



Re: Pending lists

Dear SODRAC Member:

No doubt you have heard about the class action lawsuit launched in Canada by the estate of jazzman Chet Baker and about the NMPA Late Fee Program recently established in the United States. In both cases, the issue at stake is “pending lists”—official lists of musical works contained in sound recordings and for which licences were never obtained. Today, we would like to update you on this issue by outlining efforts to collect unpaid royalties owed to SODRAC members.

Canada

In August 2008, the estate of Chet Baker filed a proposed class action lawsuit against the Canadian divisions of the four major record companies—EMI Music Canada Inc., Sony BMG Music (Canada) Inc., Warner Music Canada Co. and Universal Canada Inc—with a view to challenging the pending list system and collecting unpaid royalties owed to rights holders for use of their musical works in sound recordings.

This is a very serious issue. For more than 20 years, SODRAC has taken all possible steps to reverse the increasing reliance on pending lists. In addition to the licences we issue, we are always striving to obtain clear information from the majors allowing us to rapidly identify and pay all rights holders for use of their works. SODRAC also devotes extensive time and resources to analyzing pending lists, but all too often the information provided is fragmentary and does not enable us to identify the rights holders.

In its class action lawsuit, the estate of Chet Baker also named SODRAC and the Canadian Musical Reproduction Rights Agency (CMRRA) among the defendants. No financial claim has been filed against us; the purpose of naming us as defendants was apparently to ensure that collective management societies are involved in the process.

Reflecting its desire to resolve this issue and to put an end to the practice of using musical works without obtaining licences or paying royalties, SODRAC is cooperating fully in this process, including by entering into a formal cooperation agreement with the plaintiffs. The issues at stake are crucial because a large number of recordings are released without authorization, even though Canadian record companies are required to obtain mechanical

licences for recordings produced and marketed in Canada, not only under federal law, but also in accordance with industry practices and various agreements. SODRAC is working closely with the parties involved, but the amounts at stake in this class action lawsuit cannot yet be confirmed.

United States

In the United States, where unpaid royalties associated with pending lists total approximately US\$275 million, the National Music Publishers' Association (NMPA), the Harry Fox Agency (HFA) and the Recording Industry Association of America (RIAA) recently established the NMPA Late Fee Program to ensure payment of unpaid royalties owed to publishers and collective management societies for use of works from their repertoires in the United States from 2000 through 2008.

In accordance with the first step of the NMPA Late Fee Program, SODRAC has registered on behalf of all of its members (authors, composers and publishers) in order to collect royalties owed to SODRAC members (you are not required to take any action in this regard). Under the Program, accumulated royalties will be distributed in two stages among the companies and music publishers that have registered, commensurate with the United States market share of each registrant's repertoire during the period in question.

We hope that, in addition to ensuring payment of royalties, the class action suit in Canada and the NMPA Late Fee Program in the United States will end reliance on pending lists and pave the way for new practices that uphold the rights of SODRAC members. Needless to say, we will keep you informed of any new developments in this area.

If you have any further questions, please feel free to contact us.

Yours truly,

Alain Lauzon
General Manager

alauzon@sodrac.ca
(514) 845-3268, ext. 243