

Copyright Board
Canada



Commission du droit d'auteur
Canada

Ottawa, November 2, 2012 (*Revised – March 31, 2014*)

File: 70.2-2008-02

Licence authorizing Astral to reproduce works in the repertoire of SODRAC for the period from December 19, 2008 to August 31, 2012

Reasons for decision

Section 1: Definitions

In this licence:

“Astral” means Les Chaînes Télé Astral, a division of Astral Broadcasting Group Inc. and Teletoon Inc. (« *Astral* »)

“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 any paid video on demand and any paid Internet 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* »)

“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 subsection 5.02 (1), 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 Astral 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 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);
- b. the production of an audiovisual montage referred to in paragraph (a) 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;
- c. the Broadcasting of programming on the television services referred to in subsection 5.02 (1) and on the Internet, including backup copies; and
- d. the conservation of Astral's television heritage (archival copies).

2.02 This licence authorizes Astral 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 Astral to authorize a third party to reproduce a Work already embedded into a program for the purpose of delivering it to Astral so that the latter may use it in one of the ways referred to in section 2.01.

2.04 This licence authorizes Astral to authorize a third party to reproduce a Work under paragraph 2.01(c) until the signal 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 Astral to reproduce a Work for the purpose of promoting a product, cause, service or institution except as set out in paragraphs (a) and (b) of section 2.01;
- b. does not authorize Astral to authorize a third party to reproduce a Work, except as set out in sections 2.03 and 2.04; and
- c. does not authorize the reproduction of a sound recording.

Section 4: Territory

4.01 The Internet reproductions authorized by this licence are not subject to any territorial restriction.

4.02 Subject to section 4.01, 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 (1) Subject to subsection (2), in consideration of the rights conferred in paragraph 2.01(c), Astral shall pay SODRAC a monthly fee based on a percentage of the Gross Income of each of its services during the Reference Month, namely:

- a. 0.296 per cent for VRAK.TV;
- b. 0.168 per cent for Canal D;
- c. 0.130 per cent for Canal Vie;
- d. 0.085 per cent for Ztélé;
- e. 0.113 per cent for Historia;
- f. 0.163 per cent for Séries+;
- g. 0.114 per cent for Teletoon (English);
- h. 0.125 per cent for *Télétoon* (French);
- i. 0.0004 per cent for Teletoon Retro (English); and
- j. 0.002 per cent for *Télétoon Rétro* (French).

(2) If a television program contains at least one Work and provides or has provided SODRAC with documentation establishing that the rights referred to in paragraph 2.01(c) have been cleared with respect to all the Works embedded into the program, Astral 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 acquisition cost, and
- C. represents the total acquisition costs for the programs containing one or more Works Broadcast by the service during the month.

(3) The 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.

5.03 In consideration of the Internet reproductions authorized by this licence, Astral shall pay SODRAC a monthly fee of 4 per cent of the royalties owing under section 5.02.

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

5.05 Royalties owed in respect of part of a month are prorated.

Section 6: Reporting and payment requirements

6.01 SODRAC shall make available on its Internet site 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, Astral shall provide SODRAC with a cue sheet indicating the following information, for each television program Broadcast by Astral for the first time during the quarter, to the extent that the information is readily available:

- a. the title of the audiovisual work;
- 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.

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

(3) The cue sheet that Astral shall provide is that which is received by Astral from the person from whom Astral acquires the right to Broadcast the program. Astral 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, Astral 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. the date and time of the Broadcast;
- c. the duration of the program Broadcast;

- d. the original title, subtitle and alternate title; and
- e. 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, Astral shall provide SODRAC with a copy of the schedule of each of the services referred to in subsection 5.02 (1).

6.05 No later than 60 days after the end of each quarter, Astral 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. the number of unique visitors; and
- c. the number of streams for each program.

6.06 The royalties referred to in sections 5.02 and 5.03 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 section 5.02.

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), Astral 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) Astral 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 reasonable notice of at least ten business days.

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

(5) If an audit discloses that royalties due to SODRAC have been underestimated in any period by more than 10 per cent, Astral 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, Astral 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 Astral 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 Astral pursuant to this licence, unless Astral 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, 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 Astral 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: Interests 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 6.05 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 Astral has been notified in writing.

(2) Any communication addressed to Astral shall be sent to Les Chaînes Télé Astral, 1800 McGill College Street, Suite 1600, Montreal, Quebec, H3A 3J6, care of the relevant service, e-

mail: dmeloul@astral.com, fax number (514) 939-3151, 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 6.05 shall be delivered electronically, in Excel format or in any other format agreed to by the parties.

(5) 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 December 14, 2009 interim licence 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 table with respect to each period. The royalties shall be accompanied by the information used to calculate them.

	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	1.0231
May		1.0794	1.0644	1.0438	1.0213
June		1.0781	1.0631	1.0419	1.0194

July		1.0769	1.0617	1.0400	1.0175
August		1.0756	1.0602	1.0381	1.0156
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	

(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 December 14, 2009 interim licence, the information shall be supplied only if it is available.



Gilles McDougall
Secretary General