

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Regime Collective Administration of Performing Rights and of Communication Rights
Copyright Act, sections 66.51 and 70.2

Members Mr. Justice William J. Vancise
Mr. Claude Majeau
Mrs. Jacinthe Th  berge

**Society for reproduction rights of authors, composers and publishers in Canada v.
Canadian broadcasting corporation: interactive kiosks; Explora; blanket licence 2012-2016**

Reasons for decision

[1] These reasons dispose of all pending applications by the Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) for interim licences targeting the use of its repertoire by the Canadian Broadcasting Corporation (CBC).

I. INTERACTIVE KIOSKS

[2] On December 16, 2011 pursuant to sections 66.51 and 70.2 of the *Copyright Act* (the “Act”), SODRAC asked the Board to set the terms and conditions of an interim and final licence for the reproduction of musical works in its repertoire by CBC in eight interactive kiosks. These kiosks, installed throughout Canada and available from October 31, 2011 to March 28, 2012, provided public access to musical moments, photos and videos from *Radio-Canada*’s archives as a tie-in with a CD box set celebrating the 75th anniversary of CBC.

[3] SODRAC asked for interim royalties of \$1 per work in the repertoire of SODRAC, or \$65. SODRAC argued that this type of copying is not targeted in the interim licence the Board issued on March 31, 2009 and amended on October 13, 2009 (“the March 2009 interim licence”). The parties could not have reasonably contemplated this activity when SODRAC and CBC reached their first licence agreement in 1992.

[4] CBC argued that the contemplated use is targeted in subparagraph 2(e) of the March 2009 interim licence, a general provision relating to all reproduction activities not expressly targeted in earlier provisions. While apparently agreeing that provisions should be added to the interim licence when an activity could not reasonably be contemplated in 1992, CBC argued that it has always provided public access to its archives. This involves neither a new activity, nor a new technology: computers and hard drives existed in 1992.

[5] For the reasons offered by SODRAC, the application for an interim licence is granted.

II. BLANKET LICENCE FOR 2012-2016; EXPLORA

[6] On November 14, 2008 SODRAC asked the Board to set the terms and conditions of an interim and final licence for the reproduction of musical works in its repertoire by CBC from that date until March 31, 2012. The Board then issued the March 2009 interim licence. The matter has been heard and is under advisement. [the “matter under advisement”]

[7] On September 6, 2011, SODRAC sought to seize the Board of the royalties to be paid by CBC for Explora, a new service that was soon to be launched.

[8] On March 26, 2012, SODRAC asked the Board to set, on an interim and final basis, the terms and conditions of a blanket licence for the reproduction of musical works in its repertoire by CBC for the period from April 1, 2012 to March 31, 2016. The application also targets Explora, from its launch on March 28, 2012; as a result, the September 6, 2011 application is moot to the extent that it targets this service. It does not target the interactive kiosks that we just addressed.

[9] SODRAC argued that an interim licence is needed to prevent a legal void beyond March 31, 2012. It proposes that the March 2009 interim licence be extended starting on April 1, 2012, and until the Board disposes of the matter under advisement. From that date, SODRAC proposes that the final licence for 2008-2012 apply on an interim basis.

[10] CBC argues that the application is both unnecessary and premature. It is unnecessary because section 1 of the March 2009 interim licence already stipulates that it applies until the Board disposes of the matter under advisement; as a result, no legal void exists. It is premature because the parties cannot negotiate a licence for the period starting April 1, 2012 until a decision has been issued in the matter under advisement.

[11] We agree with SODRAC. The application is not premature. The conditions set out in section 70.2 of the *Act* have been met. In arbitration matters, the Board is seized when a notice of application is filed, as long as parties are unable to agree and that the person who filed the notice advised the other of its intention to do so. The fact that the inability to agree may result from the absence of a final decision in another, earlier matter is simply not relevant.

[12] Neither is the application unnecessary. The March 2009 interim decision does provide that it applies until the Board disposes of the matter under advisement. However, interim measures cannot achieve more than what is sought in the main application. That application targets uses ending on March 31, 2012. The date has passed. It is therefore possible, if not probable, that the March 2009 interim licence has ceased to be in effect.

[13] The other arguments offered by CBC are of little help. Amendments that Bill C-11 may make to the *Act* will become relevant when they come into force. The lack of information on music use patterns of a new service is no reason to postpone a decision, resulting in an unauthorized use of the relevant repertoire; licences should be sought before the use, not after.

[14] The application with respect to Explora is granted, given the consent of CBC.

A. DECISION

1. The application of SODRAC for an interim licence authorizing the reproduction of musical works in its repertoire by CBC in eight interactive kiosks installed throughout Canada and available from October 31, 2011 to March 28, 2012 is granted.
2. CBC shall pay to SODRAC an interim royalty of \$65 for the uses referred to in section 1.
3. The application of SODRAC for an interim licence targeting all other uses of its repertoire by the CBC is also granted.
4. To the extent that the March 31, 2009 interim decision ceased to have effect on March 31, 2012 by operation of law, it is extended starting on April 1, 2012, and until the Board issues a final decision on the application for arbitration filed by SODRAC on November 14, 2008.
5. Paragraph 2 (a.2) of the interim licence is replaced by the following:

“(a.2) for the specialty channels Bold, Documentary and Explora, \$1 per month;”.



Gilles McDougall
Secretary General