

Copyright Board  
Canada



Commission du droit d'auteur  
Canada

[CB-CDA 2016-042]

## 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]**

May 27, 2016

[1] The Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) provided its statement of issues to the Board on April 1, 2016. The Canadian Broadcasting Corporation (CBC) provided its statement of issues to the Board on May 6, 2016.

[2] As a preliminary matter, the Board notes that section 70.2 of the *Copyright Act* is intended to be engaged where a person and a collective society “are unable to agree on the royalties to be paid for the right to do the act or on their related terms and conditions.” Therefore, there is an expectation that at least some amount of good-faith negotiation will have occurred between the parties before the matter is brought to the Board. Only those elements that have not been resolved between the parties require to be decided by the Board.

[3] In its statement of issues, CBC states that certain uses raised by SODRAC in its statement of issues are not properly before the Board. In particular, CBC refers to points 3 and 5 of SODRAC’s statement of issues that state that SODRAC [translation] “seeks to include in the 2012-2016 licence the offering of on-demand paid video” and “seeks royalties for associating a musical work in SODRAC’s repertoire with a radio programme of the CBC.”

[4] SODRAC shall reply to CBC, no later than **Wednesday, June 1, 2016**, indicating the right that is engaged in the activities described in points 3 and 5 of its statement of issues, and what offer – if any – has been made to CBC in relation to these activities, including the royalties to be paid and any related terms and conditions set out in such an offer. In the event that no such offer has been provided to CBC, the Board will consider that it is not seized of the activities referred to in points 3 and 5 of SODRAC’s statement of issues.

[5] The Board notes that the scope of proceedings brought pursuant to 70.2 of the Act cannot be continually expanded. Generally, once the issues to be decided are set, parties are expected not to vary the scope of the matter, except in accordance with subsection 70.3(1) of the Act.

[6] Lastly, the Board notes that in the Supreme Court's decision *Canadian Broadcasting Corp. v. SODRAC 2003 Inc.*, the Court set aside the 2008-2012 statutory licence "as it relates to the valuation of CBC's television and Internet broadcast-incidental copies" and remitted the decision to the Board "for reconsideration of that valuation in accordance with the principles of technological neutrality and balance." Furthermore, it ordered that "[t]o the extent that the interim licence fees were based on the valuation of the broadcast-incidental copies in the 2008-2012 statutory licence," it set aside the interim licence and remitted to the Board the "Interim Licence Decision for reconsideration consistent with the principles guiding the redetermination of the 2008-2012 licence."

[7] As such, the Board is of the view that to the extent either of the parties' statement of issues raises issues for the 2008-2012 period beyond what is necessary to comply with the Supreme Court's order, such issues are not properly before the Board. To the extent that CBC intends to raise the issue of a blanket versus a per-piece licence for synchronization, it is limited to doing so for the 2012-2017 period.

Gilles McDougall  
Secretary General