



***Issues concerning the SODRAC-ADISQ framework agreements for phonograms (CDs) and videograms (DVDs)***

Over the past 20 years, we have developed, negotiated and entered into various agreements with ADISQ governing the use of SODRAC members' works. Today, however, ADISQ is seeking to undermine these agreements and to significantly reduce the royalties payable to you. Despite the efforts of our negotiating committee to reach a reasonable solution, we have been unable to renew the SODRAC-ADISQ framework licensing agreement for phonograms (CDs), which expired on December 31, 2008.

Given this impasse, both parties launched arbitration proceedings with the Copyright Board of Canada with a view to determining the terms and conditions applicable to reproductions of phonograms (CDs), videograms (DVDs) and CD/DVD sets. On April 6, 2009, the Copyright Board issued an initial **provisional** decision maintaining the terms of the expired SODRAC-ADISQ agreement and of the interim agreement on videograms. Although provisional, this decision does respond to one of our requests by enabling SODRAC members to continue to receive compensation for use of their works.

We do not know what the Copyright Board's final tariff rates for phonograms and videograms will be. Since the new rates will apply retroactively, we have decided to exercise caution by establishing a reserve fund using the phonogram royalties. Accordingly, until such time as the Copyright Board issues its final decision, SODRAC will withhold 10% of the royalties payable in the event that our arguments are rejected and the new official rates are reduced.

For example, the tariff rate for regular products is currently \$0.091. Instead of paying you royalties at this rate and then having you repay them if the Copyright Board's decision is not in our favour, we have decided to set the rate at \$0.081. If ADISQ's proposals lead to a reduction in the rate, our interim payments will be akin to an advance on the royalties subsequently payable to you. If, however, the Copyright Board decides in our favour and the royalty rate is increased, we will pay the full amount owed to you in accordance with the adjustment criteria determined by the Copyright Board.

As regards videograms, given that ADISQ is proposing that the DVD royalties for CD/DVD sets be eliminated altogether and since the interim agreement with ADISQ stipulates that DVD royalties constitute an advance payment, the royalties on these products will be paid when the Copyright Board issues its final decision (except for the CD royalty portion, which will be paid to you in accordance with the phonogram terms and conditions).

The stakes in these arbitration proceedings are very high. For example, ADISQ is proposing that phonogram royalties be calculated based on a percentage of the wholesale price. ADISQ has cited a deteriorating economic climate, declining CD sales and lower retail prices. It should be noted, however, that SODRAC has previously called for royalties to be based on wholesale prices—a proposal that ADISQ rejected. Yet due to the rising popularity of online music and retail prices presumably falling, ADISQ is now attempting to reduce these royalties.

ADISQ is seeking an additional tariff rate reduction as a result of “controlled composition” clauses. It is also proposing a royalty exemption for free goods (albums provided to retailers at no charge). By calling into question the current royalty system and by attempting to reduce already discounted rates, ADISQ hopes to substantially reduce the royalties payable to you for use of your works.

SODRAC is firmly opposed to ADISQ’s proposals. We believe that ADISQ’s members should continue to pay royalties on a per-work basis consistent with the realities facing the Quebec recording industry. In our view, the current royalty rates should not only be maintained—they should be increased, based on the evidence we will be presenting to the Copyright Board.

As regards the interim videogram agreement with ADISQ (which stipulates that the royalties for these products constitute an advance payment), the 5% rate based on the wholesale price has not been changed and will remain in effect until the Copyright Board issues its final decision. However, SODRAC has always maintained that payments for these products must be based on a per-work royalty. Our DVD proposal provides for a sliding-scale royalty if more than 15 works are involved, in addition to the application of a synchronization royalty. In our view, as regards CD/DVD sets, the royalty for both elements should be paid at a per-work rate. In this instance, ADISQ is proposing that DVD royalties for CD/DVD sets be eliminated altogether. And given DVDs’ increased recording capacity, ADISQ’s wholesale price percentage approach would have the effect of, among other things, reducing the royalty value of musical works to below the 1989 level.

In our attempts to renew the framework agreement with ADISQ and to reach a consensus on videograms, our goal has been and will continue to be to defend SODRAC members' interests by maximizing the royalties they receive. In our view, it is essential that fair and reasonable payment be made when your rights are exercised, consistent with the realities facing the Quebec recording industry.