

THE TELEVISION TARIFF

HOW MUCH DO CABLE OPERATORS AND OTHER RETRANSMITTERS PAY

- The tariff applies for 3 years: from January 1, 1992 to December 31, 1994.
- The royalty payments could be approximately \$42 million a year.
- The fee for cable and other retransmission systems serving more than 1,000 subscribers is based on the number of subscribers to whom they distribute distant signals, no matter how many.
- Systems with over 6,000 subscribers pay 70¢ a month, per subscriber.
- Systems with between 1,001 and 6,000 subscribers pay between 20¢ and 65¢ a month, per subscriber.
- Royalties are reduced by 50% in francophone markets.
- Royalties are reduced by 75% if only one distant signal is carried, and it is of a network that also has a local station.
- Royalties are reduced by 75% for schools, colleges, universities, hospitals and nursing homes.
- All systems serving no more than 1,000 subscribers pay \$100 per year.
- The Board rejected proposals that there be a separate tariff for distributing American "superstations".

TELEVISION RETRANSMISSION ROYALTIES TO BE PAID IN 1992, 1993 & 1994 BY
CANADIAN CABLE SYSTEMS AND OTHER RETRANSMITTERS

SYSTEM CATEGORY	TARIFF	TOTAL YEARLY AMOUNT TO BE PAID BY THESE SYSTEMS (EST.)
Over 6,000 subscribers in an English-speaking community	70¢ per subscriber, per month	\$36 million
1,001 to 6,000 subscribers in an English-speaking community	20¢ to 65¢ per subscriber, per month	\$2 million
Over 6,000 subscribers in a French-speaking community	35¢ per subscriber, per month	\$3.5 million
1,001 to 6,000 subscribers in a French-speaking community	10¢ to 32.5¢ per subscriber, per month	\$300,000
1,000 subscribers or fewer in any community	\$100, per year	\$200,000

Note: These figures have been calculated on the basis of the number of residential subscribers as of March 31, 1991.

Who must pay retransmission royalties?

It is the *retransmitters* in Canada of *distant signals*, either television or radio signals. Most cable systems and many master antenna systems, low power television stations and direct-to-home systems delivering television signals by satellite are retransmitters of distant signals.

What is a distant signal?

It is the signal of a television or radio station that is not a local station. The Local Signal and Distant Signal Regulations, SOR/89-254, indicate how to distinguish a local signal from a distant signal. Basically, a signal is local within a radius of between 100 and 200 kilometres, depending on its transmitter's strength. Thus, local signals can either be Canadian or American stations, depending on the location, as can distant signals.

Most specialty and pay television services offered by cable companies (First Choice, TSN, CBC Newsworld, CNN, A&E, etc.) are not subject to the retransmission regime. Permission to distribute these services must be obtained directly from the service itself. This is not the case for "superstations" even though, they are also received by cable operators via satellite. They count as distant signals and are covered by the royalty payments made by cable operators for the distribution of other distant signals.

Why are there no copyright fees for retransmitting local signals?

The *Copyright Act* states that local signals can be retransmitted free of charge. These signals can normally be received without having to subscribe to cable service. However, cable operators are required by the *Canadian Radio-television and Telecommunications Commission* (CRTC) to carry all Canadian local signals.

To whom must cable operators pay retransmission royalties?

They must pay to eight *collecting bodies* the royalty shares shown in section 14 of the tariff. Each collecting body represents a different group of creators, such as film producers, television networks, music composers, or sports teams. It is up to each collecting body to distribute its share of royalties to the creators it represents.

How did the Board establish how much cable operators pay?

The Board took into account the criteria mentioned in the *Copyright Act*, which are:

- That the manner of determining the royalties must be **fair and equitable**. Cabinet is entitled to provide direction to the Board on how to interpret this expression. It did so for the first time in November 1991, by requiring the Board to consider:
 - (a) *royalties paid for the retransmission of distant signals in the United States under the retransmission regime in the United States;*
 - (b) *the effects on the retransmission of distant signals in Canada of the application of the Broadcasting Act and regulations made thereunder; and*
 - (c) *royalties and related terms and conditions stipulated in written agreements in respect of royalties for the retransmission of distant signals in Canada that have been reached between collecting bodies and retransmitters and that are submitted to the Board in their entirety.*
- That there be a **preferential rate** for **small retransmission systems**, namely those serving no more than 1,000 premises.

The Board again applied the principles established in the 1990 decision, that the tariff should:

- reflect Canadian circumstances

- given a choice of approaches that equally compensate copyright owners, be the one that results in the least possible disruption to the cable services available to subscribers
- be based on a set of statistics for a test year
- reflect the actual retransmission of programs and recognize that some programs may be more valuable than others
- be simple to administer, transparent and comprehensible

What are the Board's conclusions on the impact that payment of retransmission royalties since 1990 has had on the cable industry?

While the cable industry's profits have not increased in recent years, the Copyright Board concluded that payment of retransmission royalties had not, to any significant degree, harmed the cable industry. In 1990 and 1991, the number of cable subscribers continued to rise steadily and very few cable operators outside Quebec ceased offering distant signals to their subscribers.

Since the Board must take into account royalties paid in the U.S., why did it set the royalty rate for some Canadian cable operators at a level that is apparently almost twice the U.S. rate?

There are two major reasons for this which, once they are taken into account, bring the U.S. rate much closer to the Canadian rate:

- *American cable subscribers receive, on average, fewer distant signals on the basic service than their Canadian counterparts. The U.S. average is only 2.82, while it is 4.73 in Canada.*
- *U.S. cable operators pay 75% less to retransmit signals of ABC, CBS and NBC and PBS network stations since the creators are already compensated by the networks for the right to broadcast the works throughout the United States. However, these "national rights" that the networks acquire do not include Canada.*

How did the Board take into account the effects of the *Broadcasting Act* and CRTC regulations?

It did so in three ways:

- The tariff is the same regardless of the number of signals. Therefore, all cable systems are treated in the same way, retransmission fees remain the same, no matter where in Canada the system is nor how many signals are carried on its basic service. This ensures the maximum availability of services to subscribers.
- Royalties are reduced by half in francophone markets. Distant signals in these markets are found to be less valuable, as they are mostly in the English and not heavily watched.

- Each collecting body's share of royalties is based on the number of Canadian and American signals that are retransmitted and not merely the viewing of programs, which tends to be higher for American signals. This measure reflects the requirement that cable operators have to distribute certain Canadian signals that may not attract many viewers.

Why did the Board set the maximum monthly royalty at 70¢ per subscriber?

The Board reviewed the evidence and concluded that the price of 70¢ established in the 1990 decision continues to be appropriate. There were a number of factors that could call for adjustments, but they appeared to balance each other on the whole. Also, its analysis of the American situation, mentioned above, satisfied the Board that the price for distant signals in Canada was set at the proper level in 1990 and remains fair and equitable.

Why did the Board set a reduced rate for francophone markets?

Distant signals have considerably less value in French-speaking communities than elsewhere in Canada. There are far fewer of them in Quebec and almost all of them are in English. Subscribers to large systems receive an average of 2.75 distant signals in Quebec, compared to an average of 4.76 in the other provinces. Only 26% of distant signal instances in Quebec are in the French language, while 90% in English Canada are in English. Distant signal viewing is indeed three times higher in English Canada than in Quebec.

Are the tariff reductions for francophone markets available outside Quebec?

Yes, if the cable operator serves more than 1,000 subscribers in a community with a French-speaking majority. Several communities in New Brunswick, Ontario, Manitoba and Saskatchewan are designated as francophone markets in the tariff.

Why is the tariff for cable systems serving no more than 1,000 subscribers only \$100 per year?

The *Copyright Act* requires a *preferential rate for small retransmission systems*, which, by government regulation, have been defined as systems *that retransmits a signal, with or without a fee, to no more than 1,000 premises in the same community.*

Why was a lower rate established for cable systems serving between 1,001 and 6,000 subscribers?

This is because their costs are often higher than those of larger systems. Quite often, the communities they serve are far from major urban centres, which in itself accounts for some of these higher costs. Hooking up a new subscriber to cable service can be costly.

While the *Copyright Act* requires a preferential rate only for systems serving no more than 1,000 subscribers, the financial constraints of cable operators do not magically disappear once the number of subscribers exceeds 1,000. They gradually diminish as systems become larger and, therefore, the tariff is graduated for systems with between 1,001 and 6,000 subscribers.

Why are the royalties lower for schools, hospitals, nursing homes, hotels and motels?

Compared to other premises, cable service and distant signals are not worth as much for each room to which cable service is provided in these establishments since there may be far less television viewing, on average. The royalty to be paid is based on the number of premises in which cable service is available and to which distant signals are retransmitted.

Why is there no tariff reduction for premises to which cable operators grant bulk rate discounts?

Discounts granted by cable operators to bulk rate subscribers, such as the owners of apartment buildings, do not affect the value of distant signals. The key reasons for these discounts are the competition from satellite dishes and the risk of illegal hook-ups to cable service. Occupancy rates are rarely an important consideration.

Why are the royalties paid by a cable operator not based on the number of distant signals retransmitted within a system?

Such a measure would have been much more costly for cable operators serving communities located far from major urban centres. To provide the same quality of service, those operators usually have to retransmit many more distant signals than urban cable systems. For instance, in Toronto, 14 of the 15 broadcast signals on the basic service are local, including those of the four American networks. But in Thompson, Manitoba, only one of the 15 broadcast signals on the basic service is local.

Why did the Board reject the request for a "superstation" surcharge?

Superstations do not have a higher value than the average distant signal. Furthermore, a superstation surcharge might have stopped cable operators from distributing superstations, inhibiting the further penetration of Canadian pay-TV services to which they, under the CRTC regulations, are linked.

Can Cabinet overturn the Board's decision?

Yes, but it can only change how much cable operators have to pay. Cabinet cannot change the royalty shares awarded by the Board to each collecting body.

Appeals to Cabinet must be filed in writing with the Minister of Consumer and Corporate Affairs by February 15, 1993 (30 days from the publication of the tariffs in the *Canada Gazette*). Cabinet must rule by April 14, 1993 (90 days from the date of the Board's decision).

WHO GETS HOW MUCH

<i>Collecting body</i>	<i>Copyright owners represented</i>	<i>Royalty share</i>
Copyright Collective of Canada (CCC)	U.S. independent motion picture and television production industry for all drama and comedy programming, except that carried on stations of the U.S. Public Broadcasting Service (PBS).	59.63%
Canadian Retransmission Collective (CRC)	Canadian and foreign (except the U.S.) drama and comedy producers outside the United States, TVOntario and the U.S. Public Broadcasting Service (PBS).	13.51%
Canadian Retransmission Right Association (CRRA)	Canadian Broadcasting Corporation/Société Radio-Canada, Radio-Québec & American Broadcasting Corporation (ABC), Columbia Broadcasting System (CBS) & National Broadcasting Corporation (NBC).	11.18%
Canadian Broadcasters Rights Agency (CBRA)	CTV, Global, TVA and Quatre-Saisons networks and their affiliates, independent television stations and the privately owned affiliates of the CBC and Radio-Canada.	5.72%
Major League Baseball Collective of Canada (MLB)	Major League Baseball teams.	1.59%
Society of Composers, Authors and Music Publishers of Canada (SOCAN)	Composers of music and song lyricists	3.55%
Border Broadcasters' Collective (BBC)	U.S. commercial television stations	2.90%
FWS Joint Sports Claimants (FWS)	Teams of the National Hockey League, National Basketball Association, Canadian Football League and National Football League.	1.92%

What is the basis for each collecting body's royalty share?

The Board first calculated the number of American signals and of Canadian signals that are retransmitted in Canada as distant signals, as well as the number of subscribers that receive them. Close to 80% of such distant signals, weighted by the number of subscribers receiving them, are American signals and the rest are Canadian. Next, the Board calculated the share of viewing for the programs represented by each collecting body. Its royalty share is therefore based on its viewing share of American signals, to the tune of about 80%, and the rest on its viewing share of Canadian signals.

All calculations are based on 1991 data.

Since the musical works of the composers and lyricists are found in most programming, the share of SOCAN, the collective representing them, cannot be established on the basis of viewing. SOCAN's royalty share of 3.55% represents the ratio between the cost of acquiring music and all programming costs for Canadian commercial television stations, in 1991.

How much will Canadian creators receive as a result of this decision?

They can expect to collect about 15% of the total royalty, or about \$6 million. It is up to each collecting body to decide how to distribute its royalty share among its members. Several collecting bodies represent both Canadian and foreign interests.

Why are the collecting bodies' royalty shares different for 1992-1994 from what they were for 1990-1991?

The 1992-1994 distribution was established using 1991 data while for 1990-1991, 1989 data was used. The percentage of royalties awarded to most collecting bodies are based on its programming's share of viewing during the test year. These viewing statistics are based on samples taken during the year and hence are liable to vary from one year to the next.

The share for SOCAN and the two sports collectives was also adjusted by the Board.

Why was the International Olympic Committee not awarded a share of royalties, even though it had filed a tariff proposal with the Board?

The International Olympic Committee failed to prove that it is the copyright owner for telecasts of the Olympic Games. It withdrew its tariff proposal in March 1992.

Can a creator who is not a member of a collecting body claim retransmission royalties?

Yes. To do so, the creator must apply to the collecting body designated by the Board as representing the class of copyright owners to which that creator belongs.

THE RADIO TARIFF

- The tariff applies for 3 years: from January 1, 1992 to December 31, 1994.
- The royalty payments could reach \$300,000 per year.
- It reflects the terms of an agreement between all of the affected parties.
- For cable systems with more than 1,000 subscribers, the tariff is 5¢ per subscriber per year; other systems pay \$12.50 per year.
- 50% of the royalties are awarded to the **Society of Composers, Authors and Music Publishers of Canada (SOCAN)** which represents copyright owners for music that runs through radio programming.
- 50% of the royalties are awarded to the **Canadian Broadcasters Rights Agency (CBRA)**, which represents Canadian private radio networks and independent stations. CBRA, in concert with the **Canadian Retransmission Right Association (CRRRA)**, will arrange for adequate compensation to be paid to owned and operated radio stations of the Canadian Broadcasting Corporation & Société Radio-Canada as well as their affiliates.

THE LEGISLATIVE AND REGULATORY FRAMEWORK

Canada-U.S. Free Trade Implementation Act, S.C. 1988, c.65, amending Copyright Act, R.S.C. 1985 c. C-42, s. 66 to 69; Local Signal and Distant Signal Regulations, SOR/89-254 (9 May 1989); Definition of Small Retransmission Systems Regulations, SOR/89-255 (9 May 1989); Retransmission Royalties Criteria Regulations, SOR/91-690 (28 November 1991)

Why do cable companies and other retransmitters now have to pay copyright royalties?

The Parliamentary Subcommittee on the Revision of Copyright recommended, in 1985, the establishment of copyright royalties for such retransmission. Later, in the U.S.-Canada Free Trade Agreement of 1987, Canada committed itself to amending the *Copyright Act* so that all copyright owners, including Canadian creators, would have the same right to fair and equitable compensation when their television and radio programming is retransmitted in Canada as they have enjoyed since 1978 for retransmission of those programs in the United States. Canadian cable operators began paying retransmission royalties in 1990.

Why did Cabinet establish the *Retransmission Royalties Criteria Regulations*?

The regulations indicate what factors the Board must consider to establish a tariff formula that is fair and equitable. Its object is described in the following terms by the Regulatory Impact Analysis Statement which accompanies it:

The primary purpose of introducing the criteria is to require the Board to have regard to certain key issues that the Government considers important.

In assessing the various criteria that would be adopted, the interests of copyright holders and users were balanced. The guiding principle was to allow the Board to set royalties that would be fair and equitable to both.

The criteria do not direct the Board toward a particular conclusion. The Board may, in its discretion, attribute such weight as it sees fit to each criterion, to the criteria in their entirety and to the evidence and the arguments of the parties. Consideration of the criteria will take place in a manner that allows each party to conduct its own case and present its evidence as it sees fit. Finally, the criteria are flexible enough to endure over time.

CABLE SYSTEMS IN CANADA: FACTS AND FIGURES

(All information is current to March 31, 1991)

How many cable systems are there in Canada?

There are 2,723 systems. However, there are fewer cable companies, since many companies operate several systems. This is the case, for instance, for Rogers, Maclean Hunter and Vidéotron. A system serves a specific community, a part of a community or several communities within a given area.

How many subscribers do Canadian cable systems have?

In 1991 there were 7.1 million cable subscribers reported in over two thousand systems in Canada. The industry is highly concentrated, with a few large companies serving nearly all subscribers.

The three largest reported systems in the country served just over a million subscribers. There were 494 reported large systems (those with more than 6,000 subscribers), who served over 90% of all subscribers. The average number of subscribers in large systems was 13,835, although half of these large systems served no more than 4,000 subscribers.

Conversely, most systems are small. Four fifths, or 2,229 out of 2,723, systems serve no more than 1,000 subscribers. The average number of subscribers in small systems is 246.

How many distant signals do cable subscribers receive?

They receive an average of 4.73. In Quebec, it is 2.55.

Among the 494 systems with more than 1,000 subscribers, 22 systems do not retransmit any distant signals, 10 systems retransmit only one, 58 systems retransmit two, 14 systems retransmit three, 356 systems retransmit between 4 and 8 distant signals and 34 systems distribute more than 8 distant signals. The system with the largest number of distant signals is located in Thompson, Manitoba. It distributes 14 distant signals.

How much do Canadians pay for basic cable service?

The average pre-tax monthly fee is \$14.91. For systems with more than 1,000 subscribers, the average fee is \$13.75. For systems with no more than 1,000 subscribers, the average is \$16.53.