

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Regime Fixing of Royalties in Individual Cases
Copyright Act, sections 66.51 and 70.2

Members Mr. Justice William J. Vancise
Mr. Claude Majeau
Mrs. Jacinthe Thériberge

Society for reproduction rights of authors, composers and publishers in Canada v. ARTV

Reasons for decision

I. INTRODUCTION

[1] On September 30, 2011, pursuant to sections 66.51 and 70.2 of the *Copyright Act*,¹ the Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) asked the Board to set the royalties, interim and then final, as well as the terms and conditions of a licence authorizing ARTV to reproduce the works in the SODRAC repertoire from September 30, 2011 to September 30, 2014.

[2] ARTV and SODRAC entered into licence agreements since 2001. The latest took effect on September 1, 2007, and had a two-year term. It was automatically renewed for successive one-year periods unless one of the parties terminated the agreement by written notice. On July 11, 2011, ARTV gave such notice, and the agreement expired on August 31.

[3] The parties agreed to continue to apply the expired agreement during their negotiations. However, on September 29, 2011, ARTV broke off negotiations and advise it would cease complying with the agreement as of the 30th of September, 2011. On September 30, SODRAC filed the application described in paragraph [1] applying for among other things an order

¹ R.S.C. 1985, c. C-42.

requiring that all of the terms and conditions of the licence that expired on August 31 be maintained on an interim basis.

[4] ARTV objects to the application for an interim licence. It alleges that it has no need of a general synchronization licence because it has very few in-house productions and those productions make little use of the SODRAC repertoire. ARTV also argues that it needs no licence for the incidental reproductions it makes since those rights have already been cleared by the producers of the shows broadcast by ARTV.

[5] In the alternative, ARTV submits that the interim licence should be limited to the incidental reproductions made by ARTV and exclude reproductions made in its in-house productions. It contends that the royalties should be reduced to a fifth or less of the amount provided for in the agreement that expired on August 31, 2011.

[6] SODRAC objects to ARTV's proposed amendments. It maintains its position that the interim licence is necessary and should reflect the *status quo*. SODRAC submits that the changes requested by ARTV rely on contentions already at issue in an arbitration on which the Board has not yet ruled.²

[7] ARTV points out that the amount of royalties it paid to SODRAC under its licence agreement is approximately the same as the amount paid by Astral pursuant to the interim licence issued by the Board on December 14, 2009.³ Astral's income is however, twenty times that of ARTV. SODRAC argues that it is not appropriate to use the interim decision between SODRAC and *Les Chaînes Télé Astral* as a basis for comparison when there is a previously negotiated agreement between the parties.

[8] An interim decision serves chiefly to avoid the deleterious effects caused by the length of the proceedings. In general, the best way to fulfill these objectives is to maintain the *status quo* while avoiding a legal vacuum.

[9] In this case, a negotiated agreement was in place until the day on which SODRAC filed its application. ARTV submits that it does not need a blanket licence. This submission relies on legal and factual arguments that reiterate the main points argued in the Astral arbitration under reserve. Moreover, the parties have agreed not to proceed on the merits in this instance until the Board has ruled on the Astral file. Therefore, at this stage, we cannot assume that ARTV's

² *SODRAC v. SRC/CBC and SODRAC v. Groupe Astral*.

³ *SODRAC 2003 Inc. and Society for reproductive rights of authors, composers and publishers in Canada (SODRAC) v. Les Chaînes Télé Astral, A Division of Astral Broadcasting Group Inc., and Teletoon Inc.* (14 December 2009) [interim decision of the Copyright Board](#).

submissions are correct. That uncertainty and the legal vacuum resulting from the absence of a licence justify making an interim decision.

[10] SODRAC requests the interim extension of the licence agreement recently terminated by ARTV until a final decision is issued. ARTV on the other hand wishes to negotiate rights on an individual basis, or, alternatively, to significantly amend the terms and conditions of the agreement.

[11] When there is an agreement in existence between the parties, it is generally preferable to extend it on an interim basis, unless there is a change in circumstances tending to justify another approach. ARTV has not demonstrated any change in circumstances. The fact that ARTV challenges the need for a general licence is insufficient to justify a change in the *status quo*.

[12] The expired licence between the parties provides ARTV with full authorization to use the SODRAC repertoire. The extension of the agreement on an interim basis will address any legal vacuum while preserving the *status quo*. Once the present arbitration has been heard, the Board will have everything it needs to establish a final, retroactive licence. This licence will reflect the precise nature of the rights granted to ARTV by SODRAC and adjust any royalties paid as required.

[13] The application by SODRAC for an interim licence essentially duplicating all of the terms and conditions of the licence agreement that expired on August 31, 2011 is granted. This licence takes effect on September 30, 2011, and will be valid until the Board makes its final decision or modifies it by an order of the Board.

A handwritten signature in black ink, appearing to read 'Gilles McDougall', written in a cursive style.

Gilles McDougall
Secretary General