

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2003-12-19

Citation FILES: 76(1)-2000-2, 76(1)-2003-1

Regime Claims by Non-members in Retransmission
Copyright Act, subsection 76(1)

Members Mr. Justice John H. Gomery
Mr. Stephen J. Callary
Mrs. Sylvie Charron

Application by the société des auteurs de radio, télévision et cinéma (SARTEC)

Reasons for decision

I. DECISION

At the request of SARTEC and pursuant to subsection 76(1) of the *Copyright Act* (the “Act”), the Copyright Board hereby designates the Canadian Broadcasters Rights Agency (CBRA) as the collective society from which the following copyright owners, and any person claiming under them, are entitled to be paid retransmission royalties, subject to the same conditions as those to which a person who has so authorized that collective society is subject.

Targeted owners: owners of copyright in texts, written pursuant to the agreement managed by SARTEC, used in the production of television programs produced by the *Groupe TVA inc.* or its subsidiaries, including *JPL Production Inc.* and *JPL Production II Inc.*, and retransmitted on distant television signals since January 1, 1998 and until CBRA notifies SARTEC that *Groupe TVA inc.* no longer is a member of CBRA, if those owners did not authorize a collective society named in Appendix A of the Retransmission of Distant Television Signals Tariffs certified by the Board for the years 1998 to 2000 and 2001 to 2003 to collect royalties on account of those texts.

A. REASONS FOR THE DECISION


Between November 31, 2000 and November 26, 2003, SARTEC filed, pursuant to subsection 76(1) of the *Act*, applications for the designation of certain collective societies from which owners of copyright in texts used in the production of television programs could claim a share of royalties that were paid for the retransmission of distant television signals between January 1, 1998 and December 31, 2003. The Board suspended the proceedings dealing with the earlier applications in response to the filing with the Trial Division of the Federal Court of an application for a declaration

challenging the right of members of SARTEC to receive a share of the royalties. The matter before the Federal Court was dismissed for delay. SARTEC withdrew most of its applications. The Board remains seized of applications for the designation of CBRA as the collective society from which owners of copyright in texts used in the production of television programs produced by the *Groupe TVA inc.* or its subsidiaries could claim a share of the royalties that were paid for the retransmission of distant television signals between January 1, 1998 and December 31, 2003.

On December 1, 2003, availing itself of its power to proceed of its own motion in such matters, the Board advised the parties that it intended to consider the possibility of issuing a designation for an indeterminate period of time.

CBRA does not oppose the designation. It still challenges the right of the members of SARTEC to receive a share of royalties but admits that the purpose of a designation is not to settle this issue.¹ Furthermore, the relevance of designating CBRA with respect to programs produced by *Groupe TVA inc.* is solely dependent on whether or not the group is a member of that collective; for that reason CBRA feels it would be preferable not to proceed to a designation for an indeterminate period of time. SARTEC supports the Board's proposal, and adds that it is possible to address the concerns CBRA raises by stipulating that the designation ends upon written notice that *Groupe TVA inc.* has ceased to be a member of CBRA.

The reasons leading the Board to proceed to the designation are the same, with such modifications as the circumstances require, as those it stated in respect of an earlier application dealing with identical issues.² The designation will remain in force until CBRA notifies SARTEC that *Groupe TVA Inc.* no longer is a member of CBRA. This approach offers significant practical advantages. Any rights interested parties may have will not run the risk of expiring simply as a result of negligence or of a slip of the mind.³ It also dispenses with last minute filing of applications. Finally, by dealing with the matter as it intends, the Board takes into account the impact of the possible departure of the relevant group of producers.



Claude Majeau
Secretary General

¹ *Canadian Retransmission Right Association v. Société des Auteurs, Recherchistes, Documentalistes et Compositeurs* (2000), 9 C.P.R. (4th) 415 (F.C.A.).

² See *Claims by Non-members in Retransmission (Application by SARDeC)* (1999), 86 C.P.R. (3rd) 481; application for judicial review dismissed, *Canadian Retransmission Right Association, supra*.

³ Normal limitation periods will continue to apply to any recourse interested parties may have in the matter.