

Retransmission Royalties Criteria Regulations
(SOR/91-690)

REGULATORY IMPACT ANALYSIS STATEMENT¹
(*This statement is not part of the Regulations.*)

Description

Under section 70.63 of the *Copyright Act*, the Governor in Council is empowered to make regulations establishing criteria to which the Copyright Board must have regard, amongst others, in setting retransmission tariffs. The regulations will apply to both the television and radio tariffs which will come into effect on January 1, 1992.

In a press release dated December 28, 1990, the Minister of Consumer and Corporate Affairs announced that the Government would introduce regulations establishing criteria to be considered by the Board in setting future retransmission tariffs. With the completion of one full cycle of the tariff setting process, the Government is now in a position to issue criteria to the Copyright Board. The primary purpose of introducing the criteria is to require the Board to have regard to certain key issues that the Government considers important.

In assessing the various criteria which could be adopted, the interests of copyright holders and users were balanced. The guiding principle was to allow the Board to set royalties that would be fair and equitable to both.

The criteria do not direct the Board toward a particular conclusion. The Board may, in its discretion, attribute such weight as it sees fit to each criterion, to the criteria in their entirety and to the evidence and the arguments of the parties. Consideration of the criteria will take place in a manner that allows each party to conduct its own case and present its evidence as it sees fit. Finally, the criteria are flexible enough to endure over time.

Specifically, the first criterion requires the Board to have regard, when setting retransmission tariffs that are fair and equitable in Canada, to the royalties paid in the U.S. under the U.S. retransmission regime. The second criterion requires the Board to have regard to the effects of the *Broadcasting Act* and regulations made thereunder on the retransmission of distant signals. Finally, the third criterion requires the Board to have regard to royalties and related terms and conditions in written arguments that have already been arrived at between the parties and that are submitted to the Board in their entirety.

Alternatives Considered

There are no alternatives to the adoption of the regulations since the Government instructed that such regulations be introduced.

Consistency with Regulatory Policy and Citizens' Code

The Departments of Communications and Consumer and Corporate Affairs had already made their annual submissions to the Federal Regulatory Plan in the fall of 1990 at the time the decision was made to introduce the regulations. The government's announcement of its intention to introduce the regulations establishing criteria did not occur until December, 1990, after the 1990 regulatory plan had been issued.

Anticipated Impact

The parties that will be directly affected by the regulations will be cable operators and other retransmitters of distant terrestrial radio and television signals and rights holders of copyrighted works carried by those signals.

The precise impact and total cost of the regulations to these groups cannot be determined in advance.

Consultations

Comments were received from 18 collecting bodies representing right owners, from retransmitters, and from three provincial governments on the proposed regulations published in the *Canada Gazette* Part I on June 29, 1991. In general, the parties did not take issue with the subject-matter of the criteria proposed, but suggested changes that would better reflect their respective economic interests.

The Government is satisfied that the regulations as drafted provide appropriate criteria for the Copyright Board. It will therefore make no changes in the regulatory text.

ⁱ Published in the *Canada Gazette* Part II on December 18, 1991.