

## THE TELEVISION TARIFF

### THE ROYALTIES TO BE PAID

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- The television tariff applies to the retransmission of distant television signals in 1990 and 1991.
  - The tariff depends on the number of premises served. Except for some commercial and institutional buildings, a premises corresponds to the usual notion of a subscriber.
  - Large cable systems (with over 6,000 subscribers) pay a monthly fee of 70¢ per subscriber. 86% of subscribers are served by large systems.
  - Intermediate systems (1,001 to 6,000 subscribers) pay a monthly fee ranging from 20¢ to 65¢ per subscriber. 9% of subscribers are served by intermediate systems.
  - Small systems (no more than 1,000 subscribers) pay an annual fee of \$100. 5% of subscribers are served by small systems.
  - 75% discount for rooms in hospitals, nursing homes and other health care facilities.
  - 35% discount for hotel rooms.
  - It is estimated that the tariff will generate copyright royalties of just over \$50 million annually.
  - Board member Michel Latraverse issued a dissenting opinion, stating that monthly royalties for intermediate systems should have ranged from 34¢ to \$1.11 per subscriber and that for large systems, they should have been set at \$1.20 per subscriber.
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### Who pays the copyright royalties?

The royalties are charged to "retransmitters", in Canada, of "distant signals". All cable TV companies are retransmitters; a master antenna system, a Low Power Television Station and a direct-to-home system delivering television signals by satellite may also be a retransmitter.

What is a distant signal?

In a given community, a distant signal is one that cannot normally be received off-air, because the community is located well beyond that signal's good quality reception area. By regulation, the Governor in Council has determined that a station's signal becomes distant in any community located more than 32 kilometres beyond that station's Grade-B contour. Distant signals can be of either Canadian or American origin. Not all American signals are distant in Canada. For example, the signals of many stations in Buffalo, New York are local in Toronto. A cable subscriber in Canada receives, on average, 4.56 distant signals.

Why are there no copyright royalties for retransmitting "local signals"?

The Copyright Act requires the payment of retransmission royalties only in respect of distant signals. While carriage of distant signals is optional, the CRTC requires most cable systems to carry Canadian local signals and it is convenient for their subscribers to receive all signals through their cable hook-up.

To whom are the royalties paid?

The Copyright Act indicates that retransmitters make their payments to "collecting bodies" representing specific interests of copyright owners. The collecting bodies distribute the payments among the copyright owners whom they represent.

On what basis did the Board determine that the royalty per subscriber payable by systems with more than 6,000 subscribers should be set at 70¢?

The Board determined that the average value of a distant signal is 15¢ per subscriber. This number was multiplied by the average number of distant signals received by a Canadian cable subscriber, which is 4.56, to arrive at the 70¢ figure.

The assessed value of 15¢ for each distant signal is based on the price cable companies are prepared to pay for various specialty services, such as Arts and Entertainment, YTV and Canal Famille, but recognizing that there are differences between distant signals and specialty services which tend to make distant signals less valuable. The differences include the fact that distant signal programming is often available simultaneously on local signals.

What does the Board's decision say about the impact of the royalty payments on the cable industry and cable subscribers?

The Board stated that it wanted its tariff to be "fair and equitable" and "equally compensate copyright owners" while resulting "in the least possible disruption to the cable services available to subscribers". The Board concluded that the "[cable] industry is able to absorb the liability, and that after a period of adjustment, the retransmitters will continue to earn 'fair' (though possibly diminished) returns".

Why are the royalties considerably lower for systems serving 1,000 premises or less?

Subsection 70.64(1) of the Copyright Act compels the Board to establish "a preferential rate for small retransmission systems". By regulation, the Governor in Council has defined a small retransmission system as one "that retransmits a signal, with or without a fee, to no more than 1,000 premises in the same community".

Why did the Board set lower royalties for systems serving between 1,000 and 6,000 subscribers?

The Board relied on evidence indicating that special concerns of small systems, such as high administrative costs and costs associated with serving remote and rural communities, also exist for systems that do not fall within the ambit of the definition of a small retransmission system but which, nevertheless, are relatively small. The tariff structure adopted by the Board reflects the fact that these special concerns progressively diminish in importance as systems become larger.

Why are royalties lower for hotels, hospitals, nursing homes and other health care facilities?

The discount reflects the fact that not all rooms are always occupied and not all cable outlets are always used. However, each room is simply counted for the purpose of determining the size of the system.

What proportion of the royalties will go to Canadian and non-Canadian interests?

Approximately 85% of the royalties are expected to be collected by copyright owners of programming produced outside Canada. This distribution closely reflects the amount of Canadian and non-Canadian programming viewed in Canada on distant signals.

Why are the royalties higher, proportionally, than the royalties paid by American cable companies?

The Board sought to establish the intrinsic value of distant signals in Canada. Total cable royalties in the United States, for 1990, are projected to reach approximately \$CAN 230 million as compared to \$CAN 50 million in Canada. However, U.S. cable companies carry 40% fewer distant signals on average, serve about 17% fewer households and attract, proportionally, 33% less viewing to programming on their distant signals than do their Canadian counterparts.

Why did the Board not set the royalties on the basis of the number of distant signals which a retransmitter carries?

Cable companies in communities at some distance from major Canadian and American centres have to carry more distant signals in order to offer the same service as that available to subscribers in such places as Toronto, where 14 of 15 signals carried by one company are local signals, including four American signals. The Board stated that it was concerned with "equalizing the liability of retransmitters in different parts of the country".

Why did one Board member disagree with the Board's decision?

Board member Michel Latraverse expressed the view that the Board's decision underestimated the value of distant signals to cable companies. He relied on the amount cable companies pay for certain specialty services, such as Arts and Entertainment Network, Le Canal Famille, CBC Newsworld and YTV, concluding that many of these services are of lesser value than distant signals which offer greater choice and variety of programming.

What impact will the decision have on cable subscription rates?

The copyright royalties are a charge imposed on the cable companies. As a result of a decision last May 15 by the Canadian Radio-television and Telecommunications Commission (CRTC), cable systems with 2,000 subscribers or more cannot automatically pass-on this additional cost to their subscribers (see CRTC Public Notice 1990-53). They may apply to the CRTC for a rate increase but must justify it on the basis of economic need.

Can the Board's decision be challenged?

The Board's decision on the formula for determining the copyright royalties may be reviewed by the Governor in Council within 90 days. Both the collecting bodies and the cable companies can ask for an adjustment.

However, the Governor in Council cannot change the share of the royalties each collecting body is to receive.

## THE DISTRIBUTION OF THE ROYALTIES

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- ° The largest share, 57.09%, is awarded to the Copyright Collective of Canada (CCC), which represents producers of U.S. motion pictures and syndicated programming.
  - ° 12.81% goes to the Canadian Retransmission Collective (CRC), which represents producers of Canadian and other non-American motion pictures, television drama and comedy programs, TV Ontario and the U.S. Public Broadcasting System (PBS).
  - ° 11.75% of the royalties are to be paid to the Canadian Retransmission Right Association (CRRA), which represents the Canadian Broadcasting Corporation (CBC), Radio-Québec, the American Broadcasting Corporation (ABC), the Columbia Broadcasting System (CBS), and the National Broadcasting Corporation (NBC).
  - ° 6.30% is set aside for most professional sports teams, represented by the FWS Joint Sports Claimants and the Major League Baseball Collective of Canada.
  - ° 5.81% is awarded to the Canadian Broadcasters Retransmission Rights Agency (CBRRA), which represents Canadian private television networks and independent stations.
  - ° 3.30% will be received by copyright owners in music that runs through television programming, to be collected by the Composers, Authors and Publishers Association of Canada (CAPAC) and the Performing Rights Organization of Canada (PROCAN).
  - ° 2.94% of the royalties are awarded to the Border Broadcasters' Collective (BBC), which represents U.S. television stations.
  - ° The claim of the American College Sports Collective (ACS) is denied. ACS represents the U.S. National Collegiate Athletic Association (NCAA).
  - ° The Board denied an award for "compilation of the broadcast day" and the "exclusive territorial licence".
  - ° Board member Michel Latraverse dissented from the Board's decision to deny an award for the compilation of the broadcast day.
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What is the basis of the Board's distribution of the royalties?

The share of each collecting body basically corresponds to the estimated proportion of viewing that its programming represents of all distant signal viewing in Canada.

Why was the claim regarding the "compilation of the broadcast day" denied?

The Board concluded that the broadcast day compilation is not a work protected under the Copyright Act.

Why did the Board not award any royalties for "exclusive territorial licences"?

The Board concluded that "the evidence showed that broadcasters generally do not acquire any copyright interest in the programs they are licensed to broadcast".

Can copyright owners who are not members of a collecting body claim a share of the royalties?

Yes. Section 70.66 of the Copyright Act provides that non-members can claim royalties from a collecting body designated by the Board, subject to the same conditions applied to its members.



## THE LEGISLATIVE AND REGULATORY FRAMEWORK

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Canada-U.S. Free Trade Implementation Act, S.C. 1988, c.65.

Local Signal and Distant Signal Regulations,  
SOR/89-254 (9 May 1989).

Definition of Small Retransmission Systems Regulations,  
SOR/89-255 (9 May 1989)

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

This arises from a commitment Canada made under the Free Trade Agreement. American cable companies have been paying copyright royalties for the retransmission of distant signals, including Canadian signals, since 1978. The Parliamentary Subcommittee on the Revision of Copyright also recommended, in 1985, the establishment of copyright royalties for such retransmission.

What is the Copyright Board's mandate with respect to copyright royalties for the retransmission of distant radio and television signals?

The Board sets the copyright royalties to be paid by retransmitters and decides how these royalties are to be allocated among the various collecting bodies. Tariffs may be established for one or several years. The Copyright Act states that the Board must set rates that are "fair and equitable", with a preferential rate for small retransmission systems, and that it must not discriminate between copyright owners on the grounds of nationality or place of residence.



## THE RADIO TARIFF

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- ° The tariff applies to the retransmission of distant radio signals in 1990 and 1991.
  - ° The tariff set by the Board reflects an agreement between the parties concerned.
  - ° Large and intermediate-sized retransmitters (over 1,000 subscribers) pay 4¢ per subscriber per year.
  - ° Small retransmitters (no more than 1,000 subscribers) pay \$10 per year.
  - ° The radio tariff is expected to generate copyright royalty payments of approximately \$300,000 annually.
  - ° Music copyright owners, represented by the Performing Rights Organization of Canada (PROCAN) and the Composers, Authors and Publishers Association of Canada (CAPAC) each receive 25% of the royalties.
  - ° Canadian private radio networks and independent stations, represented by the Canadian Broadcasters retransmission Rights Agency (CBRRA), share the remaining 50%.
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## CABLE SYSTEMS IN CANADA: FACTS AND FIGURES

(all information is current to March 31, 1989)

### How many cable systems are there in Canada?

There are 1,469 systems. However, the number of cable companies is less, since many companies operate several systems. This is the case, for instance, of 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 system have?

The average number per system is 4,484. 1,082 of the 1,469 systems have 1,000 subscribers or fewer. 139 systems have at least 6,000 subscribers; they account for 86.17% of all subscribers. The three largest systems are Videotron-Montreal, with 582,718 subscribers, Rogers Cable TV - Toronto, with 360,442 subscribers, and Rogers Cable TV - Vancouver, with 247,533 subscribers. There are a total of 6.6 million cable subscribers in Canada.

### How many distant signals do cable subscribers receive?

The average number per system is 4.56. The number of subscribers multiplied by the number of distant signals equals 28.8 million distant signals-subscribers (some signals being distant for some of a system's subscribers but not for others). There are 22.1 million **American** distant signals-subscribers and 6.7 million **Canadian** distant signals-subscribers.

Among the 387 systems with more than 1,000 subscribers, 13 systems retransmit only 1 distant signal, 11 systems retransmit 2 distant signals, 14 systems retransmit 3 distant signals, 303 systems (i.e. 78% of all systems) retransmit between 4 and 8 distant signals and 46 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.

These 387 larger systems retransmit 4,502 signals of which 2,275 (50.5%) are distant signals and 2,227 (49.5%) are local signals.

### How much do Canadians pay for basic cable service?

The average pre-tax monthly fee is \$18.33. For systems with more than 1,000 subscribers or more, the average fee is \$13.33. For systems with no more than 1,000 subscribers, the average is \$19.50.