



# COPYRIGHT BOARD



**ANNUAL REPORT  
1995 - 1996**

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 eighth Annual Report of the Copyright Board, covering the period from April 1, 1995 to March 31, 1996, 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, 1996**

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*Chairman:* Vacant

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

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*Members:* Adrian Burns  
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 1996-97 (Part III of the Estimates), which was tabled in Parliament on March 7, 1996.*

**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*

**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 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.

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**Adrian Burns** served as a Commissioner of the Canadian Radio Television (CRTC) and Telecommunications Commission for seven years. Prior to that, she worked in television as the Business Editor for CFCN (CTV) in Calgary. During her years at CFCN she also worked as a news anchor/writer and producer. Mrs. Burns has a degree in Art History from the University of British Columbia and has done graduate studies at the British Academy in Rome. Mrs. Burns is a full-time member appointed in September 1995 for a five-year term.

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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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## PUBLIC PERFORMANCE OF MUSIC

### *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.

### *Hearings by the Board*

The Board held a pre-hearing conference on Tariff 2.A (Commercial Television) on June 23, 1995 as well as hearings September 26 to 28, 1995 on Tariff 3.B (Cabarets, Cafes, Clubs, etc. – Recorded Music Accompanying Live Entertainment) for the year 1995, December 12 to 14, 1995 on Tariff 16 (Music Suppliers) for the years 1994 to 1996, and February 6 to 15, 1996 on Tariffs 4 (Concerts), 5.B (Concerts at Exhibitions and Fairs) and 14 (Performance of an Individual Work) for the years 1995 and 1996.

### *Decisions of the Board*

The Board issued a decision on December 1, 1995, concerning Tariff 6 (Motion Picture Theatres) for the years 1992 to 1998.

A tariff for the public performance of music in movie theatres, based on their seating capacity, has existed since the Copyright Appeal Board first set tariffs in 1937. In 1981, when the Composers, Authors and Publishers Association of Canada (CAPAC) and the Performing Rights Organization of Canada (PROCAN) began using the same tariff formula, the combined rates were between 25¢ and 50¢ (with a minimum of \$25); they increased progressively to between 36.05¢ and 72.30¢ (with a minimum of \$36.25) in 1990. The tariff set the seating capacity of drive-in theatres at three times the number of cars that could be accommodated. Venues operating no more than three days a week paid half the rate. Those not operating year-round received a discount of one twelfth of the rate for each month they were inactive.

In 1991, CAPAC and PROCAN merged. The rates were set between 36.85¢ and 73.90¢ (with a minimum fee of \$37.10). In its decision of July 31, 1991, the Board expressed uneasiness about the apparent lack of coherence among the tariffs. At that time, the revenue generated by the cinema tariff was about 170 times less than the revenue generated by the commercial television tariff, and the Board did not understand why such a large disparity existed.

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In September 1991, SOCAN filed its proposed statement of royalties for 1992. In it, it asked that the rate for the cinema tariff be set at 3 per cent of gross receipts from ticket sales, with a minimum fee of \$60. Furthermore, SOCAN asked that the licence cover only performances of music embodied in motion pictures; other uses of music (e.g. background music in the lobby or between performances) would trigger payments under other tariffs. The Board estimated that the amount raised under Tariff 6 would have increased from approximately \$160,000 in 1991 to more than \$10 million in 1992. SOCAN's statements of proposed royalties under Tariff 6 for the years 1993-1995 were identical, except that the requested minimum fee was increased to \$60.78. In its reply to objections, SOCAN stated that the proposed tariff more accurately reflected the value of access to and the use of SOCAN's repertoire for movie theatre operators and would result in fair and equitable royalties.

The Motion Picture Theatre Associations of Canada (MPTAC), representing 95 per cent of the motion picture theatre owners and operators in Canada, including independent theatres, objected to the 1992 proposal. It objected to both the increase in the rate and the reduction in the scope of the licence. The Canadian Motion Picture Distributors Association (CMPDA) asked for leave to intervene. Warner Bros. Entertainment also requested leave to intervene in the proposal for 1995.

The matter was delayed pending an application made to the Trial Division of the Federal Court, requesting that the Board be prohibited from granting intervenor status to

anyone who was not a music user, or a representative of a music user. On February 12, 1993, this application was denied. An appeal from this decision was withdrawn in October 1994.

SOCAN and MPTAC informed the Board, by letter dated October 13, 1994, that they had reached an agreement on Tariff 6 on September 21, 1994. The agreement would keep the rates at their 1991 levels for 1992 and 1993. From 1994 to 1998, a single rate would be set, rising from 88¢ to \$1.01 per seat per year over that period. A minimum fee would also be set, which would increase from \$88 to \$101 over the same period. The 1991 provisions dealing with drive-in theatres, theatres operating no more than three days a week and theatres operating for only part of the year would be reinstated. Finally, the licence would again cover "operations of a motion picture theatre" instead of only performances of music embodied in motion pictures. CMPDA and Warner expressed their support to the terms of the agreement.

On March 13, 1995, the Board addressed questions to all participants it wished be answered before deciding whether to approve the agreement.

The Board found the answers supplied by the participants satisfactory. Accordingly, it has certified Tariff 6 for the years 1992 to 1998 so as to reflect the terms of the above agreement. The tariff has been published in the *Canada Gazette*, December 2, 1995.

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*General Provisions*

SOCAN's statement of proposed royalties for the year 1996, published in the *Canada Gazette* on September 30, 1995, asked for modifications to the general provisions of the tariff. Most of these simplify the reading of the tariff. One is a substantive change to the current situation.

SOCAN asked that late payments bear interest at a rate of one per cent above the Bank Rate (as published by the Bank of Canada). A similar provision already exists in the retransmission tariff.

For reasons that have already been expressed in its retransmission decisions, the Board agreed with this measure. However, it wishes to limit its effect to the future. Therefore, only royalties that become due on or after January 1, 1996 will be subject to this provision.

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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 was held on this matter from June 19 to 21, 1995.

### *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)

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Canadian Retransmission Right Association (CRRA)  
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.

From June 19 to 21, 1995, a hearing was 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. The Board has done the same on December 21, 1995, adopting, as interim tariffs for 1996, similar tariffs to those certified for 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 1995-96, the Board issued four licences to the following:

- ◆ *Gladys Fritz* of Montreal, Quebec, authorizing the inclusion of a text or certain elements of a text of an English language instruction video produced by *Ciné Langues inc.* in 1991, in a similar program produced by Ms. Fritz.
- ◆ *British Columbia Teachers' Federation* of Vancouver, B.C., authorizing the reproduction, in a textbook, of seven letters to the Editor published in the June 12, 1994 edition of the *Surrey/North Delta Leader*.
- ◆ *Éditions La Lignée* of Montreal, Quebec, authorizing the reproduction, in a textbook on French and Québec literature, of the poem entitled “*La splendeur de vivre*” written by René Chopin.
- ◆ *Edwinna von Baeyer* and *Pleasance K. Crawford*, co-editors, Toronto, Ontario, authorizing the reproduction of all or major portions of seven articles, in an anthology on Canadian gardening.

## 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 1995-96.

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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*.

One-hundred and twenty-three (123) agreements were filed with the Board during 1995-96, 114 of which involved the Canadian Copyright Licensing Agency (CANCOPY), granting the following institutions and firms a licence to photocopy works listed in its repertoire:

- . A-1 Copy Centre, Mississauga, Ontario
- . Alberta Vocational College - Calgary
- . Alberta Vocational College - Lac La Biche
- . Alberta Vocational College - Lesser Slave Lake
- . Alberta Vocational College - Edmonton
- . Alberta College of Art and Design
- . Algoma University College
- . Assiniboine Community College
- . Assumption University
- . Athabasca University
- . Atlantic School of Theology
- . Banff Centre for Continuing Education
- . British Columbia Institute of Technology
- . Cambrian College of Applied Arts and Technology
- . Camosun College
- . Canadian Conference of the Arts
- . Canadian Society of Laboratory Technologists
- . Canadore College of Applied Arts and Technology
- . Capilano College
- . Carlton Trail Regional College
- . Centennial College of Applied Arts and Technology
- . CGA-Canada
- . College of New Caledonia
- . College of the Rockies
- . Collège Boréal
- . Collège Universitaire de Hearst
- . Columbia College
- . Conestoga College
- . Confederation College
- . Copies Plus, Hamilton, Ontario
- . Cumberland Regional College
- . Cypress Hills Regional College
- . Douglas College
- . Durham College of Applied Arts and Technology
- . Eastern Pentecostal Bible College
- . Emily Carr Institute of Art and Design
- . Fairview College
- . Fanshawe College of Applied Arts and Technology
- . George Brown College of Applied Arts and Technology
- . Georgian College of Applied Arts and Technology
- . Grande Prairie Regional College
- . Grant MacEwan Community College
- . Her Majesty The Queen in Right of Ontario (represented by Chair of the Management Board of Cabinet)
- . Hewlett-Packard (Canada) Ltd., IDACOM Telecom Division
- . Honeywell Hi-Spec Solutions

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- Humber College
  - Michener Institute for Applied Health and Sciences
  - International Publishing Partnership
  - Keewatin Community College
  - Keyano College
  - Kinko's Copies Canada Ltd., North York, Ontario
  - Kwantlen University College
  - Kwik Kopy Printing, Milton, Ontario
  - Kwik Kopy Printing, Sarnia, Ontario
  - Lakeland College
  - Lambton College of Applied Arts and Technology
  - Langara College
  - Le Collège des Grands Lacs
  - Lethbridge Community College
  - Loyalist College
  - Magnum Copy Centres
  - Malaspina University College
  - Management Focus
  - Medicine Hat College
  - Minister of the New Brunswick Department of Advanced Education and Labour
  - Ministry of Education and Training of Manitoba
  - Ministry of Public Works, Supply and Services of Alberta
  - Mississauga Ontario Copies Limited (Kinko's Copies, Mississauga)
  - Mohawk College of Applied Arts and Technology
  - Mount Royal College
  - Niagara College of Applied Arts and Technology
  - Nicola Valley Institute of Technology
  - Nipissing University
  - Northern College of Applied Arts and Technology
  - Northern Lights College
  - Northern Alberta Institute of Technology
  - Nova Scotia College of Art and Design
  - Nova Scotia Minister of Education and Culture
  - Okanagan University College
  - Olds College
  - Ontario Ministry of Agriculture, Food and Rural Affairs
  - Parkland Regional College
  - Print Stop Inc., Edmonton, Alberta
  - Quality Colour Press Inc., Edmonton, Alberta
  - Red Deer College
  - Red River Community College
  - Rocky Mountain College
  - Saskatchewan Institute of Applied Science and Technology
  - Saskatchewan Indian Institute of Technologies
  - Sault College of Applied Arts and Technology
  - Searchfast Systems Ltd., Mississauga, Ontario
  - Selkirk College
  - Seneca College of Applied Arts and Technology
  - Sheridan College of Applied Arts and Technology
  - Sir Sandford Fleming College
  - South Winnipeg Technical Centre
  - Southern Alberta Institute of Technology
  - Sport Information Resource Centre, Gloucester, Ontario
  - St. Clair College of Applied Arts and Technology
  - St. Lawrence College Saint-Laurent
  - The Photoset Group Inc., Gloucester, Ontario
  - The Ministry of Education and Training of Ontario
  - The Canadian Association of Message Exchanges Inc.



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- The Press Run, Toronto, Ontario
  - The Koppee Shop, Calgary, Alberta
  - Trinity Western University
  - University College of the Fraser Valley
  - University College of the Cariboo
  - Up-To-Date Publications, Markham, Ontario
  - Van Pelt's Stationery
  - Vancouver Community College
  - West Canadian Graphics Industries & We Can Copy
  - West Canadian Industries Group Limited
  - Westviking College

Five agreements were concluded with the Audio Video Licensing Agency (AVLA):

- *Multi Music Services Inc.*, authorizing it to copy certain sound recordings and/or music tracks for the sole purpose of making digital programs and/or analogue programs for lease in Canada to its commercial subscribers. The licence is for one year.
- *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 was concluded on November 8, 1995 and filed with the Board on January 10, 1996. It is for a period of one year and may be renewed annually.
- *Great Rock Music* (a division of Chantia Inc.), authorizing it to copy certain sound recordings and/or music tracks for the sole purpose of making digital programs and/or analogue programs for lease in Canada to its commercial subscribers. The licence is for one year and may be renewed annually.

- *Advance Warning*, authorizing it to copy certain sound recordings and/or music tracks for the sole purpose of making digital programs and/or analogue programs for lease in Canada to its commercial subscribers. The licence is for one year and may be renewed annually.
- *Son Global*, authorizing it to copy certain sound recordings for the sole purpose of making digital audio programs for use in Canada in the licensee's music supply service and its archives. The licence is for a period of one year.

Furthermore, three agreements were concluded with the *Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada* (SODRAC):

- *Le Consortium de Télévision Québec Canada*, authorizing it, for broadcast purposes in Canada, to record and reproduce the works in SODRAC's repertoire. The licence is for three years and may be renewed annually at the end of its term. It was concluded on March 17, 1995 and filed with the Board on April 12, 1995.
- *Le Réseau de Télévision Quatre Saisons Inc.*, authorizing it, for broadcast purposes in Canada, to record and reproduce the works in SODRAC's repertoire. The licence is for one year. It was concluded on December 14, 1995 and filed with the Board on January 17, 1996.
- *Sony Trans Com Inc.*, authorizing it to record and reproduce, for in-flight/boarding music service in Canada, the works in

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SODRAC's repertoire. The licence is for two years.

Finally, an agreement was reached between the *Association québécoise des auteurs dramatiques* (AQAD) and the Department of Education of Quebec. This agreement ensures remuneration to Quebec and Canadian playwrights whose protected works (French and English) are played in the various educational institutions. The agreement is for a period of three years ending June 30, 1998.