

Copyright Board  
Canada



Commission du droit d'auteur  
Canada

[CB-CDA 2016-031]

## RULING OF THE BOARD

**Proceeding: 70.2-2008-01, 70.2-2012-01 and 70.2-2016-01 SODRAC v. CBC/SRC Licence 2008-2012 [Redetermination] Licence 2012-2016 [Determination] Licence 2016-2017 [Determination]**

April 5, 2016

[1] Following comments from the parties in response to the Board's ruling of March 10, 2016 [CB-CDA 2016-025], the Board rules as follows:

1. Only the Internet broadcast-incidental copies in respect of audiovisual works will be subject to the redetermination. Incidental copies of audio content will not be included in this process.
2. The Board is seized of SODRAC's request to fix royalties in respect of a licence authorizing CBC to do synchronization activities for the years 2012 to 2016.

[2] In addition, on SODRAC's request, the files in respect of the 2012-2016 and the 2016-2017 licences are consolidated.

### I. REASONS FOR THE RULING

*Redetermination of the 2008-2012 licence: Internet broadcast-incidental copies*

[3] CBC considers that all copies incidental to Internet broadcast, whether in respect of audiovisual programs or of audio services, are subject to this redetermination. To support its position, CBC cites the following excerpt from the Supreme Court judgment:

[4] The statutory licence issued pursuant to the decision of the Copyright Board in file Nos. 70.02 2008-01 and 70.2-2008-02 is set aside as it relates to the valuation of CBC's television and Internet broadcast-incidental copies and the decision is remitted to the Board for reconsideration of that valuation. [CBC's underlying]

[5] SODRAC submits to the contrary that the Supreme Court, in its reasons for judgment, limits the object of the redetermination to Internet audiovisual copies:

[26][...] The Board applied its reasoning regarding television broadcast-incidental copies to copies related to Internet delivery as well: Statutory Licence Decision, at para. 148.<sup>1</sup>

[6] The Board agrees with SODRAC. It is only logical that the debate was limited to audiovisual works. One of the main issues to be decided was whether it was possible to infer from synchronization licences the existence of a licence to make incidental copies. By definition, these licences target audiovisual works, i.e., those that involve synchronization of music and images.

[7] Incidentally, CBC, on appeal, did not require that the decision of the Board in respect of Internet copies of audio be re-examined. On the contrary, CBC limited its conclusions to television programs available online through its website:

*[11] This appeal is concerned primarily with TV broadcasting. CBC's Internet broadcasting is also at issue, but it will follow the result of this Court's ruling on the television - related issues.*

[...]

*[29] Finally, CBC also makes television programs available online through its website. The technical and legal aspects of CBC's Internet broadcasting activity are substantially identical to its television broadcasting, thus CBC's submissions apply to both TV broadcast-incidental copies and Internet broadcast-incidental copies.<sup>2</sup>*

#### *Determination of the 2012-2016 licence: synchronization licence*

[8] CBC indicates that it is not interested in a statutory general licence for synchronization copies that might be sought by SODRAC, that it intends to pursue negotiations with SODRAC on this issue, and that, accordingly, the issues described in paragraph 11 of the March 10, 2016 Ruling of the Board are not before the Board.

[9] SODRAC did not reply on this issue.

[10] Contrary to CBC's claim, the Board remains seized of the synchronization royalties issue. Indeed, SODRAC is entitled to apply to the Board to fix the royalties relative to a licence authorizing CBC to carry out reproductions as part of its synchronization activities when parties are not able to reach an agreement (s. 70.2(1), Copyright Act). The intention by one of the parties to pursue direct negotiations does not deprive the other from its right to apply to the Board to fix the royalties in the absence of an agreement. Nothing prevents the parties however to conclude an agreement, which they can do at any moment. The Board stops proceeding with the application when a notice is filed with the Board that an agreement touching the matters in issue has been reached (s. 70.3(1), Copyright Act).

[11] That being said, the Board only fixes royalties. Its decision has no implication for CBC's liability or the extent of this liability, if applicable. It is exclusively for the Courts to deal with these issues when seized of them.

#### *Determination of the 2016-2017 licence: merging with the 2012-2016 licence determination*

[12] In its March 24, 2016 letter, SODRAC applied to the Board to fix the terms of the CBC licence for the period between April 1st, 2016 and March 31, 2017. SODRAC also requested that the determination of this licence be merged with the 2012-2016 determination.

[13] CBC did not object to this request.

[14] The Board merges the determination of the 2012-2016 licence and the 2016-2017 licence. The Board understands that the calendar of proceedings is not affected by the merging of the two files.

[15] If it so wishes, SODRAC may amend any parts of its statement of issues in dispute, filed with the Board on April 1st, 2016, that would result from this ruling.

Gilles McDougall  
Secretary General

## ENDNOTES

1. Canadian Broadcasting Corp. v. SODRAC 2003 Inc., 2015 SCC 57, [2015] 3 S.C.R. 615
2. [http://scc-csc.ca/WebDocuments-DocumentsWeb/35918/FM010\\_Appellant\\_Canadian-Broadcasting-Corporation.pdf](http://scc-csc.ca/WebDocuments-DocumentsWeb/35918/FM010_Appellant_Canadian-Broadcasting-Corporation.pdf).