



CANADIAN ARTISTS REPRESENTATION /
LE FRONT DES ARTISTES CANADIENS

ADVISORY NOTE

Retransmission Rights

By Marian Hebb for CARO (Canadian Artists' Representation Ontario) © April
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The Free Trade Agreement between Canada and the United States has resulted in an amendment to Canada's Copyright Act. In the past, cable companies have picked up programs off the air and have retransmitted them without permission and without payment. But since January 1st, 1990, Canadian cable companies have had an obligation to pay the copyright owners whose works they retransmit to cable subscribers (by distant signals). The newly created retransmission right entitles a copyright owner -- **MAYBE YOU** -- to be paid a royalty, although it is subject to a compulsory licence which permits retransmission without specific authorization by the copyright owner.

A Claim Must Be Made Through a Copyright Collective

Retransmission royalties can only be claimed through a collective of rights holders and will be fixed by the Copyright Board following representations from cable companies, consumers and other interests prior to approving the royalties being claimed by the collectives set up to collect retransmission revenues.

Eleven groups of copyright owners have established collectives to claim royalties from retransmission by cable, including the producers and broadcasters who own copyright in the programs they have created, as well as others such as CAPAC and PROCAN representing composers, lyricists, and publishers of music.



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The Canadian Reprography Collective (CANCOPY), although its main mandate is to license photocopying, was concerned that authors' and publishers' interests in the new right would be jeopardised if a tariff were not filed on their behalf by the June 30th, 1989 deadline (in order to share in royalties becoming payable from January 1st, 1990). With the encouragement of the Writers' Union of Canada, the Association of Canadian Publishers, and the Playwrights' Union of Canada, CANCOPY filed a tariff and appeared before the Copyright Board to claim royalties for its affiliates. In February CANCOPY accepted an invitation to join the Canadian Retransmission Collective (formed by Canadian film producers to represent their interests before the Copyright Board) and withdrew from the hearings. Canadian Retransmission Collective ("CRC") will now collect royalties for CANCOPY in respect to the works of CANCOPY affiliates contained in the programs produced by CRC producers. CANCOPY was unable to make similar arrangements with Canadian Retransmission Right Association (primarily the Canadian Broadcasting Corporation) and Copyright Collective of Canada (the United States motion picture industry), both also from time to time representing programs containing the works of CANCOPY affiliates (although many fewer than CRC). CANCOPY will endeavour to make applications for retransmission royalties on a program-by-program basis where it becomes aware that a work of any CANCOPY affiliate has been retransmitted following broadcast by a member of either of these collectives.

Who is Entitled to Retransmission Royalties?

Clearly the copyright owners in programs will benefit most from the new right. But the new legislation will benefit all copyright owners, not just the owners of audio-visual programs. When a television program is transmitted, other works may also be transmitted, for example, a work of fiction or non-fiction on which a film has been based, a script, a poem which is recited, a sculpture or a mural. These other works -- PERHAPS YOUR WORKS -- are referred to as "underlying" and "embodied" works.

Retransmission rights are rights that are additional to the rights which must be acquired from you by a producer who wishes to incorporate your literary or artistic work in a film. Film rights remain with you. However, you cannot exercise your own retransmission rights. Retransmission royalties can only be collected and distributed by a collective. You should take care not to transfer or waive retransmission rights when you grant film rights to a producer.

Even if you have no works now which have been incorporated into a film, one day you may have. It is therefore important to sign up and essential for you to provide CANCOPY with details whenever you know that your work may appear or has appeared on television.

How Much Money Will Be Collected?

The legislation enacted by Canada provides only for payment for retransmission of distant signals. Retransmission of local signals is exempted from payment -- the justification for this being that programs can be viewed in the local area even without the assistance of cable. This exemption for local signals means that over 85% of the royalties are likely to go to American copyright owners.

Estimates of the total royalty revenues for 1990 range from 20 million to 80 million dollars. The Copyright Board has not yet finished its hearings which will determine this. The share of the new revenues which may reach authors is likely to be modest,

although potentially significant (and more than an author is likely to receive as a share of profits from a film production).

IF YOU HAVE LICENSED OR SOLD RIGHTS FOR A FILM OR TELEVISION PROGRAM, PLEASE SEND COPIES OF YOUR AGREEMENTS TO THE CANCOPY OFFICE IMMEDIATELY. (If you are a member of another collective which has authorized CANCOPY to represent it, you can send them via the office of your own collective.) The wording of the agreements may affect entitlement to payment and CANCOPY may not be able to make a claim on your behalf without copies of existing agreements. If there is no written agreement (for instance in the case of a painting in the background of a documentary film), say so! Or if you do not have copies of relevant agreements, please write to CANCOPY with any information regarding any of your works which you have licensed. All agreements and other information will be treated as confidential.

SIGN UP OR LOSE OUT!

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