



# COPYRIGHT BOARD



**ANNUAL REPORT**  
**1994 – 1995**

Copyright Board  
Canada



Commission du droit d'auteur  
Canada

The Honourable John Manley, P.C., M.P.  
Minister of Industry  
Ottawa, Ontario  
K1A 0A6

Dear Mr. Minister:

It is my pleasure to transmit to you, pursuant to section 66.9 of the *Copyright Act*, the seventh Annual Report of the Copyright Board, covering the period from April 1, 1994 to March 31, 1995, for submission to Parliament.

Yours sincerely,

Michel Hétu  
Vice-Chairman and  
Chief Executive Officer

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**BOARD MEMBERS AND STAFF  
as of March 31, 1995**

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*Chairman:* Vacant

*Vice-Chairman and  
Chief Executive Officer:* Michel Hétu, Q.C.

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*Members:* Dr. Judith Alexander  
Andrew E. Fenus

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*General Counsel:* Mario Bouchard

*Secretary:* Claude Majeau

*Researcher-Analyst:* Pierre-E. Lalonde

*Administrative Officer:* Ivy Lai

*Assistants:* Michel Gauthier  
Lise St-Cyr

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## THE MANDATE OF THE BOARD

**E**stablished on February 1, 1989, as the successor of the Copyright Appeal Board, the Copyright Board has five distinct areas of jurisdiction under the *Copyright Act* [the *Act*]. Its responsibilities are to:

- ◆ establish tariffs for the retransmission of distant television and radio signals (sections 70.61 to 70.67);
- ◆ establish tariffs for the public performance of music (sections 67 to 69);
- ◆ adjudicate rate disputes between licensing bodies representing classes of copyright owners and users of their works (sections 70.2 to 70.4);
- ◆ rule on applications for non-exclusive licences to use published works of unlocatable copyright owners (section 70.7);
- ◆ set compensation, under certain circumstances, for formerly unprotected acts in countries that later join the Berne Convention, the Universal Convention or the Agreement establishing the World Trade Organization (WTO) (section 70.8).

In addition, the Minister of Industry can direct the Board to conduct studies with respect to the exercise of its powers (section 66.8).

Finally, any party to an agreement on copyright royalties payable to a licensing body can file the agreement with the Board within 15 days of its conclusion, thereby avoiding certain provisions of the *Competition Act* (section 70.5).

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## ORGANIZATION OF THE BOARD

*Detailed information on the Board's resources, including financial statements can be found in its Expenditure Plan for 1995-96 (Part III of the Estimates), which was tabled in Parliament on February 28, 1995.*

**B**oard 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 Chairman must be a judge, either sitting or retired, of a superior, county or district court. The Chairman directs the work of the Board and apportions its caseload among the members. In matters before the Board, the Chairman casts the deciding vote in the case of a tie.

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

### *Chairman*

The position of the Chairman is vacant since October 4, 1994. Until that date, the **Honourable Donald Medhurst**, a justice of the Alberta Court of Queen's Bench, was the Chairman of the Board. His was a part-time appointment.

### *Vice-Chairman & Chief Executive Officer*

**Michel Héту, Q.C.**, was the Head of Legal Services at the Federal Department of Communications from 1981 to 1988. In that capacity, he was extensively involved in the reform of copyright law. He was also a member of the Copyright Appeal Board from 1982 to 1989, when it was replaced by the Copyright Board. Mr. Héту is a full-time member of the Board and was appointed in February 1989 and reappointed in 1994 for five years.

### *Members*

**Judith Alexander** has held various teaching positions in Economics since 1972 at the University of Kentucky, the University of Regina, Simon Fraser University and Carleton University. She has been an economist with the Patented Medicine Prices Review Board and, from 1986 to 1988, she was the Director of Regulatory Affairs of the Bureau of Competition Policy within the Federal Department of Consumer and Corporate Affairs. Dr. Alexander has also been a member of the Medical Care Insurance Commission of Saskatchewan. She is a full-time member of the Board, first appointed in 1989 and reappointed in 1992 for two years until October 4, 1994. Dr. Alexander's mandate was extended for a period of nine months until June 30, 1995.

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**Andrew E. Fenus** was a Board member and Provincial Adjudicator with the Rent Review Hearings Board of Ontario from 1988 to 1994 where he served as Senior Member of the Eastern Region. Mr. Fenus brings to the Board experience in legislative affairs and quasi-judicial public hearings. He has a strong background in policy analysis and financial management. He is a graduate of Queen's University (Honours BA in 1972 and Master in Public Administration in 1977) and McGill University (Master of Library Science in 1974). Mr. Fenus is a full-time member appointed in 1994 for a five-year term.

**Michel Latraverse** was a member of the Economic Council of Canada from 1986 to 1988. He has held senior management positions in various Quebec-based corporations. Mr. Latraverse is a member of the Chamber of Notaries of Quebec. He was first appointed to the Board in October 1989 as a full-time member. The term of his appointment expired on October 4, 1994.

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### *The Board's staff*

**T**he Board has a staff of six employees, three of whom report to the Chief Executive Officer: the General Counsel, the Secretary and the Researcher-Analyst.

The General Counsel provides legal advice on proposed tariff and licence applications before the Board. The General Counsel also represents the Board before the Courts in matters involving its jurisdiction or decisions.

The Secretary plans the Board's operations, serves as its Registrar, represents the Board in its relations with members of parliament, provincial governments, the media and the public and directs the preparation of the Board's reports to Parliament and to the federal government's central agencies.

The Researcher-Analyst provides economic expertise to the Board on matters raised by proposed tariffs and licence applications and conducts studies on specific aspects of rate regulation.

To avoid the cost of additional administrative staffing, the Board entered into a support services agreement with the Department of Industry. The department provides support services and expert advice in personnel, administrative and financial matters. The Board appreciates the excellent services provided under this agreement.



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## ACTS, REGULATIONS AND ORDERS IN COUNCIL

1. The *Act to implement the Agreement Establishing the World Trade Organization* (Bill C-57, 1994, S.C., C. 47) amended several acts including the *Copyright Act*. These amendments were made to fulfil the commitments undertaken by Canada in signing this agreement.

The most significant changes are to the protection of the performers' performance for certain unauthorized acts: the audio recording of a performance; the reproduction of a fixation ("bootleg" copies) and the communication to the public by telecommunication of a performance. Subsection 14.01(5) provides that the performer's rights expire fifty years after the end of the calendar year in which the performer's performance took place. If the performance was given in a WTO country prior to the amendments' coming into force (expected to be January 1, 1996), or if the country later becomes a member of the WTO, the performer will have the right to authorize the reproduction of recordings as of the applicable date.

Being retrospective, the protection provided by the new provisions could prejudice the rights of persons who incurred expenditures or liabilities for acts that were hitherto unprotected. The *Act* reconciles in two stages the conflicting interests and rights of these persons and of the copyright owners. First, it maintains the rights and interests of the person who incurred such an expenditure and liability. Second, it allows the owner of the new rights to terminate, with compensation, the right or interest of a user.

Failing an agreement, the Board sets a fair compensation under the circumstances. The Board may, for the purpose of avoiding serious prejudice to any party, make interim orders.

2. The *Act to Establish the Department of Industry and to Amend and Repeal Certain Other Acts* (Bill C-46, 1995, S.C., C. 1) received royal assent on March 16, 1995 and came into force on March 29, 1995. This *Act* makes the Minister of Industry responsible for the application of the *Copyright Act* and amends section 2 of this *Act* consequently. Sections 18 to 21 of this *Act* also allows the Minister after consultation with interested parties to set fees in respect of the services, products, the use of facilities, rights and regulatory processes or approvals provided by a federal organization for which the Minister is partly responsible.

3. An Order of the Governor in Council dated December 6, 1994, amended the Definition of Small Retransmission Systems Regulations. The Order came into force on January 1, 1995. A small retransmission system is now defined as a "cable retransmission system, or a terrestrial retransmission system utilizing Hertzian waves, that retransmit a signal, with or without a fee, to not more than 2,000 premises in the same licensed area."

4. On December 6, 1994, an order of the Governor in Council approved the Regulations defining "small cable transmission system" for the purpose of subsection 67.2(1.1) of the *Copyright Act*. The new regulations define "small cable transmission system" as a cable transmission system that transmits a signal, with or without a fee, to not more than 2,000 premises in the same licensed area, as set out by the Canadian Radio-television and Telecommunications Commission (CRTC).

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## PUBLIC PERFORMANCE AND THE COMMUNICATION TO THE PUBLIC BY TELECOMMUNICATION OF MUSICAL WORKS TARIFFS

### *Background*

The Society of Composers, Authors and Music Publishers of Canada (SOCAN) must file a statement of proposed royalties with the Board at least four months before the beginning of the year in which the tariff is to apply. This proposed tariff is then published by the Board in the *Canada Gazette*. Any music user or its representative has the right to file an objection with the Board within 28 days of publication. SOCAN and the objectors are provided with an opportunity to present evidence and argument to the Board before the tariff is established. Once the Board has completed its inquiry, it establishes the tariff, publishes it in the *Canada Gazette*, and provides written reasons in support of its decision.

### *Decisions of the Board*

The Board issued three decisions concerning SOCAN's tariffs during the financial year 1994-1995. The first one, dated May 20, 1994, addressed preliminary questions of law or procedure raised at the pre-hearing conference held on February 1, with respect to proposed tariffs 17.A.1 (Transmission of Non-Broadcast Services - Television) and 17.B (Retransmission of Local Broadcast Television and Radio Signals).

The Board declined to rule on its competence to establish the apportionment of royalties to be paid by non-broadcast services and the transmitters of these services. It also struck tariff 17.B from the proposal; in its view,

amendments to the *Copyright Act* in September 1993 and January 1994, clarified the situation and established that such a tariff could not be valid.

“Recent amendments to the *Act* have dissipated the uncertainty surrounding the precise nature of the actions of cable operators under the *Act*. Bill C-88 changed the definition of musical work so as to make it impossible to argue that the only manner of communicating a musical work is to hold a sheet of music in front of a camera or to fax it. Now, there can be no doubt that the music we hear on radio or television constitutes a communication of musical works by telecommunication. Bill C-88 also amended s. 3(1.4) of the *Act* – the single communication rule – in a way that makes it abundantly clear to those who still entertain doubt on the issue, that cable operators do communicate works by telecommunication...”

“Furthermore, the legislation implementing the North American Free Trade Agreement, which came into force on January 1, 1994, adds to the *Act* a provision that makes it clear that the person who communicates a work does not perform it.”

On August 12, 1994, the Board issued a second decision certifying the following regarding SOCAN's tariffs:

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**FOR THE YEARS 1992 TO 1994:**

- 4, 5.B Concerts
- 9 Sports Events
- 11 Circuses, Ice Shows, Comedy Shows and Magic Shows

**FOR THE YEARS 1993 AND 1994:**

- 1.B Non-commercial Radio
- 7 Skating Rinks
- 8 Receptions, Conventions, Assemblies and Fashion Shows
- 19 Fitness Activities

**FOR THE YEAR 1994:**

- 3 Cabarets, Cafes, Clubs, Cocktail Bars, Dining Rooms, Lounges, Restaurants, Roadhouses, Taverns and Similar Establishments
- 5.A Exhibitions and Fairs
- 10 Public Parks, Streets or Squares
- 12 Ontario Place Corporation, Canada's Wonderland and Similar Operations
- 13.A Aircraft
- 14 Performance of an Individual Work
- 15.B Music on Hold
- 18 Recorded Music for Dancing
- 20 Karaoke Bars and Similar Premises
- 21 Recreational Facilities Operated by a Municipality, School, College or University

Tariff 1.B (Non-commercial Radio), as well as tariffs 4 and 5.B (Concerts), were certified following hearings held by the Board. Other tariffs reflect either agreements reached by SOCAN and users or proposed statements that were not challenged. These remained at the previous year's levels after the Board used

again its inflation's correction formula. (Consumer Price Index less 2 per cent).

*Non-Commercial Radio*

Tariff 1.B concerns non-commercial radio stations, that is community, campus and native radio stations. For some time, these stations have been paying royalties based on their operating costs. In 1991, the National Campus and Community Radio Association (NCRA) objected to the tariff. After holding hearings, the Board lowered the applicable rate from 3.2 per cent to 2.7 per cent.

In 1992, SOCAN asked that the rate be raised to 5 per cent. NCRA, *l'Alliance des radios communautaires du Canada* (ARC) and *l'Association des radios communautaires du Québec* (ARCQ) filed objections. SOCAN and the objectors agreed to keep the rate at 2.7 per cent. They also undertook to develop a tariff formula that would take into account each station's use of music and audience share.

In its proposed tariffs for 1993 and 1994, SOCAN asked again that the rate be raised to 5 per cent. NCRA, ARC and ARCQ filed objections. In June 1993, after long and unsuccessful negotiations, the objectors asked that the Board initiate proceedings leading to public hearings. These hearings took place on December 1 and 2, 1993.

In its pre-hearing memorandum, SOCAN changed its request, asking that the Board apply the same rate and base as for commercial radio stations: 3.2 per cent of income. For their part, objectors proposed a rate of 1.9 per cent of their operating costs.

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Objectors asked that the royalties payable by non-commercial stations as a group be a function of the ratio of their audience share to that of commercial stations. To achieve this, they proposed a formula combining information provided by the stations to the CRTC and to Statistics Canada with BBM data. The objectors' calculations yielded a rate of 1.86 per cent for each station, which they rounded up to 1.9 per cent.

The Board found: "The objectors ask that the Board act on its already expressed wish to establish a closer relationship between the relative audience shares of commercial and non-commercial stations and royalties they have to pay. Given the record of these proceedings, the Board is of the view that this request should be granted."

"...Using a formula such as the one put forward by the objectors offers definite advantages. Participants have access to audience data, the operating costs of all non-commercial stations and the amount of royalties paid by commercial stations. Adjustments in the applicable rate may be made without the parties having to constitute a lengthy record, at least until someone decides to question the formula or one of its core elements."

"... Under the circumstances, given the record of these proceedings and the parties' arguments for adjustments to the rate upwards as well as downwards, the rate of 1.9 per cent of each non-commercial station's operating costs, as suggested by the objectors, appears fair and equitable for 1993 and 1994."

### *Concerts*

In April 1994, hearings were held over a one week period. In 1991, SOCAN had proposed a tariff of 5 per cent of ticket revenues for all concerts. However, it reached an agreement with the Canadian Alliance of Music Presenters (CAMP) which set the rate at 2.1 per cent for 1993 with an increase of 0.1 per cent for each year until 1997 (for a total of 2.5 per cent).

After the Board granted its motion to intervene in the proceeding in December 1993, the *Société professionnelle des auteurs et des compositeurs du Québec* (SPACQ) appeared before the Board during the popular music concert hearings. SPACQ argued that the rate should be set at 5 per cent. They maintained that the negotiated tariff was too low and it undervalued the contribution made to concerts by authors and composers who provided the single most important element to those concerts.

SOCAN requested that the Board adopt the rates set out in the agreement even if it "considers that rates of 2.1 to 2.5 per cent undervalue music in concerts."

The Board found: "... the record as it stands supports a significant increase in the rate. Five per cent would be more in line with other rates the Board has approved. Nothing suggests that this would constitute an unreasonably high rate. Furthermore, the only two producers to testify stated clearly that they would consider a rate of 5 per cent fairer and that it would not affect the number of concerts they produce."

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The Board however added the following: “The Board unfortunately cannot go beyond the rate filed by SOCAN for 1994. The SOCAN/CAMP agreement led to SOCAN asking for a rate of 2.2 per cent for 1994. This rate was published in the *Canada Gazette*. Fairness to potential users is at issue. The Board does not accept the argument that no further notice was required for 1994 since the rate of 5 per cent had already been advertised for 1992 and 1993.”

The Board concluded: “The rate will therefore be set at 2.2 per cent for the whole period. The Board hopes, however, that SOCAN will give due consideration to filing its proposed concert tariff for 1995 at a rate higher than that in the SOCAN/CAMP agreement. The Board is of the view that unless this course is followed, the interests of SOCAN’s members will not be properly served.”

The issue of a free concert tariff was also addressed in this decision. The Board granted SOCAN’s request, reflected in the CAMP agreement, that these concerts pay 2.2 per cent of their production costs instead of the \$20 minimum fee. The Board had already alluded to this approach. It stated: “The unfairness of paying only \$20 (or even \$60) for music used during the Quebec *Fête nationale* or the Canada Day festivities is obvious. The formula put forward by SOCAN appears reasonable under the circumstances.”

In the same decision, the Board opts for keeping the minimum fee at its current level. In its view, there is no evidence that the purpose of a minimum fee would be better achieved by raising it.

The Board has however concluded that it is “concerned with minimum payments in general, and their size, variation and incidence in particular. It believes that such factors as the nature of the revenues derived from these minimum payments and their effect on compliance with the tariffs ought to be examined.”

In this decision, classical music concerts were also considered. Participants agreed on the continuing need for a “per event” tariff. SOCAN asked that the rate be the same as for popular music concerts, with no discount formula.

The Board concluded that the rate for classical music concerts should be lower than the rate set for popular music concerts, to reflect the lower amount of protected music used in classical music concerts. It rejected SOCAN’s argument that the amount of protected music used is such that no discount is warranted. The Board also rejected Live Entertainment’s arguments with respect to the lower value of protected music in classical concerts. The Board consequently set at 1.3 per cent the rate applicable to classical music concerts.

The Canadian Arts Presenting Association (CAPACOA) asked that “presenters” be allowed to buy an annual licence for all the classical music concerts they hold. The tariff structure would be similar to that for orchestras. SOCAN recognized the merits of annual licences and did not object in principle to offering one to presenters.

The Board stated that the payment would cover events in which all music played is in the public domain. This should be taken into account

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when assessing the music use patterns of the industry. Basing its assessment on the quantity of protected music played by members of the Association of Canadian Orchestras, namely, 37 per cent, the Board was of the opinion that it was not unreasonable to assume that music use patterns for presenters were similar and had therefore set the presenter's tariff at 0.80 per cent. The Board did not set a minimum licence fee.

*Recreational facilities (new tariff)*

This decision addressed the request put forward by the Ontario Recreational Facilities Association (ORFA) to establish a separate tariff dealing with recreational facilities. The hearing was held on December 14, 1993. ORFA proposed two separate tariffs, paralleling the existing ones, aimed at municipally owned recreational facilities. The first tariff provided an alternative to tariffs 7 (Skating Rinks), 9 (Sports Events) and 11 (Circuses, etc.) and allowed the purchase of an annual licence by each facility, for all events at which music is used for a secondary purpose and the majority of participants are under the age of nineteen. The second tariff was an option to tariffs 8 (Receptions, etc.) and 19 (Fitness Activities). It allowed the purchase of an annual licence for events where music is used as a secondary element of the function.

The first proposal was adopted by the Board and resulted in the certification of the new tariff 21 relating to recreational facilities operated by a municipality, school, college or university. The Board found that the second proposal raised too many difficulties and rejected it. The Board strongly encouraged

SOCAN and ORFA to devise a formula that may better address these difficulties, considering that the current structure of tariffs 8 and 19 creates complications that deserve to be examined.

Finally, the Board issued a third decision on March 10, 1995, and gave reasons relating to tariffs 13.B and 13.C (for 1992 to 1995), tariff 1.A (for 1994), tariffs 2.B, 2.C and 15.A (for 1994 and 1995) as well as tariffs 1.B, 5.A, 7 to 12, 13.A, 15.B, and 18 to 21 (for 1995). All these tariffs either reflect agreements reached with various users or were uncontested.

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## RETRANSMISSION TARIFFS

### *Background*

The *Copyright Act* provides for the royalties to be paid by cable companies and other retransmitters for the carrying of distant television and radio signals. The Board sets and allocates the royalties among the collecting bodies representing copyright owners whose works are retransmitted.

A collecting body must file a statement of proposed royalties with the Board before March 31 preceding the date when the approved statement ceases to be effective. This proposed tariff is then published by the Board in the *Canada Gazette*. Any retransmitter or its representative has the right to file an objection with the Board within 28 days of publication. The collecting bodies and the objectors are provided with an opportunity to present evidence and argument to the Board before the tariff is established. Once the Board has completed its inquiry, it establishes the tariff, publishes it in the *Canada Gazette*, and provides written reasons in support of its decision.

### *CBRA application*

On January 21, 1994, the Canadian Broadcasters Rights Agency (CBRA) asked the Board to amend, for 1994, the tariff published in the *Canada Gazette* on January 16, 1993, applicable for the years 1992 to 1994. CBRA argues that as a result of the amendments made to the *Copyright Act*, which came into effect on January 1, 1994, the broadcast day (program schedule) is a work of compilation that is

entitled to remuneration under the retransmission royalties system.

Section 66.52 of the *Act* enables the Board to vary a decision if there has been a material change in circumstances. The Board concluded however, that the situation did not allow it to determine quickly whether the conditions prescribed by this section had been satisfied. Moreover, it noted that any delay in acting could prejudice the applicant. It therefore decided to make the tariff published in the *Canada Gazette* on January 16, 1993, an interim tariff until it had decided on the application for a variation. This would form part of its review of the statement of proposed royalties for 1995 and the following years. A hearing will be held on this matter during the financial year 1995-1996.

Statement of proposed royalties for retransmission (1995-1997)

On March 31, 1994, the Board received a statement of proposed royalties for the retransmission of distant radio and television signals for 1995-1997 by the following collecting bodies:

Television signals:

Border Broadcasters' Collective (BBC)  
Canadian Broadcasters Rights Agency (CBRA)  
Canadian Retransmission Collective (CRC)  
Canadian Retransmission Right Association (CRRA)

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Copyright Collective of Canada (CCC)  
FWS Joint Sports Claimants (FWS)  
Major League Baseball Collective of Canada (MLB)  
Society of Composers, Authors and Music Publishers of Canada (SOCAN)

Radio signals:

Canadian Broadcasters Rights Agency (CBRA)  
Canadian Retransmission Right Association (CRRA)  
Society of Composers, Authors and Music Publishers of Canada (SOCAN)

On June 11, 1994, the Board published in the *Canada Gazette* the tariff proposals of these collecting bodies. The Board later received objections from the Canadian Cable Television Association (CCTA), Regional Cablesystems Inc. and the Canadian Satellite Communications Inc. (CANCOM).

#### *Agreement between the parties*

On March 30, 1994, counsel for CCC informed the Board that an agreement had been concluded between the collecting bodies and the Canadian Cable Television Association (CCTA). The parties agreed to submit to the Board the following:

- The certified tariff will cover the years 1995 to 1997;
- The rates and discounts applicable to systems other than small systems will remain the same without adjustment for inflation for the whole period, subject to what the Board might allow as compilation royalties;

- The applicable rate for small retransmission systems will remain at \$100;
- The collecting bodies will not request additional royalties for compilation in excess of:
  - (a) 3 cents per month per subscriber for systems serving more than 6,000 subscribers;
  - (b) 2 cents per month per subscriber for systems serving between 3,001 and 6,000 subscribers;
  - (c) 1 cent per month per subscriber for systems serving between 1,001 and 3,000 subscribers;
- The CCTA may object to the addition of a further royalty for compilation.

In 1995-96, a hearing will be held to resolve the issues pending in the agreement.

#### *Decisions of the Board*

At the request of the Copyright Collective of Canada (CCC), the Board issued an interim decision on December 23, 1994, in which it adopted, as interim tariffs for the retransmission of distant radio and television signals during 1995, a text similar to the tariff certified for the years 1992 to 1994. The tariff has been adjusted to take into account the new definition of "small retransmission systems", which came into force on January 1, 1995.



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## UNLOCATABLE COPYRIGHT OWNERS

Under section 70.7 of the *Act*, the Board may grant licences authorizing the use of a published work if the copyright owner is unlocatable. However, the *Act* requires licence applicants to make reasonable efforts to find the copyright owner. Licences granted by the Board are non-exclusive and valid only in Canada.

In 1994-95, the Board issued three licences to the following:

- ◆ *McGraw-Hill Ryerson* of Whitby, Ontario authorizing the reproduction, in a college-level textbook, of a letter by Rita Schindler published in the *Toronto Star* of December 30, 1990.
- ◆ *La Fondation Les Forges* of Trois-Rivières, Québec authorizing the reproduction on anodized aluminum panels of eight passages from poems. These will be attached to walls in the City of Trois-Rivières for thirty years.
- ◆ *Virany & Virany, Editing and Publishing* of Aylmer, Québec authorizing the reproduction, in a book on the history of the Rotary Club of Aylmer, of a photograph which appeared on the first page of the *Aylmer Sunday Reporter* of October 29, 1972.

## ARBITRATION PROCEEDINGS

Under section 70.2 of the *Act*, the Board can arbitrate disputes between a licensing body, that represents copyright owners, and the users of the works of those owners. Its intervention is triggered by application by either the licensing body or the user.

There were no applications pursuant to that section in 1994-95.

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## COURT DECISIONS ISSUED IN 1994-1995

### **SOCAN v. Copyright Board et al.**

*(Court file nos.: T-2991-91; T-108-92)*

On July 21, 1994, SOCAN advised the Board that it was withdrawing the appeal it had filed against a decision of the Federal Court, Trial Division. The decision confirmed that the Board enjoys a wide discretion in allowing interventions and receiving comments from third parties. On July 28, 1994, the Board advised SOCAN that it was withdrawing the appeal it had filed against the same decision prohibiting it from ordering SOCAN to notify music users of increases in tariffs. The same decision states that “the Board is free to seek comments from any source by its own efforts.”

### **Canadian Association of Broadcasters v. SOCAN** *(Court file no.: A-3-94)*

On October 24, 1994, the Federal Court of Appeal dismissed an application for judicial review filed by the Canadian Association of Broadcasters against part of a decision of the Board issued on December 6, 1993. The decision dealt with, among other things, tariff 2.A.1 (Commercial Television) for the years 1990 to 1993, and kept the rate at 2.1 per cent. The decision of the Court of Appeal confirms that the Board can set royalties that do not mimic market prices and that its role is to maintain a proper balance between the interests of copyright owners and those of users of protected works.

## COLLECTIVE ADMINISTRATION OF COPYRIGHT

The Board, together with the Canadian Literary Arts Association (ALAI), the Canadian Conference of the Arts (CCA) and the Faculty of Administrative Studies (Art and Media Studies) of York University, organized in Toronto on October 31, 1994, a colloquium on the collective administration of copyright. This colloquium gave all participants, whose background included intellectual property management, the cultural industries and the communications, a chance to familiarize themselves with the various systems of collective administration of copyright on both the national and international levels and with the consequences and impact of new technologies and new media on copyright.

The colloquium also provided an opportunity to consider the relevance and effectiveness of the existing regulatory schemes for which the Board is responsible and, on the basis of the experience acquired since its inception six years ago, to suggest changes that could be made to these schemes as part of the review of the *Copyright Act* (Phase II).

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## AGREEMENTS FILED WITH THE BOARD

Under section 70.5 of the *Act*, agreements concluded between licensing bodies, acting on behalf of copyright owners, and users of the works of these owners, may be filed by any of the parties to the agreement within 15 days of the agreement. This filing renders inapplicable to parties to the agreement section 45 of the *Competition Act*. Nevertheless, these agreements can be investigated by the Board if it is asked to do so by the Director of Investigation and Research appointed under the *Competition Act*.

Sixty-four agreements were filed with the Board during 1994-95, sixty of which involved the Canadian Copyright Licensing Agency (CANCOPY) granting the following institutions a licence to photocopy published works listed in CANCOPY's repertoire:

- Ministry of Education and Training of Ontario
- Canada Institute for Scientific & Technical Information of the National Research Council of Canada
- Wilfrid Laurier University
- University of Waterloo
- Brock University
- University of Guelph
- McMaster University
- Ministry of Education of Alberta
- Ryerson Polytechnic University
- University of Sudbury
- University of Ottawa
- Trent University
- University of Saskatchewan
- Carleton University
- Lakehead University
- University of Regina, Campion College and Luther College
- Saskatchewan Indian Federated College
- Queen's University
- University of Western Ontario
- Institute for Christian Studies
- St. Thomas University
- University College of Cape Breton
- St. Mary's University
- Université Sainte-Anne de Pointe-de-l'Église
- St. Francis Xavier University
- Acadia University
- University of King's College
- University of New Brunswick
- Université de Moncton
- Holland College
- Technical University of Nova Scotia
- Mount Saint Vincent University
- Canadian International College of Nelson
- Laurentian University
- University of Victoria
- Mount Allison University
- Simon Fraser University
- University of Prince Edward Island
- York University
- Redeemer College
- Memorial University of Newfoundland
- Concordia College
- Collège universitaire de Saint-Boniface
- University of Manitoba
- University of Windsor
- University of Calgary
- University of Northern British Columbia
- University of Toronto
- Yukon College
- The King's University College

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- Augustana University College
  - Dalhousie University
  - University of Winnipeg
  - Collège de l'Acadie
  - Nova Scotia Agricultural College
  - Brandon University
  - University of Alberta
  - University of British Columbia
  - Ministry of Education, Training and Employment of Saskatchewan
  - University of Lethbridge

Another agreement was made between CANCOPY and Kwik-Kopy of Sarnia granting permission to make copies of published material in CANCOPY's repertoire by reprography for use in Canada.

Furthermore, an agreement was reached between CANCOPY, *l'Union des écrivaines et écrivains québécois* (UNEQ) and the Government of Canada. The agreement which was reached on May 18, 1994 was filed with the Board on August 12, 1994. This agreement authorizes the photocopying of any published work whose authors or publishers are represented by these collectives. The agreement deals with the period from April 1, 1991 to March 31, 2001 and involves payment of \$16.7 millions.

Finally, the following two agreements were concluded with the Audio Video Licensing Agency (AVLA):

- *Sony Trans Com Canada*, authorizing it to manufacture, advertise, distribute and lease sound recordings and/or music videos for in-flight/boarding music service in Canada. The licence is for one year and may be renewed annually.
- *New Country Network* authorizing it, for broadcast purposes, to duplicate master video clips and to broadcast programs on the licensee's television services in Canada. The two-year licence expires on December 31, 1996.