

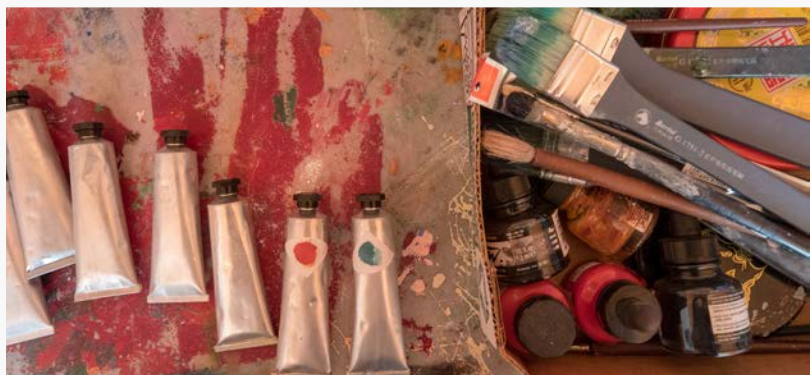


Copyright Board
Canada

Commission du droit
d'auteur du Canada



ANNUAL REPORT 2018-2019



Copyright Board
of Canada



Commission du droit d'auteur
du Canada

August 29, 2019

The Honourable Navdeep Bains, P.C., M.P.
Minister of Innovation, Science and Economic Development Canada
Ottawa, Ontario
K1A 0A6

Dear Minister:

I have the honour of transmitting to you for tabling in Parliament, pursuant to section 66.9 of the *Copyright Act*, the thirty-first Annual Report of the Copyright Board of Canada for the financial year ending March 31, 2019.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N. Théberge', written over a horizontal line.

Nathalie Théberge
Vice-Chair and
Chief Executive Officer



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CHAIR'S MESSAGE

I am pleased to present the 2018-19 Annual Report of the Copyright Board of Canada. The Report documents the Board's activities during the year in carrying out its mandate as an independent quasi-judicial economic regulator responsible for setting tariffs that are fair and equitable to both copyright owners and users of copyright-protected works.

Following the consultations that were held last year on the reform of the Board, the Government introduced amendments to the *Copyright Act* in October 2018 to modernize the legislative framework in which the Board operates, with an overall view of improving the timeliness, predictability, and clarity of its proceedings and reducing the regulatory burden and costs for all stakeholders. In particular, the amendments codify the Board's mandate, establish decision-making criteria, set timelines for rendering decisions and formalize the Board's ability to implement case management. The amendments to the *Act* came into effect on April 1, 2019.

In clarifying the Board's mandate to set fair and equitable tariffs, the amendments also address the manner in which the Board is expected to fulfill that mandate. They highlight the need for a more effective, timely, transparent and predictable tariff-setting processes, to the benefit of owners and users of copyrighted content, and in the public interest.

During this fiscal year, the Board devoted a great deal of its energy and resources toward improving the regulatory and organizational environment that will allow this objective to come to complete fruition. It worked closely with the Departments of Innovation, Science and Economic Development and Canadian Heritage in developing government regulations to support the implementation of the legislative amendments, and began drafting its own set of regulations. These will clarify rules and expectations for all participants into the tariff-setting process, and provide guidance on how to streamline and expedite those processes. The Board also published a first series of Practice Notices designed to help parties prepare for their interactions with the Board, to instill more discipline into the Board's procedures – while at the same time respecting procedural fairness and integrity – and to reduce the overall administrative burden. This work continues in 2019-2020, including the implementation of a system of case management.

At the same time, the Board continued to deal with a heavy workload. It issued eleven decisions regarding proposed tariffs filed in previous years. Most of these decisions were based on agreements negotiated between the parties, which led subsequently to the filing of a joint request for certification reflecting the terms and conditions of the agreements. When dealing with requests for certification based on negotiated agreements, the Board is required, before approving the tariffs, to examine whether the parties are representative of the entire industry to which the tariffs will apply. It must also satisfy itself that the negotiated tariffs are fair and equitable for the industry and, as well, consistent with other interrelated and already certified tariffs.

The Board also spent a considerable amount of energy dealing with a number of complex decisions that are currently under advisement, while continuing to support other on-going processes. In addition, Collectives filed with the Board a total of seventy-four new proposed tariffs for the years 2020 and beyond, all of which were prepared for publication in the *Canada Gazette* and subsequent administration.

The Board received thirty one applications for licences pursuant to the provisions of the *Copyright Act* that permit the use of published works when copyright owners cannot be located. More than half of these applications were later withdrawn, for various reasons. The Board also granted licences in four instances and declined to do so in seven, either because the works for which the application was made are part of the public domain, or there was no evidence that these works had been published. As well, Board staff assisted a number of individuals and organizations requesting a licence to locate the copyright owner thereby facilitating the use of published works.

Before ending this message, I would like to acknowledge the appointment of Nathalie Théberge as Vice-Chair and Chief Executive Officer on October 1, 2018 for a five-year term. Her expertise in respect of copyright as well as her demonstrated leadership capacities are great assets to the Board. I would also like to thank her predecessor, Claude Majeau, who for 9 years as Vice-Chair and before that, 16 years as Secretary General, led the Copyright Board with consummate professionalism, care and intelligence. His contribution to the evolution and work of the Copyright Board has been invaluable.

In addition, three new part-time Members were appointed during the year, each for a four-year term: Adriane Porcin, then Assistant Professor at the University of Manitoba's Faculty of Law, who published articles on the Copyright Board and the collective management of copyright; Katherine Braun, an economist who, in particular, worked with the United Nations in collaboration with several international agencies, as well as with the governments of Ontario and Alberta; and, René Côté, a professor of Law at the Université du Québec à Montréal, who has authored many publications in the fields of computer law, international law and intellectual property law. I welcome all of them and look forward to working with these highly qualified and exceptional people.

Finally, I must pay tribute to the contributions made by the Board's staff to the effectiveness of the Board's operations. Without their accomplished and knowledgeable assistance, the Board would not have been able to carry out its responsibilities as it did over the past year. Their expertise and work ethic make the work of the Board possible.



The Honourable Robert A. Blair
Chair

VICE CHAIR AND CEO'S MESSAGE

This fiscal year was one of great change and rapid adaptation by the Copyright Board as it embarked on a series of administrative and organizational reforms, supported by the legislative changes introduced by the Government and on-going additional financial resources through 2018 Federal Budget.

These reforms came as the Board turned 30 years old in February 2019, an impressive milestone for an organisation which has played a key role in the development of the digital and cultural economy in Canada, one it will continue to play in the next decades. These reforms also coincided with a change in leadership with my appointment as new Vice-Chair and Chief Executive Office in October 2018.

In setting out a course for this new chapter in the life of the Board, our objective was clear: creating an organizational environment that would allow the Board to fulfill its mandate, meet the requirements of the legislative reforms, and live up to the expectations bestowed upon it.

We were busy in 2018-2019: we launched a complete review of the Board administrative and procedural practices, using a “lean management” approach to identify which practices brought real value to the tariff-setting process, and how overall performance and effectiveness of the Board could be enhanced.

To reflect an increased focus on organizational stewardship and results management, the position of Director of Operations was created and filled early in 2019-2020. All Board's archives have now been digitized and a new website will be launched in fall 2019 with enhanced search-capacity and access for the parties interacting with the Board, the public in general, and for the Board employees.

Finally, interactions between parties and the Board were clarified by way of a first series of practice notices published on March 27th, 2019, and work is under way to implement case management in a manner that supports leaner and more effective procedures.

Of course, this is just the beginning as the Board continues its transition to the new legislative regime and accelerates the implementation of internal reforms, in particular as they relate to the use of information technology to increase transparency and facilitate interactions with stakeholders and the public. The additional permanent resources obtained at the very end of the fiscal year will serve in part to support this technological transformation.

Change management requires leadership and commitment from all of those affected by it. The enthusiasm and resilience of every employee at the Board, along with the support from the Chair, were instrumental in launching this journey, and will be essential as the Board completes its transition in 2019-2020 and moves forward. All should be thanked with great appreciation.



Nathalie Théberge
Vice-Chair and CEO



MANDATE OF THE BOARD

The Copyright Board of Canada (the “Board”) was established on February 1, 1989, as the successor of the Copyright Appeal Board. The Board is an economic regulatory body empowered to establish, at the request of an interested party, the royalties to be paid for the use of copyrighted subject-matter, when the administration of such copyright is entrusted to a collective society.

Moreover, the Board has the right to scrutinize agreements between users and collective societies that are filed with the Board, issue licences when the copyright owner cannot be located, and determine the compensation to be paid by a copyright owner to a user when the coming into force of a new copyright might adversely affect the latter.

The responsibilities of the Board under the *Act* are to:

- approve proposed tariffs for
 - » the doing of any protected act mentioned in sections 3, 15, 18, 19 and 21 of the *Act*, such as the public performance and the reproduction of musical works, sound recordings, performer’s performances, or literary works;
 - » the retransmission of distant television and radio signals or the reproduction and public performance by educational institutions, of radio or television news or news commentary programs and all other programs, for educational or training purposes;
 - » the manufacture or importation of blank audio recording media used for private copying;
- set royalties payable by a user to a collective society, when there is disagreement on the royalties or on the related terms and conditions;
- rule on applications for non-exclusive licences to use published works, fixed performances, published sound recordings and fixed communication signals, when the copyright owner cannot be located;
- examine agreements made between a collective society and a user which have been filed with the Board by either party, where the Commissioner of Competition considers that the agreement is contrary to the public interest;
- determine the compensation to be paid by a copyright owner to a user who has made an investment in relation to a formerly unprotected act that became protected due to a country joining the *Berne Convention*, the *Universal Convention* or the *Agreement establishing the World Trade Organization*; and
- conduct such studies with respect to the exercise of its powers as requested by the Minister of Innovation, Science and Economic Development.

The filing of proposed tariffs is mandatory in respect of the retransmission of distant television and radio signals, the reproduction or public performance for educational or training purposes by educational institutions of radio or television news or news commentary and other programs, and the manufacture or importation of blank audio recording media used for private copying. The filing of proposed tariff with respect to other protected acts is optional.

OPERATING ENVIRONMENT

Historical Overview

Copyright collective societies were introduced to Canada in 1925 when PRS England set up a subsidiary called the Canadian Performing Rights Society (CPRS). In 1931, the *Act* was amended in several respects. The need to register copyright assignments was abolished. Instead, CPRS had to deposit a list of all works comprising its repertoire and file tariffs with the Minister. If the Minister thought the society was acting against the public interest, he could trigger an inquiry into the activities of CPRS. Following such an inquiry, Cabinet was authorized to set the fees the society would charge.

Inquiries were held in 1932 and 1935. The second inquiry recommended the establishment of a tribunal to review, on a continuing basis and before they were effective, public performance tariffs. In 1936, the *Act* was amended to create the Copyright Appeal Board.

On February 1, 1989, the Copyright Board of Canada took over from the Copyright Appeal Board. The regime for public performance of music was continued, with a few minor modifications. The new Board also assumed jurisdiction in two new areas: the collective administration of rights other than the performing rights of musical works and the licensing of uses of published works whose owners cannot be located. Later the same year, the *Canada-US Free Trade Implementation Act* vested the Board with the power to set and apportion royalties for the newly created compulsory licensing scheme for works retransmitted on distant radio and television signals.

Bill C-32 (*An Act to amend the Copyright Act*) which received Royal Assent on April 25, 1997, modified the mandate of the Board by adding the responsibilities for the adoption of tariffs for the public performance and communication to the public by telecommunication of sound recordings of musical works, for the benefit of the performers of these works and of the makers of the sound recordings (“the neighbouring rights”), for the adoption of tariffs for private copying of recorded musical works, for the benefit of the rights owners in the works, the recorded performances and the sound recordings (“the home-taping regime”) and for the adoption of tariffs for off-air taping and use of radio and television programs for educational or training purposes (“the educational rights”).

The *Copyright Modernization Act* (Bill C-11) received Royal Assent on June 29, 2012, and many of its provisions came into force on November 7, 2012. Though this legislation did not change the mandate of the Board or the way it operates, it provided for new rights and exceptions that have affected its work in setting tariffs, such as new distribution and making available rights for authors, performers and makers of sound recordings, and the addition of education, parody and satire as allowable fair dealing purposes. New or modified exceptions dealing with non-commercial user-generated content, reproductions for private purposes, program copying for the purpose of time-shifting, backup copies, ephemeral copies by broadcasting undertakings and certain activities of educational institutions, among others, have also affected uses subject to a Board tariff.

Recently, in 2018, via the *Budget Implementation Act, 2018 No 2*, several measures were introduced to address the procedural and structural challenges faced by the Board with respect to timeliness, predictability and clarity of its proceedings, and to add the public interest criteria to its mandate. These changes to the *Act* came into effect on April 1st, 2019.

General Powers of the Board

The Board has powers of a substantive and procedural nature. Some powers are granted to the Board expressly in the *Act* and some are implicitly recognized by the courts.

The Board generally holds hearings in complex contested matters, but many tariff applications are disposed of without the necessity of a hearing. For example, no hearing will be held if proceeding in writing accommodates a small user that would otherwise incur large costs. The hearing may be dispensed with on certain preliminary or interim issues. No hearing has been held to date for a request to use a work whose owner cannot be located. Relevant information is obtained either in writing or through telephone calls.

The examination process is always the same, although some of the deadlines have changed since the last amendments that came into force April 1, 2019. Tariffs come into effect on January 1 and the effective period must be at least three calendar years. No later than October 15 of the second year before the calendar year in which the proposed tariff is to take effect, the collective society must file a statement of proposed royalties which the Board then publishes on its website. Users (or, in the case of private copying, any interested person) or their representatives may object to the statement within 30 days. The collective society and the objectors present oral and written arguments. After deliberation the Board approves the tariff, publishes it in the *Canada Gazette*, and provides written reasons for its decision.

Guidelines and Principles Influencing the Board's Decisions

The decisions the Board makes are constrained in several respects. Some constraints come from sources external to the Board: the law, regulations and judicial pronouncements. Others are self-imposed, in the form of guiding principles that can be found in the Board's decisions.

The recently added section 66.501 of the *Act* provides that when fixing royalty and levy rates that are fair and equitable, the Board must consider the following criteria:

- what would have been agreed upon between a willing buyer and a willing seller acting in a competitive market with all relevant information, at arm's length and free of external constraints;
- the public interest;
- any regulation made under subsection 66.9(1); and,
- any other criterion that the Board considers appropriate.

Court decisions also provide a large part of the framework within which the Board operates. Most decisions focus on issues of procedure, or apply the general principles of administrative decision-making to the specific circumstances of the Board. However, the courts have also set out several substantive principles for the Board to follow or that determine the ambit of the Board's mandate or discretion.

The Board also enjoys a fair amount of discretion, especially in areas of fact or policy. In making decisions, the Board itself has used various principles or concepts. Strictly speaking, these principles are not binding on the Board. They can be challenged by anyone at any time. Indeed, the Board would illegally fetter its discretion if it considered itself bound by its previous decisions. However, these principles do offer guidance to both the Board and those who appear before it. In fact, they are essential to ensuring a desirable amount of consistency in decision-making.

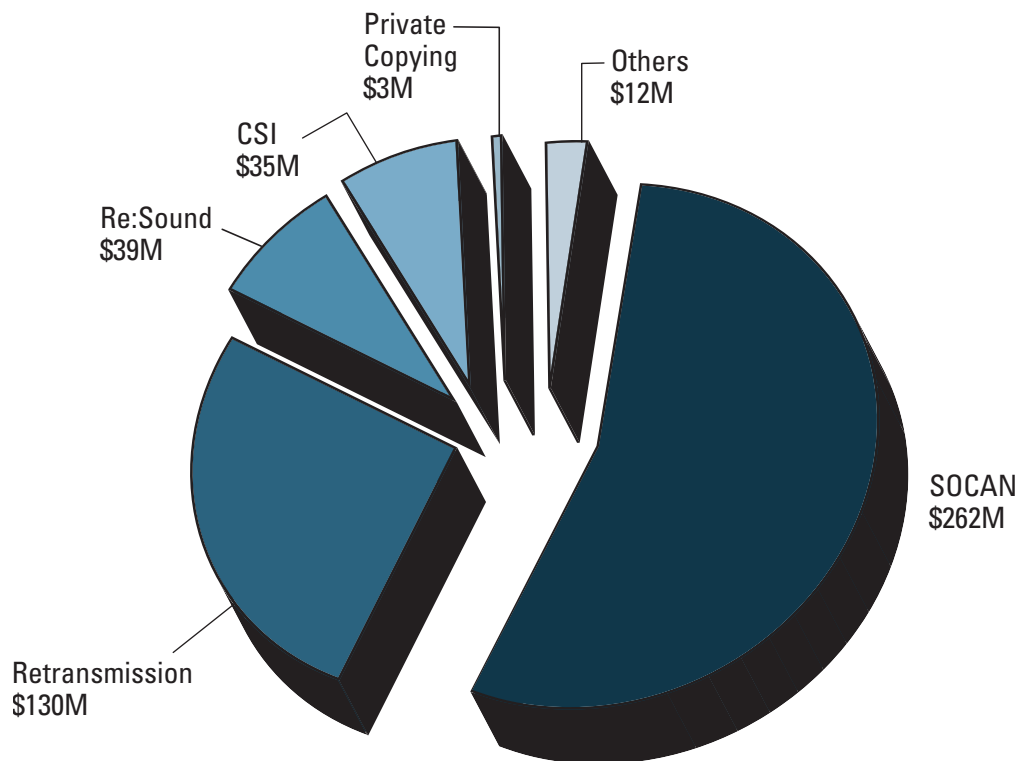
Among those factors, the following are the most prevalent: the internal coherence between the various tariffs of the Board; the practical aspects such as the ease of administration to avoid tariff structures difficult to manage in a given market environment; the relative use of the relevant repertoire; the taking into account of the Canadian environment; the stability in the setting of tariffs that minimizes undesired disruption for all participants; as well as the comparisons with "proxy" markets, including with similar prices in foreign markets.

Total Royalties Generated by the Board's Tariffs

The total amount of royalties generated by the tariffs the Board certifies is estimated at \$480 million for the year 2017. The following chart shows the allocation of these royalties among the various

collective societies. SOCAN receives the most important share of these royalties, corresponding to more than half of the total. The nine retransmission collectives together come in second, followed by Re:Sound and CSI.

Royalties Generated by the Board's Tariffs, 2017 by Collective Society



ORGANIZATION OF THE BOARD

Board members are appointed by the Governor in Council to hold office during good behaviour for a term not exceeding five years. They may be reappointed once.

The *Act* states that the Chair must be a judge, either sitting or retired, of a superior, county or district court. The Chair directs the work of the Board and apportions its caseload among the members.

The *Act* also designates the Vice-Chair as Chief Executive Officer of the Board, exercising direction over the Board and supervision of its staff.

Chair



The Honourable Robert A. Blair was appointed part-time Chair of the Board in May 2015 for a five-year term. The Honourable Robert A. Blair was appointed to the Court of Appeal for Ontario in November 2003, after serving for 12 years as a trial judge on the Superior Court. In both capacities, he has presided over matters involving almost all areas of the law, with a particular emphasis as a trial judge on cases on the Commercial List in Toronto and a continuing involvement with such cases at the appellate level. He received his B.A. (Hons.) from Queen's University in 1965 and his LL.B. from University of Toronto Law School in 1968. He was called to the Bar in Ontario in 1970 and received his Queen's Counsel designation in 1982.

Vice-Chair & Chief Executive Officer



Nathalie Th  berge was appointed full-time Vice-Chair and Chief Executive Officer in October 2018 for a five-year term. Prior to her appointment, she was Director General of Creative Marketplace and Innovation at Canadian Heritage. She has also held various other leadership positions at that department, including Director General, Copyright and International Trade; Director of International Negotiations; and Director of Copyright Policy, Planning and Research. Ms. Th  berge holds a Bachelor of Science (B.Sc.) and a Master of Science (M.Sc.) in Political Science from Universit   de Montr  al.

Part-time Members

Adriane Porcin was appointed part-time Member in October 2018 for a four-year term. She was then Assistant Professor at the University of Manitoba Faculty of Law. Before that, she was a Lecturer at the John Molson School of Business for two years. Although her research focuses on copyright law, she has been teaching a variety of subjects over the years. Ms. Porcin holds a Licence and Master degree from Aix-en-Provence's Faculty of Law, and a Master from Université de Perpignan Faculty of Law.

Katherine Braun was appointed part-time Member in November 2018 for a four-year term. Ms. Braun is an economist whose career includes service with the United Nations working in collaboration with several international agencies on international development projects. She has also worked with the governments of Ontario and Alberta on public policy. Ms. Braun holds an MBA from the University of Saskatchewan and a Master degree in economics from the University of Geneva.

René Côté was appointed part-time Member in November 2018 for a four-year term. Mr. Côté is a retired professor of law at the Université du Québec à Montréal. Before that, M. Côté was Vice-Provost, academic life and Provost of the Faculty of Political Science and Law at the Université du Québec à Montréal. He has a particular interest in law as it relates to technologies and has authored many publications in the fields of computer law, international law and intellectual property law. Mr. Côté holds a doctorate in public international law from the Université Paris X-Nanterre and an LL.B. from the Université du Québec à Montréal.

The Board is a micro organization, consisting of 18 employees organized in three functional groups:

- Operations Services Group
- Economic Services Group
- Legal Services Group

Note: Detailed information on the Board's resources, including financial statements, can be found in its Department Plan Report for 2018-2019 (Part III of the Estimates) and its Departmental Results Report for 2018-2019. These documents are or will soon be available on the Board's website (www.cb-cda.gc.ca).

COLLECTIVE ADMINISTRATION OF COPYRIGHT

In Canada, the collective administration of copyright is supported by a number of collective societies. These collective societies are organizations that administer the rights of several copyright owners. They can grant permission to use their works and set the conditions for that use. Some collective societies are affiliated with foreign societies; this allows them to represent foreign copyright owners as well.

The Board regulates Canadian collective administration organizations through one of the following regulatory regimes:

General Regime

Section 67(1) of the *Act* give collective societies that are not subject to a specific regime the option of filing a proposed tariff with the Board or enter into agreements for the purpose of establishing royalties with respect to rights the collective societies administer. The review and certification process for such tariffs is the same as under the specific regimes.

Collective societies collect royalties from users based on the tariffs approved by the Board if they chose to file tariffs or pursuant agreements they enter into.

There are a number of collective societies operating under this regime, including the following:

- The Society of Composers, Authors and Music Publishers of Canada (SOCAN) administers the right to perform in public or to communicate to the public by telecommunication musical works;
- Re:Sound Music Licensing Company (Re:Sound) collects royalties for the equitable remuneration of performers and makers for the performance or communication of sound recordings of musical works;
- Access Copyright, The Canadian Copyright Licensing Agency (Access Copyright) represents writers, publishers and other creators for the reproduction rights of works published in books, magazines, journals and newspapers. It licenses uses in all provinces except Quebec;
- The *Société québécoise de gestion collective des droits de reproduction* (Copibec) represents similar rights owners as Access Copyright, but for uses in Quebec;
- Artisti is the collective society founded by the *Union des artistes* (UDA) for the remuneration of performers' rights;
- ACTRA Recording Artists' Collecting Society (ACTRA RACS), a division of ACTRA Performers' Rights Society (ACTRA PRS), collects and distributes equitable remuneration for eligible recording artists;
- CONNECT Music Licensing (formerly known as Audio-Video Licensing Agency (AVLA)) (CONNECT) administers licences in Canada for the reproduction of sound recordings, and the reproduction and broadcast of music videos on behalf of all the major record companies, many independent labels, as well as artists and producers;
- The *Société de gestion collective des droits des producteurs de phonogrammes et vidéogrammes du Québec* (SOPROQ) administers similar rights as CONNECT. Its members are mostly Francophone independent record labels;
- The Canadian Broadcasters Rights Agency (CBRA) claims royalties for programming and excerpts of programming owned by commercial radio and television stations and networks in Canada;
- The Canadian Musical Reproduction Rights Agency (CMRRA) collects royalties on behalf of Canadian and U.S. publishers for the reproduction rights of musical works in Canada;
- The *Musicians' Rights Organization Canada* (MROC) collects royalties on behalf of musicians and vocalists for the public performance of their recorded works;
- The Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) administers royalties stemming from the reproduction of musical works. It represents members mostly from the province of Quebec; and,

- CMRRA-SODRAC Inc. (CSI), a joint venture of CMRRA and SODRAC, licenses the reproduction rights of songwriters and music publishers whose songs are active in the Canadian marketplace.

More details about other collective societies operating under this regime can be found on the Board's website at: <http://www.cb-cda.gc.ca/societies-societes/index-e.html>.

Retransmission of Distant Signals

Under section 67(2) of the *Act*, proposed tariffs must be filed with the Board for the purpose of establishing royalties referred to in paragraph 31(2)(d) to be paid by cable companies and other retransmitters for the retransmission of distant television and radio signals. The Board sets the royalties and allocates them among the collective societies representing copyright owners whose works are retransmitted.

There are currently nine collective societies receiving and distributing royalties under this regime:

- The Border Broadcasters Inc. (BBI) represents the U.S. border broadcasters;
- The Canadian Broadcasters Rights Agency Inc. (CBRA) represents commercial radio and television stations and networks in Canada;
- The Canadian Retransmission Collective (CRC) represents all PBS and TVOntario programming (producers) as well as owners of motion pictures and television drama and comedy programs produced outside the United States;
- The Canadian Retransmission Right Association (CRRRA) represents the Canadian Broadcasting Corporation (CBC), the American Broadcasting Company (ABC), the National Broadcasting Company (NBC), the Columbia Broadcasting System (CBS) and *Télé-Québec*;
- The Copyright Collective of Canada (CCC) represents copyright owners (producers and distributors) of the U.S. independent motion picture and television production industry for all drama and comedy programming;
- The Direct Response Television Collective Inc. (DRTVC) claims royalties for all television programs and underlying works in the form of direct response television programming (defined as “infomercials”);
- FWS Joint Sports Claimants Inc. (FWS) represents the National Hockey League, the National Basketball Association and the Canadian, National and American Football Leagues;
- The Major League Baseball Collective of Canada Inc. (MLB) claims royalties arising out of the retransmission of major league baseball games in Canada; and,
- SOCAN, representing owners of the copyright in the music that is integrated in the programming carried in retransmitted radio and television signals.

Educational Rights

Under section 29.6 of the *Act*, educational institutions can copy and perform news and news commentaries and keep and perform the copy for educational purposes one year without having to pay royalties. Similarly, under sections 29.7 and 29.9 of the *Act*, they can copy and perform broadcasts and keep and perform the copy for educational purposes for up to one year without having to pay royalties; after that, they must pay the royalties and comply with the conditions set by the Copyright Board in a tariff, pursuant to sections 67(2) and 71(1) of the *Act*.

There is currently however no collective society representing the interests of copyright owners for this regime.

Private Copying

The private copying regime, as set in sections 79 to 88 of the *Act*, entitles an individual to make copies (a “private copy”) of sound recordings of musical works for that person’s personal use. In return, those who make or import recording media ordinarily used to make private copies are required to pay a levy on each such medium. The Board sets the levy and designates a single collecting body to which all royalties are paid.

The Canadian Private Copying Collective (CPCC) is the collective society for the private copying levy, collecting royalties for the benefit of eligible authors, performers and producers. The member collectives of the CPCC are CMRRA, Re:Sound, SODRAC and SOCAN.

Arbitration Proceedings

Pursuant to section 71 of the *Act*, when a collective society and a user are unable to agree on the terms of the licence and on application filed by either one of them, the Board can set the royalties and the related terms and conditions of a licence for the use of the repertoire of a collective society to which section 71 applies.



PROPOSED STATEMENTS OF ROYALTIES FILED BY THE COLLECTIVE SOCIETIES

A total of 78 distinct proposed statements of royalties were filed by the Collective societies for the year 2020 and beyond, as follows:

ACCESS COPYRIGHT

- Proposed statement of royalties to be collected for the reproduction, communication to the public by telecommunication or making available to the public by telecommunication, in any form or by any method or process whatsoever, or the authorization of any such act, of works in its repertoire for the purposes of elementary or secondary education for the years 2020 to 2022.

CBRA

- Proposed statement of royalties to be collected for the fixation and reproduction of works and communication signals by commercial media monitors for the years 2020 to 2022.
- Proposed statement of royalties to be collected for the fixation and reproduction of works and communication signals by non-commercial media monitors for the years 2020 to 2022.

CMRRA and SOCAN

- Proposed statement of royalties to be collected for the reproduction of musical works by non-commercial radio stations for the year 2020.

CMRRA, SOCAN, CONNECT/SOPROQ and ARTISTI

- Proposed statement of royalties to be collected for the reproduction of musical works, of sound recordings and of performers' performances by commercial radio stations for the year 2020.

CPCC

- Proposed statement of levies to be collected on the sale of blank audio recording media for the year 2020.
- Proposed statement of levies to be collected on the sale of blank audio recording media for the year 2021.

RE:SOUND

Proposed statements of royalties to be collected for the performance in public or the communication to the public by telecommunication of published sound recordings embodying musical works and performers' performances of such works:

- Tariff 1.A – Commercial Radio (2021-2023)
- Tariff 1.B.2 – Non-Commercial Online (2020-2024)
- Tariff 1.C – CBC Radio (2020-2021)
- Tariff 2 – Pay Audio Services (2020-2022)
- Tariff 5 – Use of Music to Accompany Live Events (2021-2025):
 - » A – Recorded music accompanying live entertainment in cabarets, cafes, clubs, restaurants, roadhouses, taverns and similar establishments
 - » B – Receptions, conventions, assemblies and fashion shows
 - » C – Karaoke bars and similar establishments
 - » D – Festivals, exhibitions and fairs
 - » E – Circuses, ice shows, fireworks displays, sound and light shows and similar events
 - » F – Parades
 - » G – Parks, streets and other public areas
 - » H – Sports events
 - » I – Comedy and magic shows
 - » J – Concerts
- Tariff 8 – Non-interactive and semi-interactive streaming (2020-2021)

SOCAN

Proposed statements of royalties to be collected for the public performance or the communication to the public by telecommunication of musical or dramatico-musical works:

For the year 2020:

- Tariff 9 – Sports Events
- Tariff 22.A – Internet – Online Music Services
- Tariff 22.B – Internet – Other Uses of Music – Commercial Radio, Satellite Radio and Pay Audio
- Tariff 22.C – Internet – Other Uses of Music – Other Audio Websites
- Tariff 22.D.1 – Internet – Other Uses of Music – Audiovisual Content
- Tariff 22.D.2 – Internet – Other Uses of Music – User-Generated Content
- Tariff 22.E – Internet – Other Uses of Music – CBC
- Tariff 22.G – Internet – Other Uses of Music – Game Sites
- Tariff 25 – Use of Music by Satellite Radio Services

For the years 2020 and 2021:

- Tariff 1.A – Commercial Radio
- Tariff 3.A – Cabarets, Cafes, Clubs, etc. – Live Music
- Tariff 4.A.1 – Live Performances at Concert Halls, etc. – Popular Music Concerts – Per Event Licence
- Tariff 4.A.2 – Live Performances at Concert Halls, etc. – Popular Music Concerts – Annual Licence
- Tariff 4.B.1 – Live Performances at Concert Halls, etc. – Classical Music Concerts – Per Concert Licence
- Tariff 4.B.2 – Live Performances at Concert Halls, etc. – Classical Music Concerts – Annual Licence for Orchestras
- Tariff 4.B.3 – Live Performances at Concert Halls, etc. – Classical Music Concerts – Annual licence for Presenting Organizations
- Tariff 6 – Motion Picture Theatres
- Tariff 15.A – Background Music in Establishments not Covered by Tariff 16 – Background Music
- Tariff 15.B – Background Music in Establishments not Covered by Tariff 16 – Telephone Music on Hold
- Tariff 16 – Background Music Suppliers
- Tariff 24 – Ringtones and Ringbacks

For the year 2021:

- Tariff 1.B – Non-Commercial Radio Other than the CBC
- Tariff 2.A – Commercial Television Stations
- Tariff 5 – Exhibitions and Fairs
- Tariff 14 – Performance of an Individual Work
- Tariff 17 – Transmission of Pay, Specialty and other Television Services by Distribution Undertakings
- Tariff 23 – Hotel and Motel In-Room Services

For the years 2020 and 2022:

- Tariff 1.C – CBC Radio
- Tariff 2.D – CBC Television
- Tariff 19 – Physical Exercises and Dance Instruction
- Tariff 26 – Pay Audio Services

For the years 2021 and 2022:

- Tariff 2.B – Television of the Ontario Educational Communications Authority
- Tariff 2.C – Television of the *Société de télédiffusion du Québec*
- Tariff 3.B – Cabarets, Cafes, Clubs, etc. – Recorded Music Accompanying Live Entertainment
- Tariff 3.C – Cabarets, Cafes, Clubs, etc. – Adult Entertainment Clubs
- Tariff 7 – Skating Rinks
- Tariff 8 – Receptions, Conventions, Assemblies and Fashion Shows
- Tariff 10.A – Parks, Parades, Streets and Other Public Areas – Strolling Musicians and Buskers; Recorded Music
- Tariff 10.B – Parks, Parades, Streets and Other Public Areas – Marching Bands; Floats with Music
- Tariff 11.A – Circuses, Ice Shows, Fireworks Displays, Sound and Light Shows and Similar Events
- Tariff 11.B – Comedy Shows and Magic Shows
- Tariff 12.A – Theme Parks – Ontario Place Corporation and Similar Operations

- Tariff 12.B – Theme Parks – Paramount Canada’s Wonderland and Similar Operations
- Tariff 13.A – Public Conveyances – Aircraft
- Tariff 13.B – Public Conveyances – Passenger Ships
- Tariff 13.C – Public Conveyances – Railroad Trains, Buses and Other Public Conveyances, Excluding Aircraft and Passenger Ships
- Tariff 18 – Recorded Music for Dancing
- Tariff 20 – Karaoke Bars and Similar Establishments
- Tariff 21 – Recreational Facilities Operated by a Municipality, School, College, University, Agricultural Society or Similar Community Organizations

SOCAN/SODRAC

Proposed statements of royalties to be collected for the reproduction of musical works:

For the year 2020:

- Tariff 22.A.R – Reproduction of Musical Works Embedded in Music Videos for Transmissions by a Service (formerly SODRAC Tariff 6)
- Tariff 22.D.1.R – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by a Service (formerly SODRAC Tariff 7)

For the years 2020 and 2021:

- Tariff 2.A.R – Commercial Television Stations (formerly SODRAC Tariff 8)



REQUESTS FOR ARBITRATION

The Board did not receive any request for arbitration in the year 2018-19.

HEARINGS

No hearings were held during the fiscal year 2018-19.

DECISIONS

During the fiscal year 2018-19, the Copyright Board rendered the following decisions:

July 6, 2018 – Re:Sound Tariff 1.B – Non-Commercial Radio Other than the Canadian Broadcasting Corporation, 1998-2021

This decision set the royalties to be collected by Re:Sound for the communication to the public by telecommunication in Canada, by non-commercial radio stations, of published sound recordings embodying musical works and performers' performance of such works for the years 1998 to 2021.

Link to the decision: <https://cb-cda.gc.ca/decisions/2018/DEC-2018-07-06.pdf>

July 13, 2018 – Retransmission of Distant Radio Signals, 2014-2018

This decision set the royalties to be paid for the retransmission of distant radio signals, in Canada, for the years 2014 to 2018.

Link to the decision: <https://cb-cda.gc.ca/decisions/2018/DEC-2018-SAT-07122018.pdf>

July 20, 2018 – CBRA Commercial and Non-Commercial Media Monitors, 2017-2019

This decision set the royalties to be collected by the CBRA for the fixation and reproduction of works and communication signals, in Canada, by commercial and non-commercial media monitors for the years 2017 to 2019.

Link to the decision: <https://cb-cda.gc.ca/decisions/2018/DEC-2018-07-20.pdf>

September 28, 2018 – SODRAC Tariff 5 – Reproduction of Musical Works in Cinematographic Works for Private Use or for Theatrical Exhibition, Redetermination 2009-2012; Determination 2013-2016

This decision set the royalties to be collected by SODRAC for the reproduction, in Canada, of musical works embedded into cinematographic works for the purpose of distributing copies of these cinematographic works for private use or for theatrical exhibition for the years 2009 to 2016.

Link to the decision: <https://cb-cda.gc.ca/decisions/2018/DEC-2018-SAT-28092018.pdf>

November 6, 2018 – SOCAN Tariff 22 – Internet – Other Uses of Music – Other Sites, 2007-2013

This decision addresses the royalties that SOCAN would be entitled to collect for the communication to the public by telecommunication, in Canada, of musical works on the Internet by sites not covered by other parts of SOCAN Tariff 22 for the years 2007 to 2013.

Link to the decision: <https://cb-cda.gc.ca/decisions/2018/DEC-2018-SAT-06112018.pdf>

December 7, 2018 – SOCAN Tariff 21 – Recreational Facilities Operated by a Municipality, School, College, University, Agricultural Society or Similar Community Organizations, 2013-2020

This decision set the royalties to be collected by SOCAN for the public performance, in Canada, of musical works in its repertoire in recreational facilities operated by a municipality, school, college, university, agricultural society or similar community organizations for the years 2013 to 2020

Link to the decision: <https://cb-cda.gc.ca/decisions/2018/DEC-2018-SAT-07122018.pdf>

December 14, 2018 – Commercial Radio Stations – Application to Vary: CSI (2012-2013); Connect/SOPROQ (2012-2017); Artisti (2012-2014); and Determination: CSI (2014-2018); Connect/SOPROQ (2018); Artisti (2015-2018)

This decision set the royalties to be collected for the reproduction, in Canada, of musical works, sound recordings, and performers' performances by commercial radio stations for the years 2012 to 2018.

Link to the decision: <https://cb-cda.gc.ca/decisions/2018/DEC-2018-SAT-12122018.pdf>

December 18, 2018 – Retransmission of Distant Television Signals, 2014-2018 – Quantum Decision

This decision set the royalties to be collected for the retransmission, in Canada, of distant television signals for the years 2014 to 2018. This decision only set the rates, with reasons to follow.

Link to the decision: <https://cb-cda.gc.ca/decisions/2018/DEC-2018-12-17.pdf>

December 21, 2018 – Commercial Radio Stations, 2019 – CMRRA/SODRAC; Connect/SOPROQ and Artisti

This decision set the royalties to be collected for the reproduction, in Canada, of musical works, sound recordings, and performers' performances by commercial radio stations for the year 2019.

Link to the decision: <https://cb-cda.gc.ca/decisions/2018/DEC-2018-SAT-21122018.pdf>

December 28, 2018 – Retransmission of Distant Television and Radio Signals, 2019-2023 – Interim Decision

This decision set the interim royalties to be paid for the retransmission of distant radio and television signals, in Canada, for the years 2019-2023.

Link to the decision: <https://cb-cda.gc.ca/decisions/2018/DEC-2018-SAT-28122018-interim.pdf>

February 22, 2019 – Retransmission of Distant Television Signals, 2019-2023 – Interim Decision

This decision varied the decision that set the interim royalties for the retransmission of distant television signals, in Canada, for the years 2019-2023. It changed the allocation of royalties between the nine retransmission collectives, based on an agreement between them.

Link to the decision: <https://cb-cda.gc.ca/decisions/2019/DEC-2019-SAT-22022019-interim.pdf>

UNLOCATABLE COPYRIGHT OWNERS

Pursuant to section 77 of the *Act*, the Board may grant licences authorizing the use of published works, fixed performances, published sound recordings and fixed communication signals, if the copyright owner is unlocatable. However, the *Act* requires the applicants to make reasonable efforts to find the copyright owner. Licences granted by the Board are non-exclusive and valid only in Canada.

During the fiscal year 2018-19, 31 applications were filed with the Board. The following 4 licences were issued:

- Birch Kuch, Wells, British Columbia, for the recording and mechanical reproduction of a musical work;
- 9224-0241 Quebec Inc., Montreal, Quebec, for the synchronization of an excerpt of a musical work and the reproduction, the distribution and the communication to the public by telecommunication of the excerpt in a film entitled *La Couleur de tes lèvres (Le Souffle)*;
- Lamb of God Ministries Ltd., Saskatoon, Saskatchewan, for the reproduction, communication to the public by telecommunication and distribution of a map; and
- Groupes Fides inc., Anjou, Quebec, for the reproduction of a photograph in a book and the distribution of the book incorporating the photograph.

Furthermore, the following 7 applications were denied:

- Application by *Groupe Innovamber Inc.*, Montreal, Quebec, for the authorization to publish a translation of a literary work;
- Application by *Bibliothèque québécoise inc.*, Montreal, Quebec, for the reproduction of a photograph;

- Application by Irene Crawford, Woodstock, Ontario, for the reproduction of sixteen images;
- Application by John Richardson, Victoria, British Columbia, for the reproduction of a photograph;
- Application by *Musée des maîtres et artisans du Québec*, Montreal, Quebec, for the reproduction of the image of several contemporary artistic works;
- Application by Saskatchewan Legal History Society, Calgary, Alberta, for the reproduction of a photograph; and
- Application by *Les Productions Ciné-Plurielles Inc.*, Montreal, Quebec, for the reproduction and synchronization of fourteen excerpts of films.

COURT PROCEEDINGS

Federal Court of Appeal

Federal Court of Appeal cases No. A-265-17 and A-268-17 were jointly heard on November 26 and 27, 2018; these cases are applications for judicial review from the Copyright Board decision entitled *Online Music Services (CSI: 2011-2013; SOCAN: 2011-2013; SODRAC: 2010-2013)* issued on August 25, 2017. The Federal Court of Appeal decision is still pending.

Federal Court of Appeal cases No. A-267-17 and A-270-17 were jointly heard on November 27 and 28, 2018; these cases are applications for judicial review from the Copyright Board decision entitled *Scope of Section 2.4(1.1) of the Copyright Act – Making Available* issued on August 25, 2017. The Federal Court of Appeal decision is still pending.

AGREEMENTS FILED WITH THE BOARD

Pursuant to the *Act*, collective societies and users of copyrights can agree on the royalties and related terms of licences for the use of a society's repertoire. Filing an agreement with the Board pursuant to section 70.5 of the *Act* within 15 days of its conclusion shields the parties from prosecutions pursuant to section 45 of the *Competition Act*. The same provision grants the Commissioner of Competition appointed under the *Competition Act* access to those agreements. In turn, where the Commissioner considers that such an agreement is contrary to the public interest, he may request the Board to examine it. The Board then sets the royalties and the related terms and conditions of the licence.

In 2018-19, 37 agreements were filed with the Board pursuant to section 70.5 of the *Act*.

Access Copyright filed 19 agreements granting a licence to photocopy works in its repertoire, with the following organisations:

- Teck Resources Limited, Vancouver (BC)
- The Alberta Association of Recreation Facility Personnel (AARFP), Cochrane (AB)
- Cornerstone Research Group Inc., Burlington (ON)
- Ontario Association of Children's Aid Societies (OACAS), Toronto (ON)
- Health Technology Assessment, Toronto (ON)
- BayBridge Senior Housing Inc., Toronto (ON)
- Northern College of Applied Arts and Technology, Kingston (ON)
- Yoga by Sarah, St. Catharines (ON)
- Eastern College Inc., Toronto (ON)
- TriOs College Business Technology Healthcare Inc., Toronto (ON)
- Carleton Printers, Toronto (ON)
- Greater Sudbury Utilities, Sudbury (ON)
- Trillium Gift of Life Network, Toronto (ON)
- College of New Caledonia, Prince George (BC)
- Labour College of Canada, Ottawa (ON)
- Sunnybrook United Church, Red Deer (AB)
- Working Skills Centre, Toronto (ON)
- Herzing College (Winnipeg Campus), Winnipeg (MB)
- Enbridge, Inc., Calgary (AB)

Copibec filed 16 agreements granting a licence to photocopy works in its repertoire, with the following organisations:

- 9249-9219 Québec inc. (ChallengeU), Montréal (QC)
- Ville de Montréal – Service du greffe, Montréal (QC)
- Ville de Montréal – Service des technologies de l'information (STI), Montréal (QC)
- Ville de Montréal – Service des finances, Montréal (QC)
- Ville de Montréal, Montréal (QC)
- Centre de justice de proximité de la Côte-Nord, Sept-Île (QC)
- Ville de Montréal – Service du développement économique, Montréal (QC)
- Ville de Montréal – Direction générale, Montréal (QC)
- Centre de justice de proximité de la Montérégie, Montérégie (QC)
- Ville de Montréal – Service de la mise en valeur du territoire, Montréal (QC)
- Le Centre de Formation Professionnelle des Maux, Repentigny (QC)
- Université Laval, Québec (QC)
- INNU TAKUAIKAN UASHAT MAK MANI-UTENAM (ITUM) – Secteur éducation, Uashat (QC)
- Institut québécois de planification financière, Verdun (QC)
- Ville de Laval, Laval (QC)
- Centre de justice de proximité de la Mauricie

CBRA filed one agreement with the Government of Canada in respect of its media monitoring activities.

Finally, CMRRA filed one agreement concluded with a British Company, Snapper Music Limited Company, in respect of mechanical reproduction rights.