

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Regime Public Performance of Music
Copyright Act, Section 67.2

Members Mr. Justice Donald Medhurst
Michel Héту, Q.C.
Dr. Judith Alexander
Mr. Michel Latraverse

Decision of the Board certifying in part the statements of royalties of CAPAC and PROCAN for the year 1990

REASONS FOR DECISION

Pursuant to section 67 of the *Copyright Act*, R.S.C. 1985, 4th Supplement, chapter 10, (hereinafter, the “*Act*”), the Composers, Authors and Publishers Association of Canada, Limited (CAPAC) and the Performing Rights Organization of Canada (PROCAN) filed with the Copyright Board statements of royalties that they propose to collect, effective January 1, 1990, for the performance or the communication by telecommunication of dramatico-musical or musical works which are part of their repertoire.

Tariff items 2.A.2 and 17 were filed for periods of five and two years respectively. All other tariff items were filed for a period of one year.

Pursuant to subsection 67.1(1) of the *Act*, the Board published the statements cited above in the *Canada Gazette*, Part I, dated September 30, 1989, and gave notice that prospective users or their representatives wishing to object to these statements should file their written objections with the Board no later than October 30, 1989.

Tariff items 2.A, 2.C, 4, 5, 6, 8, 10, 16, 17 and 19 were each the subject of one or more such objections. They are listed below, under the heading “Disputed Tariffs.”

Pursuant to subsection 67.1(2) of the *Act*, the Board sent copies of these objections to CAPAC and to PROCAN for reply, and a copy of these replies to each of the objectors.

In order not to delay unduly the approval of CAPAC’s and PROCAN’s statements of royalties, the

Board has decided to certify them in part at this time. This certification concerns the undisputed tariff items.

I. UNDISPUTED TARIFFS

Pursuant to subsection 67.2(1) of the *Act*, the Board has considered and hereby certifies the statements of royalties of CAPAC and PROCAN, with the alterations hereinafter mentioned, as their respective approved statements, but only for the following tariff items: 1.A, 1.B, 1.D, 2.B, 2.D, 3, 7, 9, 11, 12, 13, 14, 15 and 18.

In the case of tariff items 1.D and 2.D for both CAPAC and PROCAN, which pertain to the radio and television stations owned or operated by the Canadian Broadcasting Corporation (CBC), the approved tariffs reflect the terms of the agreements dated October 20, 1989, reached between CAPAC and the CBC and between PROCAN and the CBC. These agreements have been filed with the Board and provide for the royalties to be calculated as follows:

- In the case of CAPAC's proposed tariff 1.D, concerning radio stations owned or operated by the CBC, the annual fee for 1990 shall be a sum equal to 4.98¢ per capita of the population of Canada;
- In the case of CAPAC's proposed tariff 2.D, concerning television stations owned or operated by CBC, the annual fee for 1990 shall be a sum equal to \$4,251,650;
- In the case of PROCAN's proposed tariff 1.D, concerning radio stations owned or operated by the CBC, the annual fee for 1990 shall be a sum equal to 1.937¢ per capita of the population of Canada;
- In the case of PROCAN's proposed tariff 2.D, concerning television stations owned or operated by the CBC, the annual fee for 1990 shall be a sum equal to \$1,653,185.

Tariff items 1.A and 1.B (Commercial and Non-Commercial Radio), both in the case of CAPAC and PROCAN, are identical to the tariffs approved for 1989.

This is the case as well of CAPAC tariff items 3 (Cabarets, Cafes, Clubs, Cocktail Bars, Dining Rooms, Lounges, Restaurants, Taverns and Similar Establishments) and 12 (Theme Parks).

PROCAN tariff item 3 is only slightly altered and relates to the manner of calculating royalties.

The wording of PROCAN tariff item 12 has been altered only by the addition of a condition enabling PROCAN to examine the books and records of account of any licensee pursuant to this tariff. The Board is of the view that this condition is reasonable.

Tariff items 7 (Skating Rinks), 9 (Sports Grounds), 11 (Circuses and Ice Shows), 13 (Public Conveyances), 14 (Performance of an Individual Work), 15 (Background Music) and 18 (Recorded Music for Dancing), for both CAPAC and PROCAN, provide for adjustments that closely reflect the increase in the cost of living. In the absence of any objection thereto, the Board has concluded that these adjustments should be accepted.

In the case of tariff item 2.B [Television; Ontario Educational Communications Authority (TVOntario)], the increase over 1989 for both CAPAC and PROCAN is in order of 10 per cent. Since, however, this tariff item deals with a single organization, TVOntario, which has not filed an objection, the Board sees fit to approve this tariff item as proposed.

At the request of the two societies, tariff item 1.C, dealing with CKO Incorporated, has been deleted from the two statements.

The Board notes that tariff item 19, which applied to MuchMusic/MusiquePlus in 1989 and previous years has not been filed for 1990 by either CAPAC or PROCAN. It appears that proposed tariff item 17 (Transmitters of Non-Broadcast Service) is intended to encompass the performance of musical works on MuchMusic/MusiquePlus. Numerous objections to this tariff have been received, including that of MuchMusic/MusiquePlus.

Finally, the Board has seen fit to modify the proposed introduction of each statement of royalties, as published in the *Canada Gazette* of September 30, 1989, as follows:

- a. The Board has deleted the words “or to communicate by telecommunication” which appear in the first paragraph of each proposed statement, as well as the entire third paragraph of the General Provisions which defines “licence to perform” and “performing licence” and other terms associated with the communication to the public by telecommunication;

This new language was directed to tariff items which are not approved herein.

- b. The Board has also deleted the fourth paragraph of the General Provisions of each of the two statements of proposed royalties which read as follows: “Time shall be of the essence of these tariffs.”

That provision, also new this year, is being challenged in another file before the Board (File 1989-1 concerning the retransmission of distant radio and television signals). As a result, and in order to avoid any unnecessary delays in the approval of these tariff items, CAPAC and PROCAN have asked that this provision be deleted.

Pursuant to section 67.2(1) of the *Copyright Act*, the approved tariff items will be published in the *Canada Gazette*.

II. DISPUTED TARIFFS

Following is the list of the tariff items disputed, with the names of the persons who have filed objections thereto:

1. **Item 2.A** – Commercial television stations and networks

Objectors / Opposants

- CTV Television Network Ltd.
- Mid-Canada Communications Corporation

- Baton Broadcasting Inc.
- CHEK-T.V. Limited & British Columbia Television Broadcasting System Ltd.
- CKY Television
- CFRN-TV
- CHUM Limited
- CKCO-TV
- Réseau de télévision Quatre Saisons Inc.
- Canadian Association of Broadcasters / Association canadienne des radiodiffuseurs
- Canadian Society of Copyright Consumers / Société de droits d'auteur pour les consommateurs

2. **Item 2.C** – Television; *Société de radio-télévision du Québec*

Objector / Opposant

- Société de radio-télévision du Québec

3. **Item 4** – Live performance at theatres or other places of entertainment

Objectors / Opposants

- West Kootenay Regional Arts Council
- Kaslo Concert Society
- Mr. Tim Huebert

4. **Item 5** – Exhibition and Fairs

Objector / Opposant

- Canadian Association of Exhibitions / Association des expositions du Canada

5. **Item 6** – Motion Picture Theatres

Objectors / Opposants

- Cineplex Odeon Corporation
- Famous Players Inc.

- Motion Picture Theatres Associations of Canada
6. **Item 8** – Receptions, Conventions, Assemblies and Fashion Shows
- Objector / Opposant*
- Mr. Tim Huebert
7. **Item 10** – Public Parks, Streets or Squares
- Objector / Opposant*
- Mr. Tim Huebert
8. **Item 16** – Background music services
- Objector / Opposant*
- Executive Communications Ltd.
9. **Item 17** – Transmitters of Non- Broadcast Services
- Objectors / Opposants*
- Allarcom Pay Television Ltd.
 - Cable News Network Inc.
 - Canadian Broadcasting Corporation / Société Radio-Canada
 - Canadian Home Shopping Network Ltd.
 - Consortium de télévision Québec-Canada
 - The Family Channel Inc.
 - First Choice Canadian Communications Corporation
 - Météomédia Inc.
 - MuchMusic Network / MusiquePlus Inc.
 - Opryland USA Inc.
 - Premier Choix : TVEC Inc.
 - Le Réseau des sports

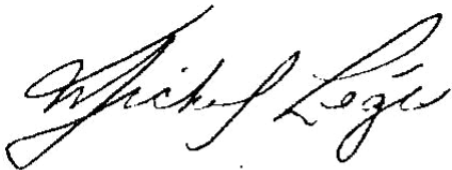
- Silent Network
- The Sports Network
- Vision TV: Canada's Faith Network
- YTV Canada Inc.
- C1 Cablesystems Inc.
- Canadian Cable Television Association / Association canadienne de télévision par câble
- Canadian Satellite Communications Inc.
- Rogers Cable T.V. Limited
- Standard Sound Systems Company Ltd.

10. **Item 19** – Fitness activities

Objector / Opposant

- Ontario Arenas Association

In due course, the Board will provide the parties concerned with the opportunity to be heard before it concludes its consideration of the tariff items to which objections have been filed.



Michel Léger
Secretary General