



September 6, 2017

[*CB-CDA 2017-095*]

File: SODRAC Tariff 5 – Reproduction of Musical Works in Cinematographic Works for Private Use or for Theatrical Exhibition (2009-2014, 2015, 2016)

NOTICE OF THE BOARD

On May 20, 2016, SODRAC and CAFDE jointly requested that the Board certify SODRAC Tariff 5 based on mutually-agreed terms and conditions (the “Settlement Tariff”) for 2009-2016. On June 8, 2017, MPA-C wrote that they did not have any comments with respect to the Settlement Tariff. Royalties under the Settlement Tariff are the greater of 1.2 per cent of revenues or 8¢ per copy for the selling or renting of DVDs of audiovisual works for private use. Royalties under the Settlement Tariff are different from SODRAC’s proposed rates for 2009-2016 as published in the *Canada Gazette* for those years.¹ In particular, rates under the Settlement Tariff exceed the proposed rates in 2014-2016, in some circumstances. For example, a distributor that uses no more than 10 minutes of music may pay 6.58¢ per copy according to the 2016 proposed rates, but has to pay at least 8¢ per copy for the selling or renting of DVDs of audiovisual works according to the Settlement Tariff. The existence of these circumstances raises issues that require further examination by the Board. As such, the Board puts the following questions to the parties.

Questions to CAFDE:

1. To the best of your knowledge, what portion of the industry (audiovisual distribution market covered under SODRAC Tariff 5 for private use) does CAFDE represent?
 - 1.1. In terms of the number of distributors;
 - 1.2. In terms of the royalties paid to SODRAC under SODRAC Tariff 5.
2. Please provide the Board with the governance structure of CAFDE. In addition, please answer the following question:
 - 2.1. Were the interests of distributors with low revenues well represented in the negotiations leading to the Settlement Tariff? Explain.
 - 2.2. Were the interests of distributors whose films use no more than 10 minutes of SODRAC music well represented in the negotiations leading to the Settlement Tariff? Explain.

¹ SODRAC Tariff 5 proposed rates for 2009-2016 are published at: (i) *Canada Gazette*, April 26, 2008 (for 2009-2012), (ii) *Canada Gazette*, April 28, 2012 (for 2013); (iii) *Canada Gazette*, May 4, 2013 (for 2014); (iv) *Canada Gazette*, June 7, 2014 (for 2015); and (v) *Canada Gazette*, June 6, 2015 (for 2016).

- 2.3. Is the Settlement Tariff binding on all CAFDE members?
 - 2.4. Are there CAFDE members not subject to the Settlement Tariff for the activities covered under SODRAC Tariff 5?
 - 2.5. Were all CAFDE members consulted on the Settlement Tariff? What was the result of the consultation?
 - 2.6. Please list all CAFDE members for the years 2009-2016, broken down by year.
3. Please discuss fairness issues in regards of distributors not represented by CAFDE, who may prefer SODRAC's proposed rates over the Settlement Tariff.

Questions to SODRAC:

1. How much royalties did SODRAC receive for the activities covered under SODRAC Tariff 5 for the period 2014-2016, broken down by year?
2. To the best of your estimation, how much of the royalties in Question 1 are from:
 - 2.1. CAFDE members only?
 - 2.2. non-CAFDE members?
 - 2.3. agreements between SODRAC and distributors (excluding the Settlement Tariff)?
 - 2.4. the Settlement Tariff (if any)?
3. Please identify the number of Canadian distributors known to you that:
 - 3.1. will be subject to SODRAC Tariff 5 (CAFDE members only);
 - 3.2. will be subject to SODRAC Tariff 5 (excluding CAFDE members);
 - 3.3. are subject to a separate agreement with SODRAC;
 - 3.4. require neither SODRAC Tariff 5 nor a separate agreement.
4. Please supply to the Board all agreements between SODRAC and distributors covering the subject matter of SODRAC Tariff 5 for the period of 2009-2016, indicating which ones are with CAFDE members.
5. Please discuss fairness issues in regards of distributors not represented by CAFDE, who may prefer SODRAC's proposed rates over the Settlement Tariff.

Parties shall file answers to the above questions with the Board by no later than **Friday, October 6, 2017**.



Gilles McDougall
Secretary General