

Copyright Board
Canada



Commission du droit d'auteur
Canada

Ottawa, November 2, 2012

File: 70.2-2008-01

Licence authorizing the Canadian Broadcasting Corporation to reproduce works in the repertoire of SODRAC for the period from November 14, 2008 to March 31, 2012

Reasons for decision

Section 1: Definitions

In this licence:

“Broadcasting” has the meaning attributed to it in section 2 of the *Broadcasting Act*, S.C. 1991, c. 11, which reads:

“any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place”,

excluding

- a. any paid video on demand and any paid Internet content, except for the online sales referred to in paragraph 2.01(f); and
- b. any podcasting of audiovisual content.

For the purposes of this definition, any video on demand offered for free as part of the subscription to a service does not constitute paid video on demand. (« *Diffusion* »)

“CBC” means Canadian Broadcasting Corporation / Société Radio-Canada. (« *SRC* »)

“CBC Program” means a radio or television program produced or co-produced by the CBC, not eligible for a tax credit or to private, public or para-public funding (other than the amounts attributed to the CBC by the Treasury Board), in which the CBC holds more than 50% of the copyright. (« *Émission de la SRC* »)

“Gross Income” means the gross amounts paid for the use of one or more broadcasting services or facilities offered by a service referred to in paragraph 5.03(b), excluding the following:

- a. income accruing from investments, rents or any other business unrelated to Broadcasting activities. However, income accruing from any allied or subsidiary business that is a necessary adjunct to the Broadcasting services and facilities or which results in their being used shall be included in the Gross Income;
- b. amounts received for the production of a program that is commissioned by someone other than the licensee and that becomes the property of that person;
- c. the recovery of any amount paid to obtain the exclusive national or provincial Broadcast rights to a sporting event, if the service can establish that it was also paid normal fees for station time and facilities. SODRAC may require the production of the contract granting these rights together with the billing or correspondence relating to the use of these rights by other parties;
- d. amounts received by an originating programming undertaking acting on behalf of a group of programming undertakings which do not constitute a permanent network and which Broadcast a single event, simultaneously or on a delayed basis, that the originating programming undertaking pays out to the other programming undertakings participating in the Broadcast. These amounts paid to each participating programming undertaking are part of that programming undertaking's Gross Income. (« *Revenus bruts* »)

“Reference Month” means the second month before the month for which royalties are being paid. (« *Mois de référence* »)

“Work” means all or part of a musical or dramatico-musical work for which SODRAC may authorize the reproduction in Canada, in proportion to the rights it holds. (« *Œuvre* »)

Section 2: Authorization

2.01 This licence authorizes the CBC to reproduce a Work, in any material form and by any known or to-be-discovered process, with or without associated images, in conjunction with the following activities:

- a. the production of a CBC Program for exploitation purposes, in any form or for any market, for the duration of the copyright in the Work;
- b. the production of an audio or audiovisual montage, of four minutes or less, of footage from a radio or television program, or of several programs from the same series, for the purpose of promoting that program or series (self-promotion);
- c. the production of an audiovisual montage referred to in paragraph (b) for the purpose of promoting the programming of the service on whose frequency the program is Broadcast, if the Work remains associated with footage from the program or series in which the Work is included;
- d. the preparation of an audio montage, compilation, mix or medley for Broadcasting on the Internet or on CBC radio;
- e. the Broadcasting of programming on CBC radio, on the CBC television services referred to in section 5.03 and on the Internet, including backup copies;
- f. the sale on a physical medium or online of a program, regardless of whether it is a CBC Program;
- g. the sale or licensing of a program, regardless of whether it is a CBC Program; and
- h. the conservation of the CBC's radio-television heritage (archival copies).

2.02 This licence authorizes the CBC to reproduce a commissioned Work for use as a program's signature or theme or to announce its programming, to the extent the author of the Work consents to such use.

2.03 This licence authorizes the CBC to authorize a third party to reproduce a Work already embedded into a program for the purpose of delivering it to the CBC so that the latter may use it in one of the ways referred to in paragraphs (b) to (h) of section 2.01.

2.04 This licence authorizes the CBC to authorize a third party to reproduce a Work for the purposes referred to in paragraph 2.01(e) until the program has been received by the subscriber of a broadcast distribution undertaking or of an Internet service provider.

Section 3: Restrictions

3.01 This licence authorizes only the reproduction of a Work, and only to the extent set out in section 2.

3.02 Without limiting the scope of section 3.01, this licence:

- a. does not authorize the CBC to reproduce a Work for the purpose of promoting a product, cause, service or institution examples set out in paragraphs (b) and (c) of section 2.01;
- b. does not authorize the CBC to authorize a third party to reproduce a Work, except as set out in sections 2.03 and 2.04;
- c. does not authorize a third party, including a person to whom the CBC has sold or licensed a program, to reproduce the Works embedded into a program; and
- d. does not authorize the reproduction of a sound recording.

Section 4: Territory

4.01 Neither the Internet reproductions authorized by this licence nor the activities referred to in paragraphs (a), (f) and (g) of section 2.01 are subject to any territorial restriction.

4.02 This licence authorizes reproductions that are incidental to Broadcasting to members of the Canadian Armed Forces stationed abroad.

4.03 Subject to sections 4.01 and 4.02, this licence is valid across Canada.

Section 5: Royalties

5.01 The royalties payable under this licence do not include federal, provincial or other governmental taxes or levies of any kind.

5.02 In consideration of the rights conferred in paragraph 2.01(a), the CBC shall pay SODRAC a monthly fee of \$69,373.

5.03 (1) Subject to subsection (2), in consideration of the rights conferred in paragraph 2.01(e) for television, the CBC shall pay SODRAC a monthly fee of:

- a. for conventional television, 14.478 per cent of what the CBC pays under SOCAN Tariff 2.D; and
- b. 0.217 per cent for RDI, 0.093 per cent for News Network, 0.253 per cent for Bold and 0.347 per cent for the Documentary Channel, of the service's Gross Income during the Reference Month.

(2) If a television program contains at least one Work and the CBC provides or has provided SODRAC with documentation establishing that the rights referred to in paragraph 2.01(e) have been cleared with respect to all the Works embedded into the program, the CBC is entitled, with respect to that program, to a discount of

$$\frac{A \times B}{C}$$

where

- A. represents the rate applicable to the service that Broadcasts the relevant program,
- B. represents the program's production cost, in the case of a CBC Program, and the program's acquisition cost, in the case of another program, and
- C. represents the total production and acquisition costs for the programs Broadcast by the service during the month.

(3) The production or acquisition cost of a program referred to in subsection (2) Broadcast by more than one service is allocated on the basis of the relative audience of each of the services.

5.04 (1) In consideration of the rights conferred in paragraph 2.01(e) for radio, the CBC shall pay SODRAC a monthly fee of \$14,540 for 2008, \$14,771 for 2009, \$15,080 for 2010, \$15,381 for 2011 and, subject to subsection (2), 10.65 per cent of what the CBC will pay under SOCAN Tariff 1.C in 2012.

(2) The CBC shall pay SODRAC, for 2012, a provisional monthly fee of \$15,381.

5.05 In consideration of the Internet reproductions authorized by this licence, the CBC shall pay SODRAC a monthly fee of 4 per cent of the royalties owing under section 5.03 and 7 per cent of the royalties owing under section 5.04.

5.06 (1) In consideration of the rights conferred in paragraph 2.01(f), the CBC shall pay SODRAC, every quarter, for each minute of a Work requiring a SODRAC licence:

- a. 1.44¢ if the program consists primarily of music;
- b. otherwise, and subject to subsections (2) and (3), the royalty established according to the following table:

Per-minute rate, per copy of program or product / Taux à la minute, par copie d'émission ou de produit	Foreground music (including themes) / Musique de premier plan (incluant thèmes)	Background music (including transitions) / Musique de fond (incluant transitions)
first 15 minutes / pour les 15	1.44¢	0.58¢

premières minutes		
next 15 minutes / pour les 15 minutes suivantes	0.87¢	0.35¢
each additional minute / par la suite	0.52¢	0.21¢

(2) A 40 per cent discount applies to the royalties owing under paragraph (1)(b) for commissioned music.

(3) The royalties owing under paragraph (1)(b) for a product (box set) comprising several programs are calculated on the basis of the product's entire content.

5.07 In consideration of the rights conferred in paragraph 2.01(g), the CBC shall pay SODRAC, each quarter, 3 per cent of the income from sales or licensing during the quarter, multiplied by the ratio whose numerator is the duration of the Works used in the program, adjusted according to the percentage of the rights held therein by SODRAC, and whose denominator is either:

- a. the total duration of the musical works used in any program whose musical content is 50 per cent or more; or
- b. the total duration of any other program.

5.08 No additional royalties shall be paid in consideration of the reproductions referred to in paragraphs (b), (c), (d) or (h) of section 2.01.

5.09 Royalties owed in respect of part of a month or quarter are prorated.

Section 6: Reporting and payment requirements

6.01 SODRAC shall make available on its Internet site a listing of its active repertoire, including, for Works in which it does not hold all of the rights, an indication of the share that it administers, as well as the list of the foreign societies it represents in Canada.

6.02 (1) No later than 60 days after the end of each quarter, the CBC shall provide SODRAC with a cue sheet indicating the following information, for each CBC (television) Program delivered during the quarter and each of the other television programs that the CBC Broadcast for the first time during the quarter, to the extent that the information is readily available:

- a. the title of the program;
- b. the title of each of the musical works embedded into the program;
- c. the name of the author and composer of each of the musical works;
- d. the duration of each of the musical works;
- e. the type of use of each of the musical works (background, foreground, theme); and
- f. the duration of the program;

as well as an indication of whether the program is a CBC Program.

(2) The CBC shall provide a cue sheet for each program that is otherwise identical to another program if their musical content differs.

(3) The cue sheet of a program other than a CBC Program is that which is received by the CBC from the person from whom the CBC acquired the right to Broadcast the program. The CBC undertakes to cooperate with SODRAC in its attempts to obtain cue sheets from third parties, regardless of whether such parties produced the programs.

6.03 (1) No later than 60 days after the end of each quarter, the CBC shall provide SODRAC with a Broadcast report indicating the following information for each program Broadcast during the quarter, to the extent that the information is readily available:

- a. the name of the broadcaster;
- b. whether the program was Broadcast over the entire network;
- c. the date and time of the Broadcast;
- d. the duration of the program Broadcast;
- e. the original title, subtitle and alternate title; and
- f. the episode number or title.

(2) A cue sheet may serve as a Broadcast report, to the extent that it contains the information referred to in subsection (1) that is readily available.

6.04 No later than 60 days after the end of each quarter, the CBC shall provide SODRAC with a copy of the schedule of each of the conventional television stations that it operates and each of the services referred to in paragraph 5.03(b).

6.05 No later than 60 days after the end of each quarter, the CBC shall provide SODRAC with the following information for audiovisual works available for streaming during the quarter, to the extent that the information is readily available:

- a. the list of Works so available;
- b. in the case of a CBC Program offered only on the Internet, the cue sheet referred to in section 6.02;
- c. the number of unique visitors; and
- d. the number of streams for each program.

6.06 (1) No later than 60 days after the end of each quarter, the CBC shall provide SODRAC with the following information for each program sold in accordance with paragraph 2.01(f) during the quarter:

- a. the title of the program in the languages in which the CBC offers it for sale;
- b. the cue sheet referred to in section 6.02, adding, if applicable, any additional musical content contained in the video-copy of the program;
- c. the title in the original language;
- d. the identification number (Universal Product Code, product number, ISBN);
- e. the date of media release or online offer;
- f. the number of units sold;
- g. the licence duration; and
- h. if applicable, documentation establishing that the Work does not require a SODRAC licence.

(2) No later than 90 days after receiving the information referred to in subsection (1), SODRAC shall provide the CBC with the list of Works requiring a SODRAC licence used in each program, with an indication of the percentage of the rights held by SODRAC.

6.07 (1) No later than 60 days after the end

- i. of the quarter in which the sale or licensing is concluded, in the case of a program that has already been produced, or
- ii. of the quarter in which the program is delivered, in the case of a program that has not yet been produced,

the CBC shall provide SODRAC with the following information for each program sold or licensed in accordance with paragraph 2.01(g) during the quarter:

- a. the title of the program;
- b. the identity of the purchaser or licensee;
- c. the scope and duration of the licence;
- d. the cue sheet referred to in section 6.02;
- e. the income earned from each sale of a program; and
- f. if applicable, documentation establishing that the Work does not require a SODRAC licence.

(2) No later than 90 days after receiving the information referred to in subsection (1), SODRAC shall provide the CBC with the list of Works requiring a SODRAC licence used in each program, with an indication of the percentage of rights held by SODRAC.

6.08 No later than 60 days after the end of each quarter, the CBC shall provide SODRAC with the following information for each month of the quarter, for each musical work or part thereof Broadcast by each of the CBC's conventional or Internet radio stations:

- a. the date, time and duration of the Broadcast of the work as well as the type of Broadcast (for example, local or regional), an indication of the time not being required if the work is Broadcast over the Internet and the information is not available;
- b. the title of the work and the name of the author, the composer and the arranger;
- c. the type of use (for example, feature, theme or background);
- d. the product catalogue number assigned to the album, the name of the principal performer or group of performers and the name of the label company;
- e. the title of the program, the station (including its call letters) that Broadcast the musical work; and
- f. to the extent possible, the International Standard Musical Work Code (ISWC) of the Work, the Universal Product Code (UPC) of the album, the names of all the other performers (if applicable) and the duration and track number of the musical work indicated on the album.

6.09 If the information received by SODRAC in accordance with sections 6.02 to 6.08 does not enable it to effect a reasonable distribution of royalties, SODRAC may, after making reasonable efforts to find the information, ask the CBC to make reasonable efforts to provide additional

relevant information to assist it in the distribution of royalties, including:

- a. an alternate title, in the original language or otherwise;
- b. the country, year and type of production;
- c. the date of release in theatre or elsewhere; and
- d. the name of the producer.

6.10 (1) The royalties referred to in sections 5.02 to 5.05 are due on the first day of the month. They shall be accompanied by a declaration of Gross Income for the Reference Month for each of the services referred to in paragraph 5.03(b).

(2) The royalties referred to in sections 5.06 and 5.07 are due 30 days after the receipt of the information referred to in subsections 6.06(2) and 6.07(2). They shall be accompanied by the information used to calculate them.

Section 7: Adjustments

Adjustments in the amount of royalties owed (including excess payments), as a result of the discovery of an error or otherwise, shall be made on the date the next royalty payment is due.

Section 8: Accounts and audits

(1) Subject to subsection (2), the CBC shall keep and preserve, for a period of three years after the end of the year to which they relate, records from which the information that must be provided under this licence can be readily ascertained.

(2) The CBC shall keep and preserve, for a period of six years after the end of the year to which they relate, records from which the amounts owing under this licence can be readily ascertained.

(3) SODRAC may require that an independent external auditor verify these records at any time during the period referred to in subsections (1) or (2), during normal business hours and on notice of at least ten business days.

(4) SODRAC shall, upon receipt, supply a copy of the audit report to the CBC.

(5) If an audit discloses that royalties due to SODRAC have been underestimated in any period by more than 10 per cent, the CBC shall pay the difference as well as the reasonable costs of the audit within 30 days of the demand for such payment.

Section 9: Guarantee

SODRAC guarantees, to the extent of the rights that it claims to hold, the CBC against any claim that may be brought against it by a third party, including a SODRAC rights holder, based on the use of a Work authorized by this licence. SODRAC undertakes to indemnify the CBC for any prejudice arising from such a claim, including reasonable legal and extrajudicial fees.

Section 10: Breach and termination

If a party fails to comply with its obligations under this licence, the other party may terminate it unilaterally, without prejudice to its rights, 15 days after providing the defaulting party with a written notice clearly indicating the nature of the alleged breach, unless the defaulting party has remedied the breach in the meantime.

Section 11: Confidentiality

(1) Subject to subsections (2) and (3), SODRAC shall treat in confidence information received from the CBC pursuant to this licence, unless the CBC consents in writing to the information being disclosed.

(2) SODRAC may share information referred to in subsection (1):

- a. with the members of its board of directors, the members of its executive board, its employees and its in-house and external legal and financial advisors;
- b. with the Copyright Board;
- c. in connection with proceedings before the Copyright Board, if the CBC has first been provided with a reasonable opportunity to request a confidentiality order;
- d. to the extent necessary to effect the distribution of royalties, with a royalty claimant;
- e. if ordered by law.

(3) Subsection (1) does not apply to information that is publicly available or to information obtained from third parties who are not themselves under duty of confidentiality.

Section 12: Interest on late payments

Any amount not received by the due date shall bear interest from that date until the date the amount is received. Interest shall be calculated daily, at a rate equal to one per cent above the Bank Rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.

Section 13: Notices

(1) The information referred to in sections 6.02 to 6.08 shall be sent by e-mail to: audiovisuel@sodrac.ca. Any other communication addressed to SODRAC shall be sent to SODRAC 2003 Inc., 1470 Peel Street, Tower B, Suite 1010, Montreal, Quebec, H3A 1T1, c/o: Director, Licensing and Legal Affairs, e-mail: mlavallee@sodrac.ca, fax number (514) 845-3401, or to any other address of which the CBC has been notified in writing.

(2) Any communication addressed to the CBC shall be sent to Canadian Broadcasting Corporation, Legal Services, 181 Queen Street, 3rd floor, Ottawa, Ontario, K1P 1K9, c/o Director, Legal Affairs and Intellectual Property, Fax: (613) 288-6279, with a copy to: droitsu@radio-canada.ca, or to any other address of which SODRAC has been notified in writing.

(3) Subject to subsection (4), a notice may be delivered by hand, by courier, by postage-paid mail, by fax, by e-mail or by File Transfer Protocol (FTP).

(4) To the extent possible, the information referred to in sections 6.02 to 6.07 shall be delivered electronically, in Excel format or in any other format agreed to by the parties.

(5) The information referred to in section 6.08 shall be sent electronically, in Excel format or in any other format agreed to by the parties. Each type of information shall be provided in a separate field.

(6) The notice or payment shall be presumed to have been received:

- a. the day it is delivered by hand;
- b. one business day after it was given to a 24-hour courier service, with written confirmation of receipt;
- c. three business days after it was mailed, whether or not it was in fact received, in the case of certified mail, with notice of delivery, postage and handling prepaid;
- d. the day it is transmitted by fax, with confirmation of receipt (followed by a confirmation of receipt given by telephone);
- e. the day it is transmitted by e-mail or FTP, with confirmation of receipt.

Section 14: Miscellaneous

14.01 A party may not waive any of its rights under this licence or the law except in writing, and only to the extent recorded in writing.

14.02 This licence shall not be modified except by written agreement signed by the parties.

14.03 The headings shall not be deemed to be part of the substance of this licence and shall not be used in interpreting it.

14.04 This licence is governed by the laws of Quebec. The parties consent to having any dispute relating to the interpretation or application of this licence decided by a court of competent jurisdiction in the judicial district of Montreal.

Section 15: Transitional provisions

(1) Royalties owing as a result of differences between this licence and the March 31, 2009 or April 30, 2012 interim licences shall be due on February 1st, 2013 and shall be increased by using the multiplying interest factors (based on the Bank Rate) set out in the following tables with respect to each period. The royalties shall be accompanied by the information used to calculate them.

Multiplying factors applicable to yearly payments:

	2008	2009	2010	2011	2012
January		1.0865	1.0694	1.0513	1.0288
February		1.0842	1.0681	1.0494	1.0269
March		1.0823	1.0669	1.0475	1.0250
April		1.0808	1.0656	1.0456	
May		1.0794	1.0644	1.0438	

June		1.0781	1.0631	1.0419	
July		1.0769	1.0617	1.0400	
August		1.0756	1.0602	1.0381	
September		1.0744	1.0585	1.0363	
October		1.0731	1.0569	1.0344	
November		1.0719	1.0550	1.0325	
December	1.0894	1.0706	1.0531	1.0306	

Multiplying factors applicable to quarterly payments:

	2008	2009	2010	2011	2012
Q1		1.0869	1.0681	1.0506	1.0281
Q2		1.0800	1.0644	1.0450	
Q3		1.0756	1.0606	1.0394	
Q4	1.0975	1.0719	1.0563	1.0338	

(2) The information required under this licence that has not yet been provided shall be provided no later than on February 1st, 2013. Unless the information was required under the March 31, 2009 or April 30, 2012 interim licences, the information shall be supplied only if it is available.



Gilles McDougall
Secretary General