

COPYRIGHT MANAGEMENT IN THE CANADIAN MUSIC INDUSTRY

January 29, 2008

A Report by C. Craig Parks
in collaboration with Louis Charles Landreville

Note

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I THE MANDATE AND PURPOSE OF THE STUDY

This study is an update of research carried out by the author and Louis Landreville in 2002 at the request of the Department of Canadian Heritage. The Department was interested in (1) the impact of the adoption and coming into force of the (then recent) 1997 amendments to the *Copyright Act*, particularly as they relate to those amendments; and (2) the status of the relationships between the various players involved in the production and distribution of sound recordings in Canada.

The 1997 amendments to the *Copyright Act* included the creation of two key rights that have had a major impact on the music industry:

- neighbouring rights (the right of performers and owners of sound recordings to receive equitable remuneration when their performances and sound recordings are performed in public or communicated to the public by telecommunication); and
- the private copying right (the right to make private copies subject to a levy on blank audio recording media intended to compensate performers, owners of sound recordings and the authors and owners of musical works embodied in those sound recordings for royalties for the resulting loss).

The neighbouring rights provisions gave rise to the creation of a new collective, the Neighbouring Rights Collective of Canada (NRCC).

The private copyright provisions also gave rise to the creation of a new collective, the Canadian Private Copyright Collective (CPCC).

Because the focus of this report is the impact of the two new regimes affecting the music industry, the collectives will be grouped under the two broad headings related to those new regimes as follows:

NEIGHBOURING RIGHTS:

NRCC Neighbouring Rights Collective of Canada

Makers:

AVLA	AVLA Audio-Video Licensing Agency Inc
SOPROQ	Quebec Collective Society for the Rights of Makers of Sound and Video Recordings

Performers:

Artistl	Société de gestion collective de l'union des artistes inc.
AFM	American Federation of Musicians of the United States and Canada
ACTRA PRS	Alliance of Canadian Cinema Television and Radio Artists (ACTRA) Performers' Rights Society

PRIVATE COPYING:

CPCC **Canadian Private Copying Collective**

Performers/Makers:

NRCC Neighbouring Rights Collective of Canada (treated above)

Authors/Publishers:

CMRRA Canadian Musical Reproduction Rights Agency Ltd.

SODRAC Society for the Reproduction Rights of Authors, Composers and Publishers in Canada

SOCAN Society of Composers, Authors and Publishers of Canada

Because so much of the revenue from the exploitation of protected sound recordings and musical works is collected and distributed by collectives, the focus of the study is the operations and interrelationships of those collectives, including, for each collective:

- A. History and Structure
- B. Members and Membership
- C. Operations
 - Repertoire Administration
 - Relationship with Users
- D. Distribution of Royalties
- E. Cooperation with Other Collectives
- F. Revenue Growth Attributable to the Amendments
- G. Current Concerns

Following its detailed study of the collectives, the report examines the relationships between and among authors, composers, publishers, artists, sound recording companies ("makers") and record distributors, including the differences and similarities between the record production industries in Canada's francophone (Québec) and anglophone sectors.

II THE COLLECTIVES

A NEIGHBOURING RIGHTS

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A. HISTORY AND STRUCTURE

NRCC is the Neighbouring Rights Collective of Canada. It was federally incorporated by Letters Patent in August 1997 [NRCC Letters Patent.pdf](#) ; [NRCC Supplementary Letters Patent 2003.pdf](#) to act as a “collective society” within the meaning of the *Copyright Act* (s. 70.1) “to collect royalties arising from or in connection with the right to receive remuneration for the public performance and communication to the public by telecommunication of eligible published sound recordings and performers’ performances fixed thereon and to distribute such royalties...”

Its Board of directors is composed of six directors, representing one appointee from each of the founding members, except that AVLA and SOPROQ jointly appoint one additional director representing makers to ensure equal representation of the two “colleges” (see below).

B. MEMBERS / MEMBERSHIP

The membership of NRCC is divided into two “colleges” of collectives, representing the performers and sound recording makers respectively. A schematic of the relationships among the collectives appears at the end of this section.

The performers’ college comprises three organizations: ACTRA PRS (The ACTRA Performers’ Rights Society), AFM (The American Federation of Musicians of the United States and Canada) and ArtistI (La Société de gestion collective de l’Union des artistes).

The makers’ college comprises AVLA (Audio-Visual Licensing Agency) and SOPROQ (La société de gestion collective des droits des producteurs de phonogrammes et de vidéogrammes du Québec).

Accordingly, in contrast to other collectives such as SOCAN and SODRAC, individuals and companies are not direct members of NRCC but derive their remuneration through a member collective that is the most appropriate for them to join.

NRCC has entered into identical Mandate Agreements with its five members (a sample of which is the [NRCC - AVLA Mandate for neighbouring rights.pdf](#)) under which it is granted an exclusive mandate to file and defend neighbouring rights tariffs before the Copyright Board, to collect fees thereunder and to remit to the member such portion as to which it is entitled.

NRCC is in turn a member of CPCC (see section on CPCC), which is the collective responsible for collecting and distributing private copying (home taping) levies. Each of NRCC's five members derives its remuneration right to those levies through NRCC. Accordingly, NRCC has entered into similar Mandate Agreements with its five members (a sample of which is the [NRCC - AVLA Mandate for private copying.pdf](#)) under which it is granted an exclusive mandate to file and defend blank audio recording media tariffs before the Copyright Board, to collect fees thereunder and to remit to the member such portion as to which it is entitled. (In turn, NRCC has entered into an agreement with CPCC under which CPCC is granted the exclusive mandate to carry out those functions [NRCC Mandate to CPCC incl amendmts in 02 and 04.pdf](#)).

The term of each Mandate Agreement, for both neighbouring rights and private copying, is two (2) years and automatically renews for successive two-year terms unless terminated on three months notice prior to the end of a term. Each member may unilaterally and without cause terminate an agreement at any time, however, on 180 days' notice.

NRCC publishes little informative literature. As its members are sophisticated music industry players, they are presumed to be well informed of the role of NRCC. For the general interest of the members of those members, however, NRCC offers a comprehensive web site: www.nrdv.ca.

C. OPERATIONS

NRCC has been operating since 1997 and has collected royalties since 1998.

1. Repertoire Administration

NRCC administers the sound recording and performers' performing right associated with eligible sound recordings. In order to be eligible for remuneration, a sound recording must be:

- A) made by a corporation that is headquartered in Canada or in a Rome Convention country, or by an individual who is a citizen or permanent resident of Canada or of a Rome Convention country, OR
- B) all the fixations done for the sound recording occurred in Canada or in a Rome Convention country.

Performers on eligible sound recordings are entitled to remuneration irrespective of their nationality or country of residence.

As the United States is not a Rome Convention country, a sizeable portion of the repertoire of sound recordings that is performed in Canada is ineligible.

NRCC has been building and adding to its repertoire by inputting the sound recording details that it receives from its members (via their respective members). NRCC's primary function, after collecting royalties owing, is determining eligibility of sound recordings.

1. Relationship with Users

a) Statutory Requirements

NRCC is required under section 67.1 of the *Copyright Act* to file tariffs of fees it proposes to collect from various broadcasters and broadcaster groups. The deadline for filing is March 31 of the year preceding the first year of the tariff period. Tariffs can be filed and certified for multiple years. There is a formal process by which music users may object to a proposed tariff or seek intervener status in the proceedings. The Copyright Board is required, under section 68, to consider the proposed tariffs and any objections thereto. This may mean the scheduling of a hearing if the issues cannot be resolved through an exchange of arguments.

The parties are not precluded from negotiating a settlement and filing it with the Board, but the Board remains bound to consider the settlement terms in the context of the public interest before certifying the agreed tariff.

For the first NRCC commercial radio fees, the parties did not negotiate a rate. A hearing was held and a tariff was certified for five years, from 1998 through 2002. A similar procedure resulted in a tariff for CBC radio.

Based on the notion that neighbouring rights should be equal in value to musical work (SOCAN) performing rights, the Copyright Board set the initial commercial radio rate at the equivalent of 3.2% of advertising revenues, corrected for ineligible repertoire. As the Copyright Board determined that, at the time, US and other ineligible repertoire accounted for 55% of the repertoire of sound recordings performed in Canada, the effective rate for most commercial radio stations was therefore set at 1.44%. All commercial stations, however, are granted a statutory exemption for their first \$1.25 million in revenue.

A lower rate of 0.63% of advertising revenues was established for so-called "low-use" radio stations (who use music less than 20% of their total monthly broadcast time). A nominal \$100

is payable on January 1 of every year by all stations, including all-talk stations which are otherwise exempt from payment obligations.

NRCC's CBC tariff (1C) was fixed by the Board at a dollar value equal to \$960,000.

Section 68.1 of the Act also provided for a three-year phase-in of the initial tariffs for commercial radio and CBC, at 1/3, 2/3 and then full rates for years 1, 2 and 3 respectively of the tariffs.

The commercial radio rates remained virtually unchanged until the Copyright Board certified the tariff for 2003-2007. On October 15, 2005, the Copyright Board of Canada rendered a decision establishing the royalties that commercial radio stations must pay to SOCAN and to NRCC for their use of music for the years 2003 through 2007. The Canadian Association of Broadcasters applied to the Federal Court of Appeal for judicial review of that decision, asserting that the Board had exceeded its jurisdiction.

On October 19, 2006, the Federal Court of Appeal set aside the Board's October 15, 2005 decision, remitting it back to the Board for re-determination.

On February 22, 2008, following its re-determination of the matter, the Board rendered a decision that maintained the rates it established in its October 2005 decision. The parties had submitted new evidence that allowed the Board to assess the value of music to broadcasters from different viewpoints. On the first \$1.25 million of annual advertising revenues, music stations continue to pay SOCAN 3.2 per cent of that amount, and \$100 to NRCC. Above that threshold, the rate is 4.4 per cent for SOCAN and 2.1 per cent for NRCC. The rates for low music-use stations (less than 20% of program time) increase from 1.4 to 1.5 per cent to SOCAN and from 0.64 to 0.75 per cent to NRCC.

The CBC tariff remains unchanged. For the years 2003 to 2007, NRCC had proposed an annual royalty equal to six (6) per cent of CBC radio revenue in the reference year multiplied by 0.6139. This proposed tariff was intended to bring the CBC royalty rate in line with the tariff NRCC had proposed for commercial radio, the .6139 multiplying factor being an adjustment for the lower amount of music used by CBC than by commercial music stations. With the commercial radio rates still undetermined for 2003 and 2007, the parties agreed to extend the existing rate of \$960,000 annually for 2003 to 2005 and, along with SOCAN, are awaiting the outcome of the commercial radio tariff before scheduling a hearing for later periods.

b) Licences

NRCC administers the equitable right of remuneration and therefore does not issue licences. Under subsection 70.17(1), NRCC cannot sue anyone who has paid the specified royalties.

Its certified tariffs are described on NRCC's own website at <http://www.nrdv.ca/english/tarFAQ.htm> and their full text on the Copyright Board's web site at <http://www.cb-cda.gc.ca/tariffs/certified/music-e.html>.

NRCC provides reporting forms and logs on line for its commercial radio, background music, and pay audio users on its web site at <http://www.nrdv.ca/english/tarInfo.htm>.

c) Sources of Licence Revenue

Revenues from the four tariffs currently in place for the past three years are as follows:

	2004	2005	2006
Commercial radio:	\$9,183,160	\$10,102,751	\$10,612,191
CBC:	\$960,000	\$960,000	\$960,000
Pay audio:	\$1,658,071	\$1,540,237	\$1,694,754
Background music:	(in process of collecting retroactive payments)		

Because the first \$1.25 million in commercial radio advertising revenues is subject to a nominal royalty of \$100, NRCC's cash flow is skewed toward the last months of the year.

In addition, performers and makers receive 34% of CPCC's earned income, the bulk of which is distributed through NRCC. CPCC's historical earnings are posted at <http://cpcc.ca/english/finHighlights.htm>.

The performer college members have taken responsibility for establishing and administering reciprocal agreements with their foreign counterparts; the maker college members rely on the intra-corporate arrangements many of their members have in place as well as reciprocal agreements with their foreign counterparts for effecting distributions to foreign rightsholders. Accordingly, foreign income and distribution do not flow through NRCC.

d) Collections and Enforcement

NRCC's main licensees have been the same sophisticated broadcasters who have become accustomed to paying SOCAN fees and with whom SOCAN has few compliance problems. NRCC does however report some compliance difficulties with its tariff payers, sometimes respecting payment of the tariff but more commonly respecting the provision of logs.

NRCC has begun collecting its background music tariff and, while its efforts have been successful, there have been extensive enforcement challenges because NRCC is new to the users.

As NRCC came into existence at the same time as the improved remedies provisions under the Copyright Act, NRCC does not have a reference point for measuring the effect of the latter on compliance rates, enforceability or legal costs.

D. DISTRIBUTION OF ROYALTIES

1. The Colleges

NRCC divides its income into two equal parts, payable to the performers' college and the makers' college. Each member collective uses sound recording use information provided by NRCC for the relevant tariff (typically artist and song identification, frequency of play, weighting by audience size such as BBM data if available, and eligibility of the recording for remuneration) to determine payments to the individual performers and makers they represent.

In the case of the maker college members, claims for the amounts owing to the individual makers they represent are submitted to NRCC for payment. For the performer college, the total amount owing to performers is allocated to the college members in a manner determined from time to time by the college's members, to be reconciled according to the payments each collective has made on behalf of individual performers.

2. Music Monitoring

In order to streamline the workload of commercial radio stations, NRCC asks the stations to log during the same logging periods selected by SOCAN. NRCC uses the data in a different way, however, applying a different weighting technique based on audience.

The CBC national and regional radio services provide comprehensive music use information and the local services provide samples, as they do for SOCAN.

Pay Audio services provide one week's music use information each month, again as they do for SOCAN.

3. Distribution Periods

NRCC distributes royalties to the colleges' accounts semi-annually based on receipts in the preceding two quarters.

E. COOPERATION WITH OTHER COLLECTIVES

1. Internationally

NRCC does not deal directly with its foreign counterparts on distribution matters, as its members have made arrangements for the flow of foreign income either with other societies

(performers' college) or with their corporate affiliates (makers' college). NRCC does however cooperate with its foreign counterparts in sharing new developments in copyright law, tariff enforcement and collection strategies.

2. Domestically

As required by the Copyright Board, NRCC cooperates with SOCAN on joint tariff hearings. Through its delegates, NRCC interacts with CPCC as a member of its Board.

F. REVENUE GROWTH ATTRIBUTABLE TO THE AMENDMENTS

All revenue since 1997 is the result of the new provisions of the Act.

G. CURRENT CONCERN

In NRCC's view, the nominal \$100 royalty on the first \$1.25 million for all commercial radio stations is not justified. The effective exemption reflected a concern by legislators that the rate later determined by the Copyright Board could put small stations in markets with only a single station out of business, or could reduce the amount of local programming. The Copyright Board, however, found that the evidence established that the industry could have absorbed the full tariff, absent any special statutory provisions. NRCC, through the professional associations representing makers and performers, has been lobbying for its removal from the Copyright Act but without success to date.

TABLE I

NEIGHBOURING RIGHTS

NRCC
Neighbouring Rights
Collective of Canada
(1)

Performers College

Makers (Record Producers) College

ACTRA PRS
ACTRA Performers'
Rights Society

AFM
American Federation of
Musicians of the United
States and Canada
(2)

ARTISTI
Société de gestion
collective de l'union des
artistes inc.

AVLA
Audio-Video Licensing
Agency Inc.

SOPROQ
The Quebec Collective
Society for the Rights of
Makers of Sound and
Video Recordings (3)

(1) Société canadienne de gestion des droits voisins (SCGDV)
(2) Guilde des musiciens (in Quebec)
(3) Société de gestion collective des droits des producteurs de phonogrammes et de vidéogrammes du Québec

AVLA

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A. HISTORY AND STRUCTURE

AVLA is the AVLA Audio-Video Licensing Agency Inc., a federally incorporated company established to act as a non-exclusive agent to license the duplication of audio recordings and the duplication and exhibition of music video recordings used in Canada on behalf of their owners and exclusive holders of copyright.

AVLA has been operating since 1985. Prior to its incorporation, record companies administered their own licensing in the relevant areas.

Its members are also generally members of either CRIA (the Canadian Recording Industry Association) or CIRPA (the Canadian Independent Record Production Association). CRIA was established in 1964 by the major international labels operating in Canada with a mission to promote the interests of Canadian record companies.

CIRPA was established in 1975 as a national trade association whose members are Canadian-owned companies involved in every aspect of the music and music-related industries, including record producers, record labels, recording studios, managers of recording acts, music publishers, music publicists, music video producers and directors.

B. MEMBERS - MEMBERSHIP

AVLA is the licensing agent of all the major record companies in Canada and many independent labels, artists and producers. AVLA's 400+ members own or control the copyright of over 95% of all musical audio recordings and music videos produced and/or distributed in Canada. Its full membership list, called Schedule A, is found at <http://www.avla2007.ca/index.php/members/list>. Applications for membership are at <http://www.avla2007.ca/index.php/members/application>.

Its members are record companies - not the artists who record for them. The artists are paid in accordance with the recording agreements entered into with their record companies. Some agreements provide for payment of 50% of the proceeds after recoupment of recording costs; others do not require recoupment. Some agreements do not provide for any payment to the artist for such “promotional” uses.

Under the AVLA Agency Agreement, the member appoints AVLA for an open-ended term as its non-exclusive agent to issue licences to third parties authorizing the copying of their sound recordings and the copying and exhibition of their music videos in the territory of Canada. AVLA’s responsibilities include active solicitation and negotiation with licensees, issuing the licences and collecting the fees and royalties. As the appointment is non-exclusive, the member can prohibit AVLA from licensing any of its sound recordings and music videos at any time.

It also conducts audits on behalf of its members of its licensees and permits every member to inspect the records and books of AVLA only in respect to transactions between AVLA and the member that has requested the audit.

AVLA is also authorized to administer, collect and distribute royalties from the public performance of sound recordings (NRCC payments) and levies from manufacturers and importers of blank audio recording media (CPCC levies).

The AVLA Agency Agreement is not available online but a summary can be found at http://www.avla2007.ca/public/docs/membership_summary.pdf.

C. OPERATIONS

1. Repertoire Administration

AVLA’s needs for repertoire information stem from the requirements of NRCC. AVLA posts on its website a reminder to its members to update their repertoire information on a timely basis. It also posts a list of “missing members” at <http://www.avla2007.ca/index.php/members/missing>.

2. Relationship with Users

a) Statutory Requirements

AVLA’s licensing activities are not subject to any mandatory tariff regime under the *Copyright Act*. However, its licenses are always subject to Copyright Board arbitration under s.70.2 of the *Copyright Act*, in the event that AVLA or any of its licensees requests its intervention.

b) Licences

AVLA does not license any duplication of sound recordings or music videos for sale by its licensees. All AVLA licensed products must be returned when an agreement with a licensee terminates or expires. All licences granted by AVLA are collective in nature; it does not enter into licence agreements on behalf of only one member. AVLA's licensing program is overseen by its Board of Directors.

Some of the main licences are: [DJs/Dance Studios](#), [DJ Pulse Articles](#), [Exhibition License](#), [In-flight Audio/Video](#), [Music Supply Services](#), [Radio Stations](#), [In-Store Licences](#), Music Video Exhibition on [Television](#), [Video Road Show](#), [Video Pools](#), [Webcasting](#). The licence forms are downloadable at <http://www.avla2007.ca/index.php/licensing>.

c) Sources of Licence Revenue

AVLA is a private corporation and, as such, does not publish annual reports or release gross revenue figures.

Its sources of revenue are its own direct licensing of audio and audiovisual uses; neighbouring rights (NRCC); private copying (CPCC) and retransmission rights (through Canadian Retransmission Collective - CRC).

d) Collections and Enforcement

AVLA does not publicly disclose its collection and enforcement expenses. Its operating overhead is 14% of its gross income.

AVLA has the right under the *Copyright Act* to take civil and criminal action against unlicensed activities upon approval by its Board.

D. DISTRIBUTION OF ROYALTIES

Licence fees are passed through to the rights owners. An administration fee of 14% is retained by AVLA to administer and enforce the licensing of the program.

Licence fees collected by AVLA are paid out to its members within thirty days after the end of each fiscal quarter. Sound recording licence payments received by AVLA on behalf of its members are calculated and paid out annually.

AVLA shares with SOPROQ the fifty percent of NRCC monies allocated to the Makers' College. There is not yet an established breakdown, but each college member will correlate airplay information provided by NRCC and BBM audience data (for weighting), with the information in its own database to establish distribution. There are recordings whose eligibility or ownership

has still not been determined. AVLA has retained a reserve to deal with any future payouts from further identification.

NRCC receives on behalf of AVLA all CPCC levies which are distributed in accordance with NRCC's rules.

E. COOPERATION WITH OTHER COLLECTIVES

1. Internationally

In February, 2002, AVLA signed a reciprocal agreement with Phonographic Performance Limited (PPL) covering record company rights in the UK and Canada. Under the agreement, PPL represents Canadian independent record companies in the UK and AVLA represents UK independents in Canada. This is the first overseas agreement reached by AVLA and only the second signed by PPL.

CRIA is a member of the *International Federation of Phonographic Industry* (IFPI).

2. Domestically

AVLA represents members of both CRIA (the Canadian Recording Industry Association) and CIRPA (the Canadian Independent Record Production Association) and accordingly has direct relations with them.

Through its participation on the NRCC Board, AVLA cooperates with the NRCC and its member organizations, ArtistI, AFM, ACTRA PRS and SOPROQ.

F. REVENUE GROWTH ATTRIBUTABLE TO THE AMENDMENTS

As the performance of audio sound recordings did not generate income until the recent amendments, all NRCC income represents new income. CPCC payments (received through NRCC) will certainly also benefit sound recording owners and artists. AVLA does not make its income public but NRCC does (\$13.3 million in 2006 directly plus approximately \$12.6 million through CPCC). AVLA does not make public its share of that NRCC income.

The AVLA/SOPROQ proposed tariff for the reproduction of sound recordings by commercial radio stations, if certified, will generate revenue unrelated to the amendments. The reproduction right was inherent in the *Copyright Act* prior to its amendment.

G. CURRENT CONCERNS

CRIA and CIRPA (the umbrella organizations of AVLA's members) share many concerns.

Declining record sales is cause for alarm. Advancing technology, especially digital distribution, is a major threat to the music industry, particularly without rights management in place. The industry is working on adapting its operating structures and business models to face these new challenges and turn them into opportunities.

The industry must achieve changes in copyright legislation to protect copyright owners and to reflect today's business realities. It must achieve appropriate rights payment structures while at the same time embarking on ongoing relationships with users and other content providers.

There is a critical need for access to funding mechanisms and programs to assist the sector. There is need for access to targeted information/knowledge in areas such as marketing and promotion, best practices and business tools. In addition, the sector needs access to business and professional skills development opportunities in order to stay alert to the changing business environment.

SOPROQ

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A. HISTORY AND STRUCTURE

The Quebec Collective Society for the Rights of Makers of Sound and Video Recordings (SOPROQ), a non-profit organization, was founded in August 1991. Prior to the passage of Bill C-32, SOPROQ collected royalties only from the broadcast of video clips.

Now, SOPROQ has set up a structure whereby the makers of sound recordings can benefit from the royalties arising out of the neighbouring rights and private copying regimes as well as royalties from the granting of general licenses for sound recording reproduction rights. As a founding member of NRCC, the Society is very much involved in the activities of both NRCC and CPCC.

SOPROQ first had to collect from its members (“makers”) the necessary mandates to establish its representation of their interests. It was then necessary to go about identifying the repertoire of its members, taking into account the eligibility of each sound recording under the two different regimes.

B. MEMBERS - MEMBERSHIP

SOPROQ has obtained the mandate to represent more than 600 independent makers.

Under the membership agreement, the maker assigns to SOPROQ its neighbouring rights and its private copying rights in consideration of receiving its share of royalties collected by SOPROQ, following deduction of administrative costs. In addition, SOPROQ’s contract contains a non-exclusive license of the maker’s reproduction rights to its sound recordings and of the maker's right to broadcast video clips, which allows SOPROQ to negotiate blanket licenses with potential users.

An informational brochure is available online at
http://www.soproq.org/uploads/files/Depliant_2007.pdf

C. OPERATIONS

SOPROQ administers the royalties that derive from the equitable remuneration and private copying regimes.

SOPROQ also represents its members in collective negotiations relating to rights of its members in their sound recordings and video clips.

It was in this capacity that it negotiated together with SODRAC a license with the Quebec Ministry of Education for the reproduction, in educational institutions, of musical works and of the sound recordings embodying such works, which form part of the repertoires of the two societies. That license can be downloaded at http://www.meq.gouv.qc.ca/drd/aut/ent_music.html#serv.

SOPROQ, together with AVLA, has also filed a tariff proposal for the reproduction of sound recordings by commercial radio stations. The tariff proposal can be downloaded at <http://www.cb-cda.gc.ca/tariffs/proposed/sr20070526-b.pdf>.

SOPROQ has developed a versatile computerized system as well as a database that contains all the relevant information on the sound recordings and video clips of its members, for the purposes of receiving and equitably distributing royalties.

D. ROYALTIES – COLLECTION AND DISTRIBUTION

1. Neighbouring Rights

On August 14, 1999, the Copyright Board published its decision setting the royalties to be paid by commercial radio stations to the makers of sound recordings and to the performers, with retroactive effect to January 1, 1998. The Board also rendered its decision on the CBC radio neighbouring rights tariff on September 29, 2000, also with retroactive effect to January 1, 1998. The Board rendered its decision on the pay audio radio services tariff on March 15, 2002, with the same retroactive effect.

SOPROQ relies on NRCC to provide it with radio airplay information (“logs”) for purposes of identifying the rights holders and weighting, in the context of those logs, the royalties received. For purposes of distribution, this information must be made available in a format that enables each society to cross-reference it with the information in its own database.

SOPROQ has filed an undertaking with the Copyright Board that its members will not do anything nor impose any contractual obligation that would have the effect of appropriating the performer’s share of neighbouring rights royalties.

2. Private Copying

On December 17, 1999, the Copyright Board rendered its first decision on private copying, fixing the royalties to be paid by importers and manufacturers of blank media to eligible makers of sound recordings, performers and author-composers.

The private copying royalties collected are distributed between the performer and maker colleges in the percentages determined by the Copyright Board.

3. Direct Licenses

SOPROQ was initially created to administer the rights of the producers of video clips and continues to do so. It also issues the following direct licenses: radiophonic, back ground music, television, and transactional licenses customized based on the scope and need of particular projects.

E. COOPERATION WITH OTHER COLLECTIVES

1. Internationally

To date, SOPROQ has not entered into any reciprocal agreements with foreign societies.

2. Domestically

Through its participation on the NRCC Board, SOPROQ cooperates with the NRCC and its member organizations, ArtistI, AFM, ACTRA PRS and AVLA.

As noted above, SOPROQ filed a joint tariff proposal with AVLA for the reproduction of sound recordings by commercial radio stations.

F. REVENUE GROWTH ATTRIBUTABLE TO THE AMENDMENTS

Apart from the direct licenses referred to above, SOPROQ's revenue derives from the 1997 amendments to the Copyright Act that led to the creation of NRCC and CPCC. SOPROQ does not make its income public but NRCC does (\$13.3 million in 2006 directly plus approximately \$12.6 million through CPCC). SOPROQ does not make public its share of that NRCC income.

The AVLA/SOPROQ proposed tariff for the reproduction of sound recordings by commercial radio stations, if certified, will generate revenue unrelated to the amendments. The reproduction right was inherent in the Copyright Act prior to its amendment.

G. CURRENT CONCERNS

SOPROQ believes it is the role of the professional associations to take positions with respect to the scope of the Copyright Act.

SOPROQ's concerns relate to the efficiency of its distribution process and the collection of data from its members. SOPROQ also wants to make sure that all eligible makers are able to collect the royalties to which they are entitled.

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email : artisti@uniondesartistes.com
Web: www.uniondesartistes.com/index_ArtistI.aspx

A. HISTORY AND STRUCTURE

With the passage of Bill C-32 into law, Union des Artistes (UDA) founded in 1997 la Société de gestion collective de l'union des artistes inc. (ArtistI). Its mission is to protect, preserve and promote the rights granted under the *Copyright Act* which it administers collectively. Among other things, ArtistI administers and distributes neighbouring rights and private copying royalties to its eligible performer members. UDA is the sole shareholder of ArtistI. It has tax status as a not-for-profit organization.

B. MEMBERS - MEMBERSHIP

Performers who are eligible for membership in ArtistI are those whose performances are embodied, or about to be embodied, on a sound recording and who sign the Assignment of Performer's Rights and the Performer's Initial Declaration. These documents are available in hard copy only from ArtistI.

As of November 26, 2007, ArtistI had 1,622 performing artists whose performances are embodied on recordings eligible to participate in the remuneration collected for neighbouring rights or private copying.

ArtistI is a founding member of the Neighbouring Rights Collective of Canada (NRCC).

C. OPERATIONS

ArtistI has given NRCC a mandate to negotiate tariffs, and to collect and remit to ArtistI its share of the neighbouring rights royalties.

ArtistI is also entitled to royalties under the private copying regime on behalf of its members through NRCC.

In addition to its administrative activities, ArtistI negotiates bilateral agreements with foreign collective societies, provides information to its members, and makes submissions and representations at the political level. Information for members can be found at http://www.uniondesartistes.com/index_artisti.aspx.

The initial tasks of the Society were to develop, for its own particular needs, a database of recordings which embody its members' performances, to recruit members and to conclude bilateral agreements with foreign societies. The Society is currently developing a new database. At present, there are 11,174 eligible albums in the database, for a total number of 114,744 tracks.

D. ROYALTIES – COLLECTION AND DISTRIBUTION

Together with ACTRA PRS and AFM, ArtistI receives from NRCC the royalties allocated to Canadian performers under the neighbouring rights regime and from CPCC, via NRCC, the private copying levies. ArtistI's share of NRCC's revenue from equitable remuneration is one-third (1/3) of the Performers' College share of fifty percent (50%) of the total.

NRCC collects data that is used for equitable remuneration. That data is then prepared, compiled and provided to its member collectives by NRCC, in the form of summary logs, for processing purposes.

NRCC also acts as an intermediary for CPCC regarding the management of private copying levies. Each collective receives from NRCC summary airplay logs and sales data, which enables the collectives to make claims on behalf of their represented performers/makers against the private copying levies collected by CPCC.

ArtistI must identify each performer who has participated on a given eligible and sampled recording. Identifying a feature performer is much easier than identifying each and every backup/session performer. When sampled recordings cannot be identified and the eligibility determinations cannot be confirmed, corresponding royalties are held in reserve.

Since its creation, ArtistI has distributed approximately \$7 million in royalties to its members.

One of ArtistI's internal distribution rules provide that, for pop and country music, 80% of the royalties allocated to that track are paid to the feature performer, and the remainder paid to the backup singers and musicians. Different rules apply to jazz and classical recordings.

E. COOPERATION WITH OTHER COLLECTIVES

Internationally, ArtistI has entered into four bilateral agreements, with the following collective societies: ADAMI (France), URADEX (Belgium), SWISSPERFORM (Switzerland), and GDA (Portugal)

Domestically, through its participation on the NRCC Board, ArtistI cooperates with AFM, ACTRA PRS, AVLA and SOPROQ.

F. REVENUE GROWTH ATTRIBUTABLE TO THE AMENDMENTS

All revenue generated for the performers and related to neighbouring rights and private copying is the result of the new provisions of the Act introduced in 1997. Since its creation, ArtistI has distributed approximately \$7 million in royalties to its members.

G. COMMENTS AND RECOMMENDATIONS

1. The \$1.25 million exemption under the neighbouring rights tariff

ArtistI believes that this exemption should be removed. Not only is it unacceptable, it is also discriminatory, as it does not apply to the calculation of public performance (SOCAN) royalties for authors and composers of music.

2. The neighbouring rights tariff

The neighbouring rights tariff should not be calculated by reference to the SOCAN tariff. It should be an autonomous tariff and much higher.

AFM / MNRR

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Web: www.afm.org (for AFM)
www.mnrr.ca (for neighbouring rights)

A. HISTORY AND STRUCTURE

The AFM is the American Federation of Musicians of the United States and Canada, founded in 1896. The organization operated as an unincorporated association until 1998 when it was incorporated in California as a not-for-profit corporation. There are 27 affiliated locals in Canada, centred in its largest cities but covering fairly broad geographical areas. Each local is separately chartered, some dating back to 1901. A full listing of US and Canadian locals is found at <http://www.afm.org/about/locals>.

AFM is certified as an artists' association under the federal *Status of the Artist Act*.

AFM is governed by the democratically elected International Executive Board (IEB) composed of an executive committee of five members and the International President, International Vice-President, Vice-President from Canada and International Secretary-Treasurer. This body has jurisdiction over all travelling musicians, negotiates international electronic media agreements, grants local charters and adjudicates disputes and claims.

The Canadian office of the AFM is situated in Toronto and employs a staff of ten. The Canadian Vice-President has authority to make decisions affecting solely Canadian locals and their members.

B. MEMBERS / MEMBERSHIP

The Canadian membership of AFM oscillates between 13,000 and 15,000 members during an average year. Of these members, 20-25% earn their livelihood from their musical performances. Of course, the remaining majority of earning musicians supplement their income through full-time or part-time jobs, often unrelated to the music industry.

There are no qualifications for membership other than having to be a professional musician. Membership is confirmed upon receipt of a completed application form (available online at <http://www.afm.org/scripts/reg/regs1.html>) and payment of an application fee and first year's

membership dues. The application fee varies between \$90 and \$250, depending on the size of the local; and annual dues vary between \$80 and \$200, again depending on the size of the local. The performers' Appointment and Authorization form for neighbouring rights purposes is part of the application form downloadable at the above mentioned site.

AFM is a founding member of NRCC, one of three members representing the performers' college. AFM has entered into a Mandate Agreement with NRCC under which NRCC is granted an exclusive mandate to file and defend both performers' rights tariffs and blank audio recording media tariffs, to collect fees thereunder and to remit to AFM the portion to which it is entitled. (In turn, NRCC has entered into an agreement with CPCC under which it delegates to CPCC its functions under the blank audio recording media regime).

AFM publishes a wide variety of informative literature online, particularly under "Music Biz Resources": <http://www.afm.org/resources>.

AFM Canada has established the Musicians' Neighbouring Rights Royalties division with a dedicated website - www.mnrr.ca – which gives information on making claims under the neighbouring rights regime. The website has a comprehensive FAQ page. Canadian members may download the Appointment and Authorization for neighbouring rights representation and the Repertoire Form: <http://www.mnrr.ca/Repertoire%20Form.pdf>.

C. OPERATIONS

1. Relations with Members

The AFM offers a myriad of union-type services to its members. It operates the AFM-Employers' Pension and Welfare Fund (Canada) and two trust funds. The pension fund is funded by the signatory employers (producers or engagers) who generally add 10% to the "scale" fees on every engagement contract. The Recording Industry Music Performance Trust Fund (MPTF) is funded by royalties from signatory record companies to fund free live performances by musicians. The Phonograph Record Manufacturers Special Payments Fund (MSPF) is also funded by signatory record companies based on their total annual record sales and distributed on the basis of US \$30 per musician per recording session played during the year.

AFM Canada also supplies to its members standard form engagement contracts, enters into collective bargaining with major users (e.g. CBC, NFB), establishes minimum performance standards and provides dispute resolution services (member-member and member-engager).

AFM Canada offers to administer neighbouring rights and private copying remuneration to its members and to non-member musicians. Not all assignors of the foregoing rights are AFM members nor have all AFM members assigned these rights to AFM.

2. Relations with Users

a) Agreements with Engagers

At the international level, the AFM maintains agreements in the recording, film and legitimate theatre areas for English language performers. The Phonograph Record Labor Agreement deals with minimum wages and working conditions for musicians working for the major record companies. The Basic Theatrical Motion Picture Agreement covers the same issues for musicians working for the major studios. A similar agreement covers major touring theatrical musicals. (These agreements are not available online).

The federal *Status of the Artist Act* requires CRTC-licensed broadcasters to deal with the AFM. AFM Canada has negotiated two major broadcaster agreements in Canada, with CBC radio and with CBC television. Although most other Canadian broadcasters have not entered into formal agreements with the AFM, for each project they normally sign a “letter of adherence” promising to respect all the terms and conditions of the corresponding CBC agreement.

Agreements are also in place with the National Film Board (NFB), with TV Ontario, with many independent television producers (but not yet with CFTPA), with booking agents and with the Association of Canadian Advertisers / Institute of Communication Agencies (for radio and TV commercials).

b) Collections and Enforcement

The tariffs of fees (minimum fees or “scale”) are established at the local level. It is the responsibility of the local to maintain and enforce the scale levels, through sanctions against both members and signatories who undercharge or underpay. Members are prohibited from working for an engager who is placed on an international or local “Unfair List” and, if they do so, may be fined up to \$50,000 (international) or \$10,000 (local) or expelled.

The Guilde des musiciens (AFM in Quebec) has status under Quebec’s *Status of the Artist Act* to initiate legal proceedings on behalf of its members. Under the federal *Status of the Artist Act*, the AFM has status to institute actions but the field of engagers under federal jurisdiction is limited. However, in December 2007, AFM was granted jurisdiction federally to represent all musicians, whether members of AFM or not. Other provinces, notably Saskatchewan (which has had legislation since 2002 but has not implemented it) and Ontario are in the process of establishing regimes under which AFM hopes to benefit as well.

D. DISTRIBUTION OF NRCC AND CPCC ROYALTIES

Together with ACTRA PRS and ArtistI, AFM receives from NRCC the royalties allocated to Canadian performers under the neighbouring rights regime and from CPCC, via NRCC, the private copying levies. AFM's interim share of NRCC's revenue from equitable remuneration is one-third (1/3) of the Performers' College share of fifty percent (50%) of the total. The shares of the three members of the performers' college will be reconciled following an analysis of the actual performances over time.

NRCC collects data that is used for equitable remuneration. That data is then prepared, compiled and provided to its member collectives by NRCC, in the form of summary logs, for processing purposes.

NRCC also acts as an intermediary for CPCC regarding the management of private copying levies. Each collective receives from NRCC summary airplay logs and sales data, which enables the collectives to make claims on behalf of their represented performers/makers against the private copying levies collected by CPCC.

AFM must identify each performer who has participated on a given eligible and sampled recording. Identifying a feature performer is much easier than identifying each and every backup/session performer. When sampled recordings cannot be identified and the eligibility determinations cannot be confirmed, corresponding royalties are held in reserve.

AFM has an agreement in place with ACTRA PRS to administer the distribution of its share of the NRCC royalties. Since its creation, AFM has distributed approximately \$3 million in royalties to its assignors.

AFM's internal distribution rules provide that, for pop and country music, 80% of the royalties allocated to that track are paid to the feature performer, and the remainder paid to the backup singers and musicians.

E. COOPERATION WITH OTHER ORGANIZATIONS

a) Internationally

AFM Canada's dealings are strictly with its US head office.

AFM has also appointed ArtistI to represent its interests in the areas of neighbouring rights and private copying for France, Belgium, Switzerland and Portugal. For the rest of the world, AFM has appointed ACTRA PRS which has concluded reciprocal agreements with the United Kingdom and Ireland.

There is little direct interaction between AFM and its counterparts abroad. However, its President (based in New York) sits on the Presidium of the International Federation of

Musicians (FIM – La Fédération Internationale des Musiciens), an organization of musicians' associations and unions many of which operate performers' collectives.

In addition, AFM representatives regularly attend meetings of WIPO in Geneva and discuss matters of international copyright concern with their counterparts.

b) Domestically

AFM works closely with ACTRA PRS to assist in the latter's distribution mandate for AFM. For example, for certain recordings, ACTRA PRS may receive information only on ACTRA members which needs to be supplemented with information on the AFM member musicians who played on the recordings. Record company label copy information must be correlated with AFM contracts which, being issued at the beginning of a recording session, often list song titles as "TBA".

Through its participation on the NRCC Board, AFM also cooperates with Artsitl, AVLA and SOPROQ.

F. REVENUE GROWTH ATTRIBUTABLE TO THE AMENDMENTS

Prior to 1997, the income of musicians from live performances, radio, television and motion pictures had not been dependent on copyright. All revenue generated for performers arising out of the neighbouring rights and private copying regimes is the result of the 1997 amendments to the Copyright Act.

G. CURRENT CONCERNS

Canadian musicians enjoy no special preference when Telefilm Canada funds qualifying films. AFM is lobbying Telefilm Canada to introduce incentives for potential funding recipients to use Canadian musicians in their films.

An ongoing concern at the local level is the financial health of community orchestras. Even orchestras in major centres face financial difficulties from time to time. AFM staff offers consultation to the locals to assist the orchestras in securing public and private support. AFM also lends its support to Orchestras Canada.

ACTRA PRS

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A. HISTORY AND STRUCTURE

The Alliance of Canadian Cinema Television and Radio Artists (ACTRA) Performers' Rights Society ("ACTRA PRS") was federally incorporated by Articles of Incorporation as a non-profit organization in 1983 to act as agent for collecting use fee payments for ACTRA members and to give ACTRA the ability to take stronger legal action against companies negligent in their payments to ACTRA members.

ACTRA PRS is responsible for the collection and disbursement of use fees, royalties, residuals and all other forms of compensation or remuneration to which members and permit holders of ACTRA and others may be entitled to as a result of their work or engagement in the entertainment and related industries.

ACTRA PRS' Sound Recording Division is also a member of the Neighbouring Rights Collective of Canada ("NRCC") and is one of the organizations responsible for distribution of royalties collected on all tariffs related to sound recordings (commercial radio, private copying, CBC, etc.) under the Copyright Act. Through individual assignment, any performer who has sound recording repertoire that qualifies under the Act may elect to have ACTRA PRS collect and distribute on his or her behalf.

B. MEMBERS / MEMBERSHIP

ACTRA counts approximately 18,000 members. A smaller number of these members have also assigned their sound recording rights to ACTRA PRS for NRCC and CPCC purposes.

A performer with at least one work permit can become an Apprentice Member of ACTRA. There is a \$30.00 initiation fee plus an annual fee of \$30.00. Upon securing six work permits (three for visible minorities and the disabled), a performer can apply for full membership status.

In order to qualify for membership as an ACTRA Extra, a performer must have worked as a background performer at least 24 days within a 12-month period and to maintain membership

must work 15 days in each successive year. The initiation fee is \$75 and annual membership dues are \$30.

While ACTRA's members are primarily TV actors, ACTRA also represents those performers who sing. This includes recording vocalists (who may also qualify for membership within the AF of M). For example, recording artists have assigned their rights for neighbouring rights and private copying purposes and so are members of ACTRA PRS by virtue of that assignment. ACTRA PRS is a founding member of NRCC, one of three members representing the performers' college. ACTRA PRS has entered into Mandate Agreements with NRCC under which NRCC is granted the exclusive mandate to file and defend respectively performers' rights tariffs and blank audio recording media tariffs, to collect fees thereunder and to remit to ACTRA PRS the portion to which it is entitled. (In turn, NRCC has entered into an agreement with CPCC under which it delegates to CPCC its functions under private copying regime).

ACTRA PRS' web page - <http://www.actra.ca/actra/control/prs> - is part of the ACTRA main web site. It offers members and potential members a wide range of information on how to participate in the neighbouring rights and private copying regimes. The Assignment Form and the Repertoire Form are downloadable at http://www.actra.ca/actra/control/nr_docs.

C. OPERATIONS

1. Repertoire Administration

ACTRA PRS correlates information on sound recordings that it receives from a variety of sources: the performers and their managers or agents, music logs, reference books and liner notes from albums. This information forms the basis for the database which is used to distribute monies to all eligible rights holders who have assigned their rights to ACTRA PRS.

2. Relationship with Members

ACTRA offers a myriad of union-type services to its members. It negotiates on behalf of its members contracts with Canadian broadcasters and producers. Through yet another related company, also governed by ACTRA members, ACTRA Fraternal Benefits Society ("AFBS") is a not-for-profit organization which has provided Insurance and Retirement benefits to the Canadian artistic community for over thirty years. AFBS currently administers and invests in excess of \$300 million in Retirement Plan assets on behalf of its Members.

ACTRA also supplies standard form engagement contracts, enters into collective bargaining with major users and provides dispute resolution services (member-member and member-engager).

Bulletins are enclosed with quarterly payments made to the members.

ACTRA PRS maintains an office out of the national ACTRA office, based in Toronto. ACTRA has regional offices in Toronto, Montreal, St. John's, The Maritimes, Ottawa, Manitoba, Saskatchewan, Vancouver, Edmonton and Calgary.

3. Relationship with Users

a) Agreements with Engagers

ACTRA has current collective agreements in place with the Canadian Film and Television Producers Association (CFTPA), CBC, CTV, CITY-TV and the NFB and is currently negotiating new agreements with the private broadcasters and the specialty services.

b) Collections and Enforcement

The collective agreements establish the minimum fees payable to performers under their separately negotiated contracts. During production, these use fees are enforced through the Branches; after production is completed, they are enforced by ACTRA PRS in accordance with the collective agreements. Members are prohibited from working for an engager who is placed on the Unfair Engager List posted and updated frequently on the ACTRA web site.

D. DISTRIBUTION OF NRCC AND CPCC ROYALTIES

Together with AFM and ArtistI, ACTRA PRS receives from NRCC the royalties allocated to Canadian performers under the neighbouring rights regime and from CPCC, via NRCC, the private copying levies. ACTRA PRS' share of NRCC's revenue from equitable remuneration is one-third (1/3) of the Performers' College share of fifty percent (50%) of the total. The shares of the three members of the performers' college will be reconciled following an analysis of the actual performances over time.

NRCC collects data that is used for equitable remuneration. That data is then prepared, compiled and provided to its member collectives by NRCC, in the form of summary logs, for processing purposes.

NRCC also acts as an intermediary for CPCC regarding the management of private copying levies. Each collective receives from NRCC summary airplay logs and sales data, which enables the collectives to make claims on behalf of their represented performers/makers against the private copying levies collected by CPCC.

ACTRA PRS must identify each performer who has participated on a given eligible and sampled recording. Identifying a feature performer is much easier than identifying each and every backup/session performer. When sampled recordings cannot be identified and the eligibility determinations cannot be confirmed, corresponding royalties are held in reserve.

For pop and country music, 80% of the royalties allocated to that track are paid to the feature performer, and the remainder paid to the backup singers and musicians.

NRCC and other members of the CPCC are working diligently on their distribution policies, using the historical experience available to them through their member collectives.

E. COOPERATION WITH OTHER ORGANIZATIONS

1. Internationally

ACTRA has reciprocal agreements in place with American Federation of Television and Radio Artists (AFTRA) and Screen Actors Guild (SAG) in the United States.

ACTRA PRS has appointed ArtistI to represent its interests internationally, in the areas of neighbouring rights and private copying in four countries: France, Belgium, Switzerland and Portugal. Elsewhere, on its own behalf and on behalf of AFM, it is directly establishing reciprocal agreements with sister societies, notably in the United Kingdom and Ireland.

2. Domestically

ACTRA has reciprocal agreements in place with Canadian Actors Equity Association (CAEA), Union des Artistes (UDA) and American Federation of Musicians (AFM). The latter two agreements establish rules for representation of their respective members for different types of performances, primarily for the purposes of the Canadian Artists and Producers Professional Relations Tribunal under the *Status of the Artist Act*.

ACTRA PRS is responsible for AFM's distribution for all neighbouring rights and private copying receipts.

Through its participation on the NRCC Board, ACTRA PRS cooperates with ArtistI, AFM, SOPROQ and AVLA.

F. REVENUE GROWTH ATTRIBUTABLE TO THE AMENDMENTS

From 2000 through 2003, ACTRA PRS consistently distributed over \$5 million annually to its members. Most of that money, however, consists of film and television use fees.

All revenue generated for performers arising out of the neighbouring rights and private copying regimes is the result of the 1997 amendments to the Copyright Act. However, the NRCC and CPCC source earnings are not broken out in the statistics section of the web site:

http://www.actra.ca/actra/control/prs_stats.

G. CURRENT CONCERNS

Data collection for NRCC purposes: The building of a solid data base and of systems to track, maintain records, and distribute royalties for all eligible repertoire is a challenge, given the volume of eligible works played on commercial radio.

Emerging technologies: Like all organizations representing copyright holders, ACTRA PRS must continually keep abreast of new and emerging technologies, through research and information exchange on a national and international level.

II THE COLLECTIVES

B PRIVATE COPYING

CPCC

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A. HISTORY AND STRUCTURE

The CPCC is the Canadian Private Copying Collective. It was federally incorporated by Letters Patent in March 1999 under Part II of the *Canada Corporations Act* to act as a “collective society” and a “collecting body” within the meaning of the *Copyright Act* [ss. 83(8)] “to collect royalties arising from or in connection with the right to receive remuneration in respect of the reproduction for private use of eligible musical works embodied in sounds recordings, eligible performers’ performances of musical works embodied in sound recordings, and eligible sound recordings in which performers’ performances of musical works are embodied, and to distribute such royalties...”

Pursuant to subsection 83(14) of the *Copyright Act*, the CPCC operates as an “umbrella” collecting body to receive revenues generated from the levy on blank audio recording media.

The CPCC’s Board of Directors is composed of six directors, three of whom are from the “performer/maker” class and appointed by NRCC; and the other three of whom are from the “author/publisher” class and appointed by SOCAN, CMRRA and SODRAC.

B. MEMBERS / MEMBERSHIP

The five founding members of the CPCC were SOCAN, SODRAC, CMRRA, NRCC and SOGEDAM. NRCC and SOGEDAM formed the “performer/maker” class. SOGEDAM has since wound up, its members now solely represented by NRCC. A schematic of the relationships among the member collectives is found at the end of this section.

In contrast to other collectives such as SOCAN and SODRAC, individuals and companies are not direct members of the CPCC but derive their remuneration through one of the four member collectives.

The CPCC has entered into identical Mandate Agreements with its four members under which it is granted an exclusive mandate to prosecute and defend private copying tariffs before the Copyright Board, to collect the levies thereunder and to remit to the member such portion as to

which it is entitled.

The term of each Mandate Agreement is two (2) years and automatically renews for successive two-year terms unless terminated on three months notice prior to the end of a term. Each member may unilaterally and without cause terminate an agreement at any time, however, on 180 days' notice.

Because the CPCC has few "members", its role as educator differs markedly from that of SOCAN. Its members are sophisticated participants in the music industry. However, the CPCC's website contains a news page for the media: <http://cpcc.ca/english/news.htm>; and a general information page for the public: <http://cpcc.ca/english/privCopKey.htm>, along with a brochure at http://www.cpcc.ca/english/pdf/CPCC_CorePrinciples_Web_Eng_120508.pdf. Also a detailed explanation of the distribution process is available at http://www.cpcc.ca/english/pdf/CPCC_Distribution_Eng_280408.pdf.

C. OPERATIONS

The CPCC has been operating since 1999 and has collected royalties since December 18, 1999. It maintains its head office in Toronto.

1. Repertoire Administration

Being the collecting body, the CPCC collects the levies arising out of the private copying sections of the Copyright Act (sections 79 - 88) and pays its collections to the member collective that represents the eligible authors, eligible performers and eligible makers in the proportions set by the Copyright Board under the Tariff. Songwriters, music publishers, recording artists and record companies are all eligible to receive private copying payments. Each of the CPCC's member collectives represents a particular type of rights holder and is responsible for representing their members in private copying distributions.

2. Relationship with Users

a) Statutory Requirements

Under subsection 83(1) of the *Copyright Act*, the CPCC is to file a tariff of fees it proposes to collect from the manufacturers and importers of blank audio recording media.

The deadline for filing is March 31 of the year preceding the proposed effective date. Tariffs may be certified for multiple years. There is a formal process by which objections to a proposed tariff are to be filed. The Copyright Board is required, under subsection 83(7), to consider the proposed tariff and any objections thereto. As the CPCC does not have users or licensees, it is not possible to negotiate a tariff without going through the tariff hearing process.

The first CPCC tariff was certified for two years, from 1999-2000; since then, the tariffs have been certified for multiple years. The levies through 2007 were as follows:

	<u>1999-2000</u>	<u>2001-2002</u>	<u>2003-2004</u>	<u>2005-2007</u>
Audio cassettes over 40 minutes	23.3 cents	29 cents	29 cents	24 cents
CD-R or CD-RW	5.2 cents	21 cents	21 cents	21 cents
CD-R audio/CD-RW audio/minidisc	60.8 cents	77 cents	77 cents	21 cents

In the CPCC's first full year of operation, 40% of earnings were from levies on cassettes; by 2001, this had dropped to 14% and is now negligible. Minidiscs have all but disappeared and the bulk of earnings now come from CD-Rs.

b) Licences

The publication of a tariff in the *Canada Gazette* acts as a notice to manufacturer and importers of the amount of levy to be paid. The levies are not licence fees and the statutory notice does not therefore constitute a licence, as it does for SOCAN for example.

c) Revenue

The historical earnings of the CPCC (as well as information on expenses and distribution) can be tracked at <http://cpcc.ca/english/finHighlights.htm>. The published income figures (in '000s) were as follows:

2000	2001	2002	2003	2004	2005	2006
\$7,245	\$24,258	\$27,809	\$28,425	\$39,366	\$35,075	\$37,158

d) Collections and Enforcement

The CPCC benefits from a unique civil remedies provision - s. 88 of the *Copyright Act*. Under subsection 88(2), failure to pay the levy may subject a manufacturer or importer to paying up to five times the amount of the levy. Subsection 88(3) permits the CPCC to seek a court order to direct compliance with any obligations under the regime. The existence of these remedies is helpful in its dealings with evaders.

The CPCC also exercises its audit rights under the Tariff.

The Collection and Enforcement department consists of the General Counsel, the In-House Litigation Counsel, a Compliance and Enforcement Officer, a Research and Collections Officer and a Collection and Enforcement Assistant. The General Counsel is responsible for the supervision of the Collection and Enforcement department and for management of litigation files. The In-House Litigation Counsel works with the CPCC's external counsel on litigation files. The collection and enforcement staff is responsible for ensuring compliance with the Private Copying Tariff.

D. DISTRIBUTION OF ROYALTIES

1. The Colleges

Pursuant to the tariff, the CPCC divides its income as follows:

- 66% to the author/publisher college; and
- 34% to the performer/maker college, further broken down into:
 - Eligible Performers: 18.9%; and
 - Eligible Makers: 15.1%.

While songwriters and music publishers are eligible regardless of nationality, only Canadian recording artists and record companies may receive payments under current law. It should be noted that because “eligible” authors comprise a broader class than “eligible” sound recordings (and therefore indirectly performers), fewer sound recordings qualify than the musical works that are embodied on them.

2. Distribution

Manufacturers and importers of blank media submit levies owing to the CPCC bi-monthly. Distribution is based on the annual net revenues reflected in the CPCC’s annual audited financial statements which are presented at the CPCC’s AGM in the following year. Once the financial statements are approved, the CPCC can begin the distributions for that year.

The private copying levy distribution is based on representative samples of radio airplay and album sales, which are given equal weight in the distribution. Every year the CPCC validates tens of thousands of tracks.

The sales sample is taken from the SoundScan database which summarizes album sales in Canada for the year. For each album, the CPCC identifies each track on the album. This is done in multiple ways: by pulling information from the CPCC’s master database which includes albums from previous years; by using Muze, a track listing database that is purchased annually; and by conducting research on the Internet. Once identified, the tracks are added to the sales file.

Airplay logs received from SOCAN are used to generate the airplay sample for the author/publisher college. The sample identifies the work and how many plays it received during the year. This log is not available until September of the following year.

The CPCC also receives an airplay log file from NRCC, which is used for the performer/maker college. The sample identifies the work and how many plays it received during the year. This log is not available until September.

E. COOPERATION WITH OTHER COLLECTIVES

1. Internationally

The CPCC does not have reciprocal representation agreements with its counterpart societies.

2. Domestically

The CPCC interacts with its member collectives (NRCC, SOCAN, SODRAC and CMRRA) in the manner outlined in the mandate agreements. There are no parallel organizations domestically with which the CPCC could interact.

F. REVENUE GROWTH ATTRIBUTABLE TO THE AMENDMENTS

All revenue since the CPCC's inception is the result of the 1997 amendments to the *Copyright Act*.

See Part C 2 (c) above for actual growth figures.

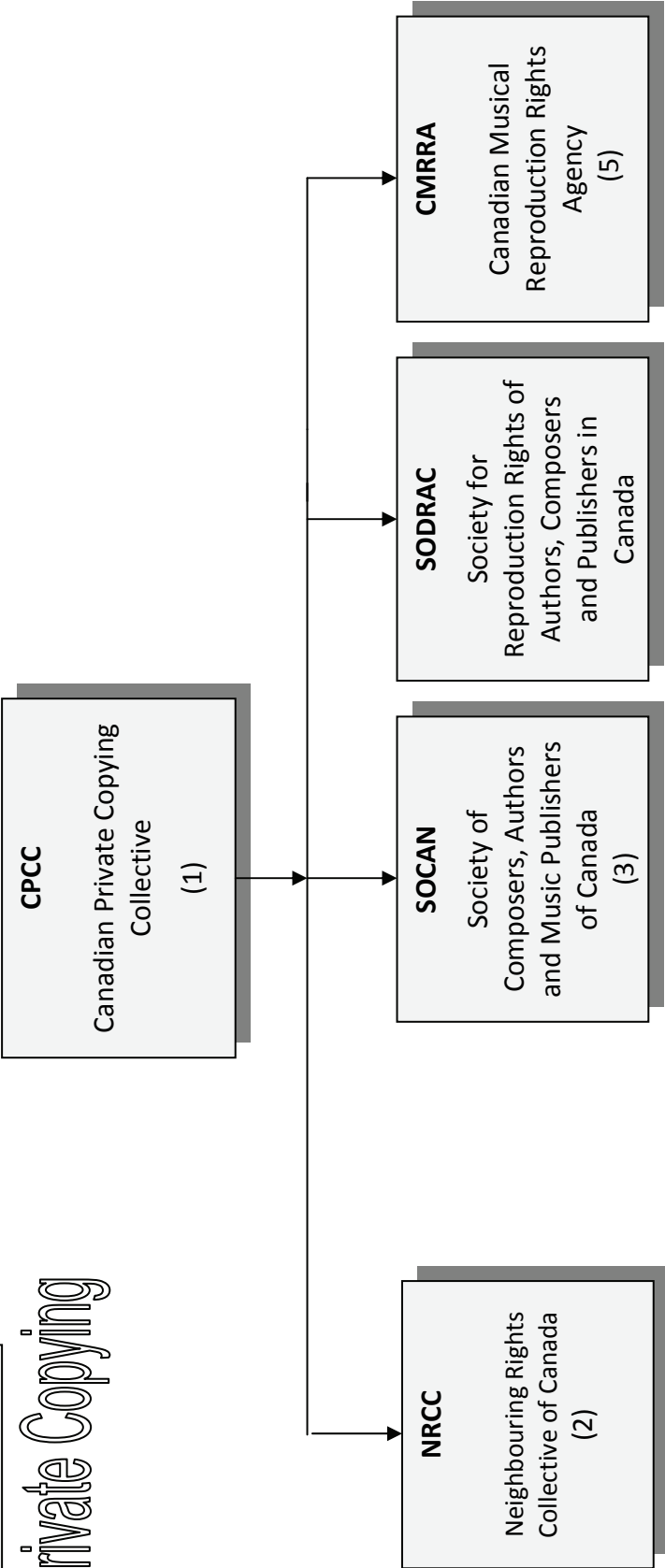
G. CURRENT CONCERNS

The blank audio recording media covered in the Private Copying Tariff have become or are quickly becoming eclipsed by MP3 players (e.g., iPods). CPCC revenues could decrease dramatically.

The CPCC filed a proposed tariff for 2008-2009 with the Copyright Board that includes digital audio recorders. In its interim decision of July 19, 2007 [<http://www.cb-cda.gc.ca/decisions/c19072007-b.pdf>], the Copyright Board held that a digital audio recorder does qualify as an "audio recording medium" if it is later established that it is ordinarily used by individual consumers to reproduce sound recordings. That decision is now subject to judicial review, at the instigation of the objectors to the tariff. CRIA has been granted intervenor status.

Table II

Private Copying



- | | |
|-----|---|
| (1) | Société canadienne de perception de la copie privée (SCPCP) |
| (2) | Société canadienne de gestion des droits voisins (SCGDV) |
| (3) | Société canadienne des auteurs, compositeurs et éditeurs de musique (SOCAN) |
| (4) | Société de droit de reproduction des auteurs, compositeurs et éditeurs au Canada (SODRAC) |
| (5) | Agence canadienne des droits de reproduction musicaux (CMRRA) |

CMRRA

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Tel: (416) 926-1966
Fax: (416) 926-7521
Web: <http://www.cmrra.ca>
e-mail: inquiries@cmrra.ca

A. HISTORY AND STRUCTURE

CMRRA is the Canadian Musical Reproduction Rights Agency Ltd. It was federally incorporated by Letters Patent in 1975 as a non-profit music licensing agency to license Canadian record companies and to collect mechanical reproduction rights royalties on account thereof, on behalf of music publishers doing business in Canada. CMRRA also offers audio-visual synchronization licensing services (licensing TV, film and commercial producers) and also offers foreign representation, for the collection of mechanical royalties abroad through its reciprocal agreements with sister societies.

CMRRA's shares are held in trust for the members of the Canadian Music Publishers' Association (CMPA). Its Board of Directors is composed of nine directors, appointed by the CMPA.

B. AFFILIATES AND AFFILIATION

CMRRA represents over 30,000 music publishers whose repertoire is primarily Anglo-American and Canadian. It issues the bulk of English-language repertoire mechanical licences in Canada.

Unlike SODRAC, CMRRA does not take an assignment of reproduction rights. It enters into non-exclusive agency agreements with its principals, the music publishers. It also differs from SODRAC in that it only represents music publishers and excludes authors and composers.

Its main affiliation agreement, covering the licensing of mechanical rights has an open-ended term and can be terminated effective at the end of any calendar quarter following notice. CMRRA will mail out its Publisher Information Kit on request. It contains the full affiliation agreement, as well as the rider agreements for synchronization licensing, the broadcast mechanical right and private copying.

CMRRA charges its publishers a straight five per cent (5%) commission on all its mechanical licences. Its commission rate is 10% for synchronization licences.

CMRRA makes available a great deal of information on its website: www.cmrra.ca. The website is oriented toward music users (record companies and film, television and commercial producers). An overview of mechanical licensing can be found at <http://www.cmrra.ca/cmrradocs/mlbe06.pdf>. The searchable data base [http://www.cmrra.ca/Site_Policy/site_policy.html] is a useful tool, particularly since CMRRA does not represent the universe of song titles.

For prospective affiliates, the Information Kit contains some 40 pages of information including the affiliation agreements, international agreements, repertoire and release advice forms, etc.

CMRRA maintains its head office in Toronto.

C. OPERATIONS

CMRRA has been operating since 1975. Prior to its existence, mechanical licensing in Canada was handled by the Harry Fox Agency, a similarly constituted agency, operating out of New York City.

1. Repertoire Administration

CMRRA depends on two sources for information: its publisher affiliates and the record companies that it licenses. CMRRA encourages its publisher affiliates to use CMRRA Direct to advise CMRRA of song titles and publisher and composer splits. The four major record companies who are signatory to the CMRRA-CRIA Mechanical Licensing Agreement (MLA) are obligated to send to CMRRA a copy of every record they release.

2. Relationship with Users

a) Statutory Requirements

CMRRA's mechanical and synchronization licensing activities are not governed by any statutory requirements under the *Copyright Act* to deal with the Copyright Board.

As a collective society, however, in March 2000, CMRRA availed itself of the optional provisions of section 70.13 to file with the Board a proposed Broadcast Mechanical Tariff to collectively license ephemeral copies made by radio broadcasters. SODRAC filed a similar tariff.

b) Licences

The bulk of CMRRA's mechanical licensing falls under the CMRRA-CRIA Mechanical Licensing Agreement (MLA), a 25-page agreement renewed most recently for the period January 2004 through June 2006. The MLA was filed in the broadcast mechanical tariff hearings for the year 2007 as Exhibit Coalition 3-B and is a public document.

The primary purpose of the MLA is to establish a negotiated mechanical royalty rate to apply in the absence of the statutory rate which was abolished in 1988. Although it technically binds only CRIA members (the four major record companies and some others), the MLA has generally (but not as a matter of law) has replaced the statutory rate. The current rates are 7.7 cents for the first five minutes and 1.54 cents for each minute or portion thereof in addition thereto.

The MLA also covers a number of other critical issues including an override of the “controlled composition” clause found in most English Canadian recording agreements. It also addresses issues such as “free goods,” reserves, promotional copies and deletes.

Record companies must be licensed for every release and must report sales to CMRRA, remitting at the same time the fee calculated based of the standard or otherwise approved mechanical rate. The five major record companies render statements in a standard electronic royalty statement format which in turn can be delivered to the publisher clients on-line via CMRRA Direct.

c) Sources of Licence Revenue

Mechanical licenses:

Not surprisingly in light of the decline in CD sales in the first years of the millennium, CMRRA's royalties from mechanical licences decreased from \$50,306,835 in fiscal year 1999/2000 to \$34,129,659 in fiscal year 2004/2005. More recent figures are unavailable but would be consistent with the further decline in CD sales over the past two years. It is noteworthy that the decline in CD prices has not had a compounding effect on mechanical license income, as the flat penny rate per track is not price-dependent.

Synchronization licenses:

CMRRA offers synchronization licensing services to its affiliates. However, most publishers prefer to carry out their own synchronization licensing. As a result, CMRRA's income from this source is relatively small.

Broadcast mechanical licenses:

CMRRA/SODRAC Inc. (“CSI”) is a joint venture with SODRAC set up to secure tariffs for the reproduction of their respective repertoires by radio stations and by online music services.

Its first tariff was certified in 2003 for the years 2001-2004, for commercial radio. Unlike the tariffs for NRCC and SOCAN, these rates did not increase in subsequent CSI tariffs. The current tariff for 2007 is posted at <http://www.cb-cda.gc.ca/tariffs/certified/i17022007-b.pdf>. The step rates of 0.27 per cent on the first \$625,000 of gross annual income, 0.53 per cent on the next \$625,000 and 0.8 per cent thereafter have generated between \$5 to \$7 million annually. For

2007, the Copyright Board estimated, in its February 16, 2007 decision, that the newly certified tariff would generate approximately \$8 million.

SODRAC's and CMRRA's shares are determined internally, based on their respective shares of radio performances.

d) Collections and Enforcement

CMRRA allocates considerable resources to auditing and enforcement. The major record companies are audited on a regular basis and discrepancies are often found. The smaller record companies attract a disproportionate amount of resources and individual one-time licences are labour-intensive in terms of educating, policing and enforcement.

CMRRA's President reports no measurable improvement in enforcement as a result of the new remedies available, although he concedes that they may be instrumental in helping to settle disputes and that they have certainly not made matters worse.

D. DISTRIBUTION OF ROYALTIES

CMRRA collects and distributes the mechanical royalties it collects on a quarterly basis. After deducting its 5% commission, all royalties collected under a mechanical licence are remitted to the publisher client. Revenues from broadcast mechanical licenses are distributed based on radio performances, also on a quarterly basis.

E. COOPERATION WITH OTHER COLLECTIVES

1. Domestically

Although SODRAC and CMRRA "compete" for Canadian clients, SODRAC primarily represents francophone and non-English language repertoire while CMRRA specializes in English-language repertoire. CMRRA's reciprocal representation agreements are with the main publisher-based societies in the US and the UK while SODRAC's agreements are with author/publisher societies in the non-English speaking world. As such, the two societies can and do cooperate on matters of mutual interest including government lobbying on common issues and, most recently, working closely on the joint hearings for the broadcast mechanical tariff.

CMRRA has entered into an affiliation agreement with CPCC for the collection of the blank media levy on its behalf. Through its participation on the CPCC Board, it also interacts with SODRAC, SOCAN and NRCC. (CMRRA does NOT participate in NRCC royalties, as its repertoire consists of musical works, not sound recordings).

2. Internationally

CMRRA has closest ties with the US' Harry Fox Agency (HFA) and the UK's Mechanical Copyright Protection Society (MCPS). These two organizations control the bulk of the Anglo-American repertoire.

CMRRA no longer represents Canadian copyrights outside Canada and has dispensed with reciprocal agreements for that purpose. A Canadian publisher with foreign releases must either license the foreign record label directly or appoint a subpublisher in the territory of release to collect mechanical royalties on its behalf.

F. REVENUE GROWTH ATTRIBUTABLE TO THE AMENDMENTS

Only revenues from private copying, collected through CPCC can be attributed to the 1997 amendments. See the section on CPCC for details.

The broadcast mechanical tariffs and the resulting royalties have not arisen as a result of those amendments. Changes in the way broadcasters and online music services store music for broadcast / radiocommunication purposes have given rise to the reproduction right that was always inherent in the *Copyright Act*. Physical CDs are no longer played directly but rather are reproduced as music files copied onto servers or downloaded as music files directly to those servers.

G. CURRENT CONCERNS

One of CMRRA's major concerns is the impact of private copying. Although the CPCC Tariff makes up for some of the decrease in revenue from CD sales, CMRRA is still concerned on behalf of the publishers it represents about the real shortfall in earnings that a shift from purchasing to copying will create.

SODRAC

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A. HISTORY AND STRUCTURE

SODRAC was founded in 1985 by the *Société professionnelle des auteurs et compositeurs du Québec* (SPACQ), the *Société des auteurs, compositeurs et éditeurs de musique* (SACEM – France) and the *Performing Rights Organization of Canada* (PROCAN). Before April 1, 2004, SPACQ and SACEM were the Society's only shareholders. On that date, the society was newly incorporated as SODRAC 2003 Inc. and thenceforth has belonged to its members.

Its Articles of Association are posted on its main web page at www.sodrac.ca under Articles and Bylaws.

The SODRAC Board of Directors consists of 11 members: six (6) are authors and/or composers and five (5) are publishers. Its current directors are listed at <http://www.sodrac.ca/anglais/structure.html>.

B. MEMBERS AND MEMBERSHIP

The Society has more than 5,000 Canadian members. Close to 95% of the composers and publishers in Quebec are members. It also represents the repertoire of 85 countries.

Members assign to SODRAC their reproduction rights in their existing repertoire as well as in any compositions they create or acquire during the term of their agreement. The Member Application Form for Writers (similar for Publishers) is found at the following link: http://www.sodrac.com/oeuvres_artistiques/eng/pdf/Demande%20d'admission%20auteur%20AV%20anglais.pdf

Members are kept informed of news via the web site at: <http://www.sodrac.ca/anglais/PDF/SodracInfo-41.PDF>

Users can search the SODRAC database of composers, publishers and works that it represents: http://www.sodrac.ca/RechercheAyantDroit/intro_rechercher_ayant_droit.aspx?lang=e which is a useful tool, given that SODRAC does not represent the universe of works.

C. OPERATIONS

SODRAC manages the rights of artists and rights holders in the area of visual arts as well as the reproduction rights of authors, composers and music publishers. SODRAC's operations consist of administering the rights it controls, i.e. documenting the works, licencing the users and distributing the royalties to its members. To that end, it must keep up to date a data base of its works. The data is collected from information supplied by its assignors.

On the user side, SODRAC issues reproduction rights licences for its repertoire. Some of its licences are the subject of tariffs approved by the Copyright Board, such as the tariff filed by SODRAC for the reproduction of musical works embodied in cinematographic works in view of their video-copy distribution.

Other licences will be the result of negotiations for blanket use of the entire repertoire. SODRAC has general licence agreements with television broadcasters.

Finally, for CD reproduction, individual licences to record companies are issued in accordance with the conditions stipulated in the standard licence agreement with *l'Association québécoise de l'industrie du disque, du spectacle et de la vidéo* (ADISQ) downloadable in French only at <http://www.adisq.com/doc/pdf/ADISQ-SODRAC-03-06.pdf> (the "ADISQ Agreement"). The most recent amendment to that agreement may be downloaded at http://www.adisq.com/doc/pdf/lettre_entente2006-2008.pdf. A similar agreement with the Canadian Recording Industry Association (CRIA) governs the licensing terms and conditions for CRIA members. Licences may also be issued to independent record companies according to a different royalty rate.

The ADISQ Agreement provides for a fixed rate to be paid to composers, authors and publishers for the reproduction of their works on sound recordings (mechanical royalties) for each work reproduced. The rate varies according to type of record.

The Agreement accords authors and composers better remedies against record companies who reproduce their works without authorization or whose payments are in default. Not only does it provide for remedies but it also provides that such record companies may not obtain new licences until the arrears are paid.

Because SODRAC is a society and does not have the status of professional association, it is not recognized by the *Canadian Artists and Producers Professional Relations Tribunal*. However, because the ADISQ Agreement signatories include most of the record companies in Quebec, and because the rest of the industry follows suit, its standards apply practically universally

within Quebec. For example, the practice of seeking or imposing reduced rates for “controlled compositions” has been virtually renounced by the Quebec record industry. Also, even if old mechanical licences provide for a rate lower than the current one, the record companies will generally pay the current rate.

Some of the interesting provisions of the ADISQ Agreement include those dealing with:

- the credits that must appear on the recordings (s. 3.4);
- the frequency and the terms and conditions of reporting and paying royalties (ss. 4 and 6);
- audit rights (s. 8), including a provision which allows the owner to obtain sales reports directly from the distributor if the record company fails to provide them (s. 8.2).

SODRAC makes its license applications available online at:

https://secure.sodrac.ca/AchatLicence/acheter_licence_intro.aspx?lang=e.

Commission

SODRAC’s commission is 8% of mechanical royalty collections. A 15% commission applies to “general licensing” and a 20% commission applies to artistic works licensing.

D. ROYALTIES – COLLECTION AND DISTRIBUTION

The growth in royalties collected since 1991 is illustrated in the graph entitled *SODRAC: Evolution des perceptions* which can be downloaded at the following link: [SODRAC Graphiques Perceptions 2005-2006.pdf](#).

1. Mechanical Reproduction

SODRAC has a general mechanical license agreement with the Quebec independent label association ADISQ, available (in French only) at <http://www.adisq.com/doc/pdf/ADISQ-SODRAC-03-06.pdf>. The most recent amendment to that agreement may be downloaded at http://www.adisq.com/doc/pdf/lettre_entente2006-2008.pdf. The royalty rate provided in the ADISQ/SODRAC Agreement is set for 2007 at \$0.091 per work reproduced. The agreement imputes a regular retail price of \$25.98 for ordinary CDs.

SODRAC collects mechanical royalties based on the record companies’ sales reports. The record companies are also asked to produce their distributors’ reports, thereby making auditing easier. It also makes it easy to allocate royalties based on sales of each work in the repertoire.

2. Private Copying

As a member of CPCC, SODRAC receives its share of the royalties allocated to the author-publisher college and distributes it to its members. For the years 2000 to 2006, SODRAC has collected, through CPCC, more than \$ 6 million for distribution to its members.

3. Broadcast Mechanical Tariff

CMRRA/SODRAC Inc. ("CSI") is a joint venture with CMRRA set up to secure tariffs for the reproduction of their respective repertoires by radio stations and by online music services.

Its first tariff was certified in 2003 for the years 2001-2004, for commercial radio. Unlike the tariffs for NRCC and SOCAN, these rates did not increase in subsequent CSI tariffs. The current tariff for 2007 is posted at <http://www.cb-cda.gc.ca/tariffs/certified/i17022007-b.pdf>. The step rates - 0.27 per cent on the first \$625,000 of gross annual income, 0.53 per cent on the next \$625,000 and 0.8 per cent thereafter - have generated between \$5 to \$7 million annually. For 2007, the Copyright Board estimated, in its February 16, 2007 decision, that the newly certified tariff would generate approximately \$8 million.

SODRAC's and CMRRA's shares are determined internally, based on their respective shares of radio performances.

E. COOPERATION WITH OTHER ORGANIZATIONS

1. Domestically

Although SODRAC and CMRRA "compete" for Canadian clients, SODRAC primarily represents francophone and non-English language repertoire while CMRRA specializes in English-language repertoire.

SODRAC has entered into an affiliation agreement with CPCC for the collection of the blank media levy on its behalf. Through its participation on the CPCC Board, it also interacts with SOCAN, NRCC and CMRRA. (SODRAC does NOT participate in NRCC royalties, as its repertoire consists of musical works, not sound recordings).

As noted above, SODRAC cooperated with CMRRA in the first hearings for a broadcast mechanical tariff and has since incorporated a joint venture with CMRRA (CSI) to file single tariffs not only for commercial radio but for CBC, non-commercial radio, pay audio services and online services.

2. Internationally

SODRAC is a voting member of the *Confédération internationale des sociétés d'auteurs et de compositeurs* (CISAC) and of the *Bureau international des sociétés gérant les droits d'enregistrement et de reproduction mécanique* (BIEM).

SODRAC has entered into reciprocal agreements with similar societies in over 85 countries which are listed at <http://www.sodrac.ca/anglais/autres.html>. From the list, it can be seen that SODRAC's agreements tend to be with author/publisher societies in the non-English speaking world. The Harry Fox Agency represents SODRAC members in the US but not vice-versa.

F. INCREASE IN REVENUES ATTRIBUTABLE TO THE AMENDMENTS

Only revenues from private copying, collected through CPCC can be attributed to the 1997 amendments. The growth in royalties collected since 1991 is illustrated in the graph entitled *SODRAC: Evolution des perceptions* which can be downloaded at the following link: [.. \SODRAC Graphiques Perceptions 2005-2006.pdf](#).

The broadcast mechanical tariffs and the resulting royalties have not arisen as a result of those amendments. Changes in the way broadcasters and online music services store music for broadcast / radiocommunication purposes have given rise to the reproduction right that was always inherent in the *Copyright Act*. Physical CDs are no longer played directly but rather are reproduced as music files copied onto servers or downloaded as music files directly to those servers.

G. COMMENTS AND SUGGESTIONS

SODRAC is currently facing many challenges related to the transition from physical to digital use of musical works. One of these challenges is based on the Internet Service Providers' lack of accountability with respect to the increase in illegal downloading. This puts the Society's author, composer and publisher members in a vulnerable position.

SOCAN

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A. HISTORY AND STRUCTURE

SOCAN is the Society of Composers, Authors and Publishers of Canada. It was federally incorporated by Letters Patent in 1990 through the merger of two predecessor organizations, PROCAN and CAPAC. CAPAC's predecessor, CPRS, was formed in 1925 as a joint venture of ASCAP (a US performing rights society) and PRS (the UK performing rights society). PROCAN's predecessor, BMI Canada was formed in 1947, as the Canadian operation of BMI, a US performing rights organization.

Its Board of directors is composed of 18 directors of which half are publishers and half are composers. They are elected every three years by the membership at large.

B. MEMBERS / MEMBERSHIP

SOCAN has approximately 80,000 **composer** (sometimes called creator, composer, lyricist, writer or songwriter) and **publisher** (sometimes called copyright owner because it acquires copyrights from composers) members of which 18,000 composers and 4,000 publishers actually earned income in 2006. Most composers and music publishers based in Canada who earn performing rights income are members of SOCAN, although some join a foreign society such as ASCAP or BMI (US), PRS (UK) or SACEM (France), receiving Canadian earnings through such foreign society rather than directly.

In order to qualify for membership as a composer, the applicant must have written at least one musical work which has been published, commercially released or performed. In order to qualify as a publisher member, the applicant must have published five or more musical works written or co-written by a SOCAN member or by a Canadian who is a member of another performing rights society, or at least one musical work written or co-written by a SOCAN member or by a Canadian who is a member of another performing rights society, featured on a commercial recording. There is no fee for membership.

SOCAN secures from composers and publishers an assignment of the public performing rights and the communication rights (the right to communicate to the public by telecommunication)

in musical works. The rights are separately assigned by the composers and publishers respectively and SOCAN makes direct and separate payments of royalties to the two groups.

Since the private copying provisions were introduced, effective January 1, 1999, SOCAN has also been requesting, on a non-compulsory basis, an assignment of the members' right of remuneration under those provisions. This allows SOCAN, as a member of the CPCC, to claim royalties on behalf of its members who have assigned that right to SOCAN.

The term of the membership agreement is two (2) years and it automatically renews for successive two-year terms unless terminated on three months notice prior to the end of a term.

The membership agreement is succinct. Members warrant title to their works and agree to register all works with SOCAN, to assist in enforcement of rights and to refrain from doing anything that might prejudice SOCAN's rights. SOCAN's obligations are to collect royalties, to distribute them and to institute and defend legal actions at its own expense.

C. OPERATIONS

1. Repertoire Administration

SOCAN administers the "small" (as opposed to "grand") performing rights on behalf of composers and publishers of musical works. It maintains and continuously adds to its repertoire by inputting the information it receives from affiliated foreign performing rights societies and from members on **registration forms** submitted by them and on **cue sheets** submitted by television and motion picture producers. Electronic registration software is now available from SOCAN's offices and, shortly, members will be able to register their works on line.

2. Relations with Members

SOCAN makes available to its members a number of printed and web-accessible documents. Its primer, called How Your Music Make\$ Money at http://www.socan.ca/pdf/en/pub_HowYourMusicMakesMoney07.pdf, describes the work registration system, sources of licence income, music tracking procedures and the royalty distribution system.

SOCAN's welcome page at www.socan.ca directs the reader to information oriented toward music creators and publishers or music users. There are also very comprehensive and detailed pages on a variety of topics.

SOCAN maintains a head office in Toronto as well as four regional offices in Vancouver, Edmonton, Montreal and Halifax (Dartmouth). Each of these offices has a Member Services Department to deal with members= individual queries or concerns.

3. Relations with Users

a) Statutory Requirements

SOCAN is required under section 67.1 of the *Copyright Act* to file tariffs of fees it proposes to collect from various users and user groups. The deadline for filing is March 31 of each year for the following year, although some tariffs are certified for up to five (5) years. There is a formal process by which music users may object to a proposed tariff or seek intervenor status in the proceedings. The Copyright Board is required, under section 68, to consider the proposed tariffs and any objections thereto. This may mean the scheduling of a hearing if the issues cannot be resolved through an exchange of arguments.

The parties are not precluded from negotiating a settlement and filing it with the Board, but the Board remains bound to consider the settlement terms in the context of the public interest before certifying the agreed tariff. In most instances, a negotiated settlement is accepted by the Board with little or no additional formality.

A listing of the tariffs and their current fees can be found at:

<http://www.socan.ca/jsp/en/resources/tariffs.jsp>.

On October 15, 2005, the Copyright Board of Canada rendered a decision establishing the royalties that commercial radio stations must pay to SOCAN for their use of music for the years 2003 through 2007. The Canadian Association of Broadcasters applied to the Federal Court of Appeal for judicial review of that decision, asserting that the Board had exceeded its jurisdiction.

On October 19, 2006, the Federal Court of Appeal set aside the Board's October 15, 2005 decision, remitting it back to the Board for re-determination.

On February 22, 2008, following its re-determination of the matter, the Board rendered a decision that maintained the rates it established in its October 2005 decision. The parties had submitted new evidence that allowed the Board to assess the value of music to broadcasters from different viewpoints. On the first \$1.25 million of annual advertising revenues, music stations continue to pay 3.2 per cent of that amount. Above that threshold, the rate is 4.4 per cent. The rate for low music-use stations (less than 20% of program time) increases from 1.4 to 1.5 per cent.

b) Licences

The publication of a tariff in the *Canada Gazette* advises users of the licence fees SOCAN is entitled to charge. Under section 68.2(1), SOCAN cannot sue for copyright infringement anyone who has paid the specified royalties. Broadcasters and cable systems do not receive paper licences.

In certain instances, it serves SOCAN well to issue a paper licence certificate so that it can be conspicuously posted in the establishment. Over 35 licence applications are now available on-line at the SOCAN web site: www.socan.ca/lic/en/tariffspdf.jsp. A music user must complete the application, sign it and return it to SOCAN with the self-calculated fee payment.

c) Sources of Revenue

As discussed above, SOCAN administers both performing rights and communication rights. The latter, which are mainly exploited by the broadcasting industry, contribute the lion's share of SOCAN's revenue. In 2006, the four largest broadcasting licensee contributor groups were: cable systems (for the specialty services they carry), commercial radio broadcasters, commercial television broadcasters, and the CBC (radio and TV). The four largest general licensee contributor groups were concerts, assemblies and dances, background music, and cabarets (live music).

d) Collections and Enforcement

SOCAN's licensing department effectively handles most collection matters. Where a licensee does not pay the fee, after exhausting internal avenues, the matter is turned over either directly to the inside litigation department or to a collection agency and then to the inside litigation department.

In the event of infringement (no prior licensing history), the matter will go to SOCAN's internal litigation department and if it chooses, to outside counsel for copyright infringement proceeding before the courts. These cases require detailed evidence of music use, obtained through on-site logging, as well as chain-of-title proof for each infringed composition. The direct cost of enforcement is sometimes greater than the fees owed but such cases are important to maintain SOCAN's credibility, to ensure an equal playing field throughout a particular industry ; and to establish an ongoing licensing relationship with the music user.

The broadcasting sector is relatively knowledgeable about its copyright responsibilities and is generally compliant.

General licensees tend to be less sophisticated about copyright and require a disproportionate amount of SOCAN's licensing and legal resources for enforcement purposes, given that the tariff level is usually much lower than in the broadcasting sector and the compliance level is also much lower.

SOCAN has noticed that in some cases, the statutory damages have provided a "deterrent effect" for some users. Procedurally, SOCAN was already using the injunction remedy. One lawyer with SOCAN in Montreal reports some success in obtaining a rate that is triple the tariff in settlements with infringers and points to the new minimum damages provision [s. 38.1 (4)] as instrumental in effecting them.

D. DISTRIBUTION OF ROYALTIES

1. The Pools

SOCAN groups the domestic licence income from its 20 - 30 performing rights tariffs (excluding private copying) into five pools: television, cable, cinema, radio and concert. The radio pool is the depository for income from the “general” tariffs which do not comprise their own pools, with the exception of 20% of the income from certain general tariffs with a “concert” component, which is allocated to the concert pool. The so-called “cable” pool consists of non-broadcast television services available only through cable (or DTH). By contrast, TV and radio retransmission royalties, which arise from the carriage of distant broadcast signals, are put in the television and radio pools respectively.

SOCAN also receives income from foreign societies for the foreign performance of its members’ works. That income forms a separate pool for which SOCAN acts as a conduit.

2. Music Monitoring

SOCAN monitors the music used by the key contributors to the five domestic pools. Commercial and public television stations, as well as the “cable” services, are expected to report 100% of their music use through cue sheets. While the licensees are highly compliant, it is difficult to obtain cue sheets for every program aired and the income is, by necessity, distributed among those claimants for which data has been received.

With the exception of the CBC national and regional radio services which provide comprehensive music use information, radio stations are asked to keep logs of the music they play during randomly selected periods during the year. Commercial radio stations log 3 or 4 consecutive days four times a year. Background music services provide 104 days of programming.

In 2007, SOCAN introduced the Digital Audio Identification (DAI) technology to provide a more complete record of performances on Canadian radio, using census data provided by Nielsen Broadcast Data Systems (BDS). SOCAN will receive 100 percent census-performance data from approximately 160 radio stations across the country. These represent nearly all of the major stations, covering most genres of music, in all key advertising markets across the country. More than 18 million radio performances will be captured each year and approximately 65 percent of all SOCAN’s radio revenue will be distributed based on 100 percent census data.

The monitoring of music used in motion pictures is achieved by surveying newspaper listings to determine the number of screen-weeks each motion picture enjoys. Cue sheets indicating the music breakdown are obtained from the motion picture producers.

SOCAN depends primarily on its members to supply concert repertoire information for its concert distribution, although it will accept such information from the venue, managers, promoters and affiliated societies. To be eligible, a concert must be licensed by SOCAN.

3. Allocation of Royalties - Credit System

A general overview of SOCAN's Distribution Rules is found in Sections V and VI of *How Your Music Make\$ Money*, downloadable at

http://www.socan.ca/jsp/en/music_creators/distbroe.pdf.

Briefly, the Television and Cable pools are allocated on a per-second credit basis, subject to weighting by licence fee paid in the case of television and by audience in the case of cable. They are further differentiated by type of use: "background" and "theme" receive a 60% weighting; "feature" is at 100%; "concert feature" is at 200%; and "logo" music is at 5%. There are also exceptions for commercials, dancercise programs, 2 - 6 A.M. and non-programming.

The Radio pool uses a simple credit system for distribution. Most songs receive four credits, falling within the 1 - 7 minute duration category.

The Concert pool is allocated on the basis of a declining percentage scale which is more than triple the licence fee collected for low fee concerts (up to \$75 paid for licence fees up to \$25) but drops to approximately 100% of the fee collected at license fees of \$300 and over.

The Cinema pool is distributed on the basis of one credit per screen-week, based on listings in Toronto and Montreal newspapers. The music in each film is then analyzed and credited using the same weighting principles for type of use as apply under the television distribution rules.

4. Royalty Payments

SOCAN distributes royalties quarterly on February 15, May 15, August 15 and November 15.

Members have the option of receiving their royalty payments by direct deposit, the authorization form for which is available on line at: http://www.socan.ca/pdf/en/directdeposit_E.pdf.

E. COOPERATION WITH OTHER COLLECTIVES

1. Internationally

SOCAN has reciprocal representation agreements with over 200 similar societies, either directly or through major societies who represent the smaller ones. As Canada's tastes in music are

primarily British, American and French, most of the transactions are between SOCAN and the domestic societies in those countries.

The societies cooperate, as they share the common goals of ensuring enforcement, obtaining comprehensive repertoire and usage information and the free flow of related data. An umbrella organization - CISAC (International Confederation of Societies of Authors and Composers) - meets regularly to discuss issues of common concern.

2. Domestically

If mandated by the Copyright Board, SOCAN cooperates with NRCC on joint tariff hearings, and the same set of music use data is sent to both organizations.

It meets with officials of CMRRA, SODRAC and other organizations from time to time to seek common ground in lobbying for copyright reform.

F. REVENUE GROWTH ATTRIBUTABLE TO THE AMENDMENTS

Apart from income from its share of CPCC collections, SOCAN receives no direct financial benefit from the 1997 amendments to the *Copyright Act*.

G. CURRENT CONCERNS

1. Reduced Commercial Television Tariff

The Copyright Board in 1999 departed from over thirty years of maintaining or increasing broadcasting tariffs by reducing the commercial television tariff from 2.1% of gross revenues to 1.8%; it was later increased to 1.9%. This net rate decrease has been offset by growth in income in both the broadcast and the cable sector. However, the decision has far-reaching precedent-setting consequences for SOCAN.

First, the decision also provided for a carve-out of rights by the composers of television music. This opens the door to direct licensing which, if it becomes widespread, could affect the ability of SOCAN to hold the current rate firm at 1.9%. SOCAN intends to re-argue that portion of the decision at future tariff hearings.

Secondly, the tariff rate is the benchmark for rating the value of other audiovisual music use, notably cable (specialty services), the CBC and retransmission. Thus, reinstatement of the previous rate is essential to prevent a ripple effect.

2. Encroachment of Revenue Base by New Collectives and New Rights

SOCAN worries about the impact of the introduction of new rights on its ability to maintain or increase its revenues, in light of the finite amount of money that users are prepared to pay for the use of intellectual property.

3. Copyright Board Discretionary Powers

SOCAN is also disturbed by the Copyright Board's discretion, under the tariff setting process, to reject or amend a tariff when the parties submit an agreement.

THE RELATIONSHIPS AMONG MUSIC INDUSTRY PLAYERS

III THE RELATIONSHIPS BETWEEN SONGWRITERS AND ...

A. Publishers

In English Canada, the relationships between composer/songwriters and their publishers differ depending on whether the publisher is a “major” or an “independent” and whether the songwriter is a pure songwriter or a singer-songwriter.

Where a songwriter signs with a “major” publisher, the contract is usually a co-publishing agreement. This means that, from most income sources, the writer retains 50% in his capacity as writer and 25% in his capacity as co-publisher, for a total of 75%. However, he often receives less for cover versions and synchronization licence fees.

Where a songwriter signs with an “independent” publisher, that publisher already has or intends to have its own co-publishing agreement with a major publisher. Accordingly, in order to split the publishing share with the major while providing sufficient incentive to both co-publishers, the songwriter normally signs a full publishing agreement. Under that structure, the writer receives only his 50% in his capacity as a writer, the remainder being split between the two third party publishers.

In some instances, notably where the songwriter is also the artist on an independent label, the independent label’s publishing arm becomes the publisher, under a full publishing agreement. Often, the independent record label publishing arm has no intention of co-publishing with a major publisher but compels the writer to assign his publishing as part of the recording package deal, for two main reasons: (1) to reduce the record labels’ effective mechanical royalty disbursements; and (2) to allow the record label to earn back some of its outlay through SOCAN radio airplay royalties.

This kind of “tied” deal is being resisted more and more effectively by lawyers representing independent artists, but is by no means eradicated as a business practice.

Songwriter agreements with “independent” publishers tend to be “development deals.” The “majors” are doing fewer development deals than in the past. The object of a development deal is to cultivate promising talent into commercial songwriters who do not already have a record deal in place. It becomes the role of the publisher to “shop” demos of the songs to potential recording artists and to record labels, the latter if the songwriter is also a recording artist.

Songwriter agreements with the “majors” tend to be tied to existing record deals. Often a band that writes its own material signs a recording contract first and then looks for a (co)-publishing deal, either with the record label’s sister publishing company or a rival. The role of a publisher in this scenario is more one of a banker, lending non-returnable advances to the songwriting band members. The band benefits from sorely needed cash flow and presumably more licensing opportunities in the form of audio-visual synchronization licences (commercials, TV

and movies) and sometimes in the form of “cover” records (e.g., Gordon Lightfoot’s songs have been covered by numerous artists).

2. Collectives

As noted in the sections on the collectives, the relationship between composers/songwriters and their collectives depends on the collective.

For mechanical rights, CMRRA has no direct relationship with songwriters as it represents only publishers. Songwriters are paid out of the net receipts of the publishers who are paid by CMRRA. On the other hand, SODRAC has a direct relationship with its songwriters as it pays them directly and they sit on the SODRAC Board.

For performing rights, SOCAN has a direct relationship with its songwriters as it pays them directly and they sit on the SOCAN Board.

For private copying rights, CPCC has no direct relationship with individuals, representing only other collectives. Those collectives who represent songwriters - CMRRA, SODRAC and SOCAN - appoint directors to the CPCC Board.

NRCC represents only sound recording performance and performers’ performance rights, not songwriters’ rights.

3. Record Companies

The relationship between songwriter and record company varies depending on whether or not the songwriter is also a recording artist signed to the label.

If the songwriter is not an artist signed to the label, there is generally no direct relationship between the two. The record company must secure a mechanical licence from the songwriter or his publisher. However, apart from rare instances where the publisher issues such licences directly, it is CMRRA or SODRAC that issues them.

For compilation CDs with a high number of tracks, for special TV-advertised CDs and for some budget-priced CDs, record companies will often try to negotiate rates at less than the industry-negotiated rates. Record companies often want medleys to share the single-song rate. These variances require direct negotiations with the publisher, since the collectives are not authorized to reduce the rate without the publishers’ approval.

If the songwriter is signed to the label, in English Canada, there is generally a “**controlled composition**” clause in the recording agreement. Controlled compositions are songs that the artist has written in whole or in part or controls. Recording agreements often impose limits on the mechanical royalties that the company will pay, as to both the rate and the number of compositions on an album for which it will be responsible.

The typical controlled composition clause will limit the payment to 3/4 of the industry-negotiated rate for a 5-minute song on not more than 10 songs (the “cap”). The record company thereby limits its mechanical outlay to $(3/4 \times 7.7\text{¢} \times 10 =) 58\text{¢}$ per album which represents a considerable savings on a 15-track album, otherwise totaling $(7.7\text{ ¢} \times 15 =) \1.12 . However, paragraph 7(c.3)(iii) of the current CMRRA-CRIA Mechanical Licensing Agreement (MLA) (effective January 1, 2004) provides for a minimum aggregate mechanical royalty of $3/4 \times 7.7\text{¢} \times 12 = 69\text{¢}$, notwithstanding any less favourable contractual provision.

The effect of the controlled composition clause is to reduce the singer-songwriter’s mechanical royalties whenever he records non-controlled compositions. For example, if he records six non-controlled songs and six controlled songs, the non-controlled songs must be paid $(7.7\text{¢} \times 6 =) 46\text{¢}$. From an initial mechanical royalty budget for the CD of 69¢, this leaves only 23¢ for the artist’s own compositions or 3.8¢ per song. If the artist writes fewer than half the songs, his share of the mechanical budget will be further reduced. Additional benefits of the MLA are:

- an override that prohibits the record company from paying less than 50% of the full rate for any one song;
- for multi-year deals, an override that moves the mechanical rate upward as the industry negotiated standard license fee is increased, even if the artist’s contract purports to lock in the rate prevailing at the time of release.

It should be borne in mind, however, not all Canadian independent record companies are signatories to the MLA and that no similar provision has been adopted in the US where a statutory regime is in place.

“Controlled composition” clauses are rare in Quebec recording agreements, as industry practices there are not so heavily influenced by US practices.

4. Audio-Visual Producers

The relationship between composers of TV and motion picture scores and the producers of those A-V works is quite different from that between recording artists and their record labels.

An A-V producer wants to own the copyrights in music composed for its soundtracks for two main reasons:

- to participate in performing rights royalties generated both when the music is performed with the program or movie and when the music is performed on its own; and
- to allow the producers to distribute their products throughout the world without concern about subsequent payments for music use.

The composer is paid a one-time fee for composing and synchronization, retaining his right to collect directly the composer share of performing rights royalties from his local performing rights society. He also generally participates in half the royalties earned from subsequent exploitation of the music in other media.

Film and TV composers with considerable clout (of which there is a handful in Canada) are sometimes able to negotiate a co-publishing agreement with their producers.

Since 1999, SOCAN's commercial television tariff has allowed a broadcaster-producer to obtain a complete "buy-out" of performing rights; i.e., the composer may license the music directly to the broadcaster, rather than through SOCAN. In theory, higher composing and synchronization fees would compensate the composer for forgone performing rights royalties, but, in practice, most composers are not in a strong bargaining position.

SOCAN was initially concerned that this option would erode the blanket licence system. However, the extent to which broadcaster-producers have availed themselves of this option has not seriously undermined the value of the commercial television tariff.

IV THE RELATIONSHIPS BETWEEN MAKERS OF SOUND RECORDINGS AND ...

A. Artists

In Québec, there are only a few independent “makers” who exclusively produce sound recordings. Many are the artists themselves who, with the advent of cheap recording technology, are able to produce their own first recordings and then “shop” them to record companies (or “labels”). If an artist engenders sufficient interest at a record company, the latter often signs him or her to an exclusive recording contract, under which the record company becomes the “maker”.

In Québec, the practice of independent makers licensing the sound recordings of their artists to the “majors” has been largely replaced by the establishment by these makers of their own independent labels. These labels are active across the musical spectrum, from punk-rock to classical music.

In the rest of Canada, independent labels such as Nettwerk, Linus, Sonic Unyon and Maple Music continue to attract artists and to license their recordings to or distribute them through the “majors” (Sony BMG, Universal, Warner and EMI).

The exclusive recording services of an artist are secured by the maker for a specified number of albums. In Quebec, the average number is three (3) and the term is fixed between three and seven years. In the rest of Canada, the term is relatively open-ended, and the number of albums deliverable is higher, although it has been falling since the recording industry began its decline in 2003.

In consideration of the grant of an artist’s exclusive recording services and the right to commercially exploit them, the maker agrees to pay royalties, normally based on a percentage of the Published Price to Dealers (“PPD”), a wholesale price. In Quebec, the royalty rates tend to be lower than in the rest of Canada. When the royalty basis was the retail price, a number of deductions were made: packaging, *free goods*, breakage, new media, etc. The move to a PPD basis has removed the makers’ needs for most of these deductions, although the new media deduction is often imposed to reduce the penny royalty payable on downloads.

Most recording agreements between artists and record companies impose few obligations on the record company, other than to pay for the recording and to remit royalties. Under the ADISQ/UDA Agreement (Quebec), the record company has 15 months following execution of

the recording agreement to produce a sufficient number of masters to constitute an album, failing which the artist is released from his contract.¹

The record company's obligation to pay royalties to the artist is generally subject to recoupment by the company of the recording and video costs, so-called "tour support", and the costs of outside publicity and promotion specialists. (The record company is normally responsible for general promotion and publicity costs: trade ads, radio tracking, etc.)

In addition to producing the sound recordings, the maker is responsible for graphic design of the packaging, manufacturing, promotion and distribution of the sound recordings. Many smaller record labels often include the cost of pressing and manufacturing. Even after recoupment, the artist does not become the copyright owner of his sound recordings.

The ADISQ/UDA Agreement stipulates certain minimum conditions which are worth noting, representing a levelling of the bargaining positions of the parties:

- any grant specifically allocated to a recording project must be credited toward production costs;
- master use license fees collected by the maker are deemed revenues for the purposes of recoupment (s. 8-3.04 and 3.05 – rarely applied)
- recoupment of the company's production costs must first come out of gross profits, deemed to be no less than 20% of the wholesale price in the case of a maker who is also a record label (s. 8-2.02)

The introduction of the new rights has not given rise to a contractual practice of including for recoupment purposes royalties to which artists are entitled. Indeed, the members of ADISQ, CRIA and CIRPA have filed an undertaking with the Copyright Board not to appropriate the performer's share of neighbouring rights royalties.

B. Authors/Composers

Makers/labels have to obtain mechanical reproduction licences from the author-composers whose musical works they intend to reproduce.

¹ ADISQ/UdA Agreement <http://www.adisq.com/doc/pdf/UDA-ADISQ-phono.pdf>, paragraph. 8-2.02. For an excellent comparison of contractual terms and those in the ADISQ/UdA Agreement superseding them, see: http://patrimoinecanadien.gc.ca/progs/ac-ca/progs/pda-cpb/pubs/audio_performers/5_e.cfm

As noted above, the CMRRA has no author-composer members. All dealings with record companies are through the author's publisher. SODRAC does represent author-composers directly. The royalty rate for each mechanical reproduction is established under the ADISQ/SODRAC Agreement: <http://www.adisq.com/doc/pdf/ADISQ-SODRAC-03-06.pdf>. The tariff is widely applied within the Quebec industry. The practice of granting reduced rates pursuant to exclusive recording agreements (the "controlled composition clause"), prevalent in the rest of Canada and in the United States, is rare in Quebec.

However, in Quebec, makers/labels will often impose on an artist who writes his own songs the requirement that he assign to the label's affiliated publishing house the copyright in songs that are recorded under the recording agreement. Such assignment is generally for the life of copyright throughout the world. In the rest of Canada, this practice has practically disappeared (with the exception of some very small labels).

The unequal bargaining power between new artists and their Quebec-based labels has resulted in the latter accumulating large publishing catalogues over the years. Unfortunately, many of these companies have disappeared and the catalogues are not being actively exploited.

In the past, the practice was justified by the same risk arguments used to justify recoupment practices and by the fact that radio airplay may be the only significant source of revenue with record sales being relatively low. However, the inherent risks have been significantly reduced through the advent of new funding opportunities for record production and promotion; and the advent of neighbouring rights royalties for makers removes the argument that they receive nothing from airplay of their sound recordings. It remains to be seen whether this long-standing practice in Quebec will be reversed.

C. Distributors

Since this paper was originally commissioned, Canadian Heritage has published the excellent and comprehensive paper by Larry Leblanc on the subject of Music Distribution in Canada. The reader is directed to the Department's web site where the Report may be downloaded at <http://www.pch.gc.ca/progs/ac-ca/progs/fcmus-cmusf/pubs/distribution/mdc.pdf>.