed.

[24] The Receiving collectives also rely on the wording of the 2012 draft tariff to conclude that interest ought to be paid on allocation adjustments. Where interest is waived, this is done expressly. Silence on the matter favours the position that interest is payable.

[25] The Receiving collectives dismiss as irrelevant the fact that allocation adjustments never attracted interest in earlier retransmission proceedings. In those instances, the Collectives specifically agreed to waive interest, and the Board expressly relied on those agreements. There is no such agreement here. Moreover, previous adjustments, in the range of several thousands to a few million dollars, were for amounts considerably less than the $45 million or so that are at play in this instance.

[26] From a principled point of view, the Receiving collectives argue that their position is consistent with the Board's general policy on retroactive payments.[7] The tariff is being certified

---

[7] *SOCAN and Re:Sound Tariffs 1.C (CBC-Radio), 2006-2011* (8 July 2011) Copyright Board Decision at para. 131.

years after it takes effect. Receiving collectives could not distribute funds they had not collected nor could rights holders spend or invest royalties they had not received. These are opportunity costs, and the Board has held that such losses must be accounted for.

[27] In the past, the Board has always applied the Bank Rate to retroactive royalty adjustments. The Receiving collectives proposed using a higher rate, which they sometimes referred to as the Bank of Canada's published prime rate.[8] In *CBC Radio (2011)*, the Board recognized that the Bank Rate may no longer be appropriate since it does not reflect the actual borrowing costs of collectives and rights holders.[9] The Receiving collectives argued that the rate should reflect actual opportunity costs, expressed as the interest rates that would be payable on loans to rights holders. These rates would be higher than any chartered bank prime rate. The Bank of Canada's published prime rate would represent a compromise between the Bank Rate and the real opportunity costs of rights holders who have been deprived of the use of royalties since 2009.

### B. POSITION OF THE PAYING COLLECTIVES

[28] The Paying collectives argue that allocation adjustments should not be subject to interest, for the following reasons.

[29] First, the allocation agreement reflects a final resolution of all significant financial issues. Interest on an amount that increases to approximately $45 million over a four-year period is not an ancillary matter. The wording of the November 9, 2012 email advising the Board of the allocation agreement only serves to reinforce this point.

[30] Second, neither the quantum agreement nor the 2012 draft tariff provide for interest to be paid on allocation adjustments. Where the parties agreed on such payments, this was stated specifically. Had the parties intended that interest be paid on allocation adjustments, they would have specified it.

[31] Third, no interest was ever paid on allocation adjustments in earlier retransmission proceedings. There is no reason why any should be paid now.

[32] Fourth, judicial and quasi-judicial bodies encourage settlements. To that end, additional terms that were not negotiated in settlements ought not to be imposed.

---

[*CBC Radio (2011)*]

[8] This is an average of the prime rates set by Canadian banks (not the Bank of Canada) that the Bank of Canada publishes on its Web site as "Prime business ("prime rate")": http://www.bankofcanada.ca/rates/interest-rates/canadian-interest-rates/.

[9] *CBC Radio (2011)*, *supra* note 7 at para.

[33] Fifth, silence is not tantamount to an implicit agreement that the issue was to be adjudicated at a later date.

[34] Sixth, the policy argument made by reference to *CBC Radio (2011)* is not relevant. It concerns retroactive royalty payments by users to collectives, not the inter-collective reallocation of royalties.

[35] Seventh, neither the Paying collectives nor their members derived any benefit from collecting the royalties that are to be reallocated. The reserved funds were not distributed to members. They earned little or no interest. Any award in excess of what was earned would be punitive.

[36] Eighth, the Receiving collectives provided no evidence of opportunity costs. Failure to provide material evidence over which one has exclusive control without explaining it away amounts to an implied admission that the absent evidence would be contrary to the party's case or at least would not support it.

[37] Alternatively, any interest to be paid should be set according to a proper application of the doctrine of unjust enrichment. Compensation for unjust enrichment is capped at the lesser of the enrichment enjoyed or the deprivation suffered. Equity and the application of the doctrine of unjust enrichment dictate that any amount in lieu of interest should not exceed interest actually earned by the Paying collectives on funds that are to be reallocated. Furthermore, only interest accrued since the date of the allocation agreement should be awarded, if only because the need to proceed to allocation adjustments could not have reasonably been known until allocations were finally agreed upon.

### C. REPLY OF THE RECEIVING COLLECTIVES

[38] The Receiving collectives challenged the suggestion that interest should be limited to those the Paying collectives had received on the reserves actually made. Interest payable to the Receiving collectives for being deprived of the use of that money should not depend on what the Paying collectives chose to do with the money. The Receiving collectives also argued that accruing interest only from the date of the allocation agreement would be inconsistent with past Board decisions, judicial decisions and the principles that underlie prejudgment interest. This would perversely encourage a collective facing the prospect of a retroactive payment to delay the process so as to prolong the interest-free period during which it could retain its excess payments.

## IV. ANALYSIS

[39] We start by disposing of the arguments on which we do not rely, either as a matter of choice or because they are irrelevant.

[40] The 2012 draft tariff is irrelevant to the issue at hand. The draft tariff is a companion to the quantum agreement. The quantum agreement settles issues between Collectives and Objectors; remaining issues among Collectives are alluded to incidentally, without resolving them. There was no meeting of minds in the 2012 draft tariff on the allocation of royalties, let alone on the terms and conditions related to such allocation, including the payment of interest on eventual allocation adjustments.

[41] The fact that interest was not addressed during the discussions leading to the allocation agreement is not determinative. The November 9, 2012 email clearly mentions "outstanding issues". It would be as reasonable to conclude that interest was part of these outstanding issues as to conclude that they were not. Fortunately, we can dispose of the matter without reaching a conclusion on the Collectives' mind set in this regard.

[42] The fact that no interest was ever paid on allocation adjustments in earlier retransmission proceedings also is not determinative. The present proceedings differ in two important respects. First, collectives always agreed in the past to waive interest. Second, the amounts involved are much more important than they ever were. However, these differences are not sufficient of themselves to justify a decision to impose interest.

[43] The principles outlined in *CBC Radio (2011)* dealing with the imposition of interest cannot be applied in this instance without some further analysis. The decision concerned the relationship between collectives and users of their repertoire. The relationship among collectives is vastly different. These differences result both from the nature of the relationship and from the nature of collectives.

[44] The client-collective relationship is continuing: a retransmitter cannot legally retransmit television signals without reporting to a collective on a monthly basis. The collective-collective relationship is occasional, at least to the extent that it is governed by a retransmission tariff: here, for example, we are asked to determine the terms of a one-time adjustment payment.

[45] A collective's clients may derive a commercial advantage from delaying royalty payments (for example, to pay other debts attracting higher interest). Setting a high interest rate on delinquent royalty payments can encourage the prompt settlement of such debts. By contrast, a collective derives little or no benefit from delaying a re-allocation payment to another collective. Both collectives are in a relationship of trust to their members. Both must retain sufficient reserves to provide for contingencies until a final tariff is certified. Both must invest reserves conservatively, at yields that currently are either low or insignificant. It is highly improbable that setting a high interest rate on late payments can change a collective's behaviour towards another collective.

[46] Nevertheless, we conclude that the principles outlined in *CBC Radio (2011)* dealing with the imposition of interest are relevant in this instance:

> [131] In our opinion, the practice of using interest factors should be generalized. This tariff is being certified more than four years after it takes effect. It increases the royalties payable. Collectives cannot distribute funds they have not collected. Rights holders cannot spend or invest royalties they have not received. These are opportunity costs; their losses must be accounted for. […].[10]

[47] The principle is clear. A delay in collecting royalties entails opportunity costs for the collective or its members. So does a delay in a collective receiving its full royalty allocation. In both cases, the collective cannot distribute amounts it does not have. In both cases, resulting losses must be compensated through the imposition of interest. Therefore, interest should be payable on allocation adjustments.

[48] Once the reason for imposing interest on allocation adjustments becomes clear, it is relatively easy to dispose of other arguments.

[49] First, while it would have been helpful if the Receiving collectives had filed better evidence of their opportunity costs, the fact that they did not is not determinative. Just as the Board has done in the past, we can recognize opportunity costs on a general basis, without the need for evidence specific to any single collective or other debtor.

[50] Second, unjust enrichment is irrelevant. A retransmission proceeding is not civil litigation. As a matter of policy, and for reasons that have been validated by the Federal Court of Appeal,[11] the Board imposes interest as part of the terms and conditions of the tariff. An interest provision in a tariff cannot possibly reflect the individual circumstances of each debtor (be it a user or a collective) or creditor.

[51] Third, the argument that interest should not apply for the whole period is not tenable. The Receiving collectives' opportunity costs exist from January 1, 2009, irrespective of the Paying collectives' conduct. Board tariffs regularly require users to pay interest on retroactive payments even when there is a genuine issue of whether they are liable to pay any royalties at all. In this respect, there is no reason to treat collectives differently.

[52] The Receiving collectives asked that interest be paid at the Bank of Canada's published prime rate, which averaged 2.75 per cent over the relevant period. In the past, the Board has used the Bank rate (which averaged 1.01 per cent over the relevant period) for retroactive adjustments and the Bank Rate plus one per cent for late payments of certified royalties.

---

[10] *CBC Radio (2011)*, *supra* note 7.

[11] *Canadian Cable Television Association v. American College Sports Collective of Canada, Inc.*, [1991] 3 F.C. 626 (C.A.).

[53] In asking for a higher rate, the Receiving collectives rely on the following passage in *CBC Radio (2011)*:

> [133] Interest factors were derived as in the past, using month-end Bank Rates, simple interest, and no further penalties. Other interest rates could be used for this purpose. The fact that none of the parties could borrow at the Bank Rate is a reason to suspect that it may be inappropriate to use for interest factors. However, since no party has requested that a different interest rate be used to construct the interest factors, we will not disturb this convention for the time being.[12]

[54] The Receiving collectives argue that the amounts at play here justify revisiting the Board's past practice regarding interest rates. We disagree, for the following reasons.

[55] First, the Receiving collectives failed to provide a justification for abandoning the Board's past practice. *CBC Radio (2011)* stands for two separate propositions. First, opportunity costs must be compensated through the imposition of interest. Second, a difference between the rate the Board currently sets and what parties pay to borrow money may justify an increase in the rate. The Receiving collectives simply relied on the existence of opportunity costs to support both propositions. They did not explain which policy objectives would be fulfilled by increasing the rate in this instance. As we stated in paragraph [45] above, a higher interest rate may encourage a user to pay royalties promptly, but will do little to accelerate a reallocation of royalties.

[56] Second, little would be served by imposing now on the Paying collectives a costlier interest formula than in the past.

[57] Third, it is impossible to decide in this instance whether, by whom or when the interest issue ought to have been raised. Under the circumstances, using a higher interest rate would amount to an inappropriate sanction.

[58] Allocation adjustments shall bear interest at the Bank Rate for the life of the tariff. We estimate that interest charges will amount to about $1.3 million in total.

## V. ROYALTY RATES AND ALLOCATION

[59] We certify a television tariff that reflects the quantum agreement and the allocation agreement. The royalties payable by small retransmission systems and unscrambled Low Power Television Stations (LPTV) and Multichannel Multipoint Distribution Systems (MDS) remain the same. For all other systems, rates increase over the life of the tariff by 6¢ to 13¢ per subscriber per month; increases are greater for larger retransmitters. These increases, while

---

[12] *CBC Radio (2011)*, *supra* note 7.

significant, are justified to reflect the increase in both the number of distant signals available to subscribers and the Consumer Price Index.[13]

[60] We estimate that the total amount of royalties the tariff will generate is about $110 million for 2013. Were the retransmitters to be paying under the last certified rates, the amount generated would be about $95 million.

## VI. RADIO AND TELEVISION TARIFF WORDING

### A. GENERAL

[61] The wording of the tariffs we certify is identical in most respects, other than royalty amounts and allocations, to the ones they replace. Only the following comments are necessary.

[62] Subsections 2(2) and 2(3) of both tariffs are removed. They were transitional, and no longer relevant.

[63] Section 6 of the television tariff has been removed, since regulatory changes made it irrelevant as of March 7, 2004.

[64] References to the *Personal Information Protection and Electronic Documents Act* that were added in the 2004-2008 tariffs for the first time have been removed. They proved to be unhelpful.

### B. TRANSITIONAL PROVISIONS

[65] Transitional provisions are vastly simplified for four reasons. First, none are needed for the radio tariff since royalty amounts and their allocation remain the same. Second, the information provided to us pursuant to the March 15, 2013 Order referred to in paragraph [18] above allows us to conclude that all retransmitters but three have already made the additional payments required as a result of the increase in television royalties, making it possible to leave the collectives to deal with the matter without specific instructions. Third, the Collectives have already agreed on how to effect television royalty allocation adjustments for the period ending December 31, 2012. Fourth, pursuant to the *Interim Television Retransmission Tariff, as of January 1, 2013*, retransmitters have allocated television royalties since that date in accordance to the same ratios as those we certify today.

[66] Transitional interest provisions in the television tariff have been adjusted so as to reflect the fact that the Collectives agreed not to collect interest on additional royalties for 2009 and 2010 as long as these were paid by January 31, 2011.

---

[13] See *Retransmission (2008)*, *supra* note 3 at para. 21.

## C. FORMS

[67] A question arose as to whether the forms attached to the tariffs were still required. The forms only ask information that is either expressly required by the tariff or implicitly necessary to support royalty calculations. Over the years, some retransmitters have developed their own ways of reporting the information required by the tariff, probably so that the reporting format dovetails with their own internal systems; the collectives have accepted or agreed to this.

[68] The collectives confirmed that the forms fulfil two important functions, whether or not they are actually used. First, retransmitters know precisely which information they must provide without having to interpret the tariff to determine what that information is. Second, the forms serve as a fallback position on which either the collective or the retransmitter can rely if both cannot agree on what should be provided and how.

[69] We accept these explanations and will continue to attach forms to the certified tariffs. A collective and a retransmitter remain free to agree to adapt the reporting obligations of the tariffs to their particular situation.

## D. DUE DATE FOR ALLOCATION ADJUSTMENTS

[70] The Receiving collectives proposed that the allocation adjustments be paid according to the following schedule, starting from the day the tariff is certified. Within 15 working days, CRC would circulate detailed interest calculations, together with the total payment due. During the next 15 working days, any questions the collectives may have would be answered; CRC would make the required corrections and would circulate a final set of calculations. Allocation adjustments would be due 45 working days after the tariff was certified.

[71] The Receiving collectives argued that this schedule provides ample time to complete, verify and pay the allocation adjustments. The principal amounts have been known since the December 21, 2012 interim decision of the Board, in which the royalty allocations that apply in this tariff were set. CRC has already calculated and circulated the principal; no one challenged the calculations. Interest calculation will be a matter of simple math. Fifteen working days is more than adequate time for all collectives to verify interest calculations.

[72] The Paying collectives asked for 90 days. The sums involved are significant. Paying collectives claim they need more that 45 days to gather the necessary sums. Furthermore, the quantum agreement contemplated that reallocation payments would be due six months after the tariff was certified.

[73] We agree with the Receiving collectives that the 6-month delay contemplated in the quantum agreement has become irrelevant. The agreement contemplated that the collectives

would know the allocations (and hence, be able to calculate the allocation adjustments) only once the tariff was certified. Here, the allocations have been known for several months.

[74] We do not know the extent to which the difficulties invoked by the Paying collectives are real, serious or prevalent. We did not wish to take more time to find out if they are. Based on the assumption that a week comprises five working days, as the expression is used by the receiving Collectives, their proposed schedule would extend over up to 63 days. Under the circumstances, we conclude that 60 days should be ample time for the Paying collectives to secure the necessary funds. Sixty days is also a delay that the Board commonly grants to make royalty adjustments for past reporting periods. We add ten days to the second and third deadlines to account for the year-end holidays.

[75] We reject the Paying collectives' proposal that interest on allocation adjustments not be due until later, to allow for any possible application for judicial review. Interest will be due at the same time as the principal. The Board's decision is enforceable even if it is challenged. If an application for judicial review is filed, it will be up to the Federal Court of Appeal to stay interest payments if it wishes to do so.

Gilles McDougall
Secretary General