

NEWSLETTER

An Entertainment Industry Organization



Canada - Winds of Change in Music Licensing

by David A. Basskin
President, CMRRA Ltd.

50th Anniversary

The President's Corner

Teri Nelson Carpenter

Last month we began an exciting new year for the CCC, which will culminate in our 50th Anniversary in May, 2004. We were fortunate to host a panel of distinguished legal experts at the first dinner meeting of the year. They explored the latest developments in legislation and the recording industry. Michael Morris and Ed Arrow did an excellent job at moderating that panel. As we will do at every meeting, we saluted a past president of the CCC at the September meeting: Jay Cooper, who was also a panelist. Jay shared his thoughts of and experience with the CCC and encouraged everyone to continue their support of this valued organization. Thank you, Jay, for your insight and kind words. Tonight's panel will be moderated by another past president of the CCC, Steve Winogradsky. We will salute Steve at this meeting and look forward to hearing his ideas and history with the CCC. Tonight's panel is entitled "O Canada", as our panelists hail from our neighbor to the north, Canada. David Basskin from the CMRRA and Paul Spurgeon from SOCAN will join us for this evening's discussion.

Heard anything about Canada lately? Well ... according to the papers, it's a vast frozen wasteland of mad cows, SARS victims and runaway productions. Okay, that's all true. But it's not the whole story! For one thing, SARS is history. For now, at least.

You probably know CMRRA as Canada's mechanical licensing agency. We've been around since 1975, and we represent the majority of music publishers doing business in Canada. If you're really well-informed, you'll know that we were responsible for getting rid of Canada's long-established statutory two-cent mechanical license and rewriting the rule book: rates are higher than ever, and we continue to make powerful inroads into controlled composition clauses.

But of late there's been much more happening! CMRRA has entered several new areas of activity, and we've made some unique breakthroughs. Without further ado, here's the news:

Broadcast Mechanical Tariff

Turn back the clock at any radio station and you'd see a scene out of "WKRP In Cincinnati": an operator in front of a console

and a DJ in the booth - or maybe one person doing both jobs, actually spinning discs (remember them?) or tapes. Drop by a radio station today and everything's changed - it's all computerized, just like most other businesses.

It's rare day indeed when a DJ loads a CD and presses "play". Today, virtually every radio station puts its entire music library on a hard disk (often in MP3 format) and organizes its entire schedule - the music, commercials, news, sports, traffic reports - using software. The software even picks the songs on the basis of the station's music format as programmed by its Program Director.

Why have radio stations gone this route? That's easy: it saves money and it lets them operate with unprecedented efficiency. No floor space is taken up for a music library, every song is available instantly, no CD's or albums get lost, broken or go missing. Every song goes out exactly when it's supposed to, and the station can even be operated without human operators! In fact, many large broadcasters run several radio stations out of a central operations centre.

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Mechanical Licensing in Canada

by Ed Arrow

Membership Opportunities

CORPORATE MEMBERSHIPS: \$250

Starting new this year, we are offering Corporate Memberships. Corporate Sponsors can send up to 10 people to each dinner seminar at the member dinner price. In addition, each member can bring a guest at the discounted member rate. A Corporate Sponsor can save \$60 per meeting, with a potential savings of \$480 for the year.

INDIVIDUAL MEMBERSHIPS: \$55

Enjoy each dinner seminar at the special member rate of \$28; the non-member rate is \$35

MONTHLY DINNER MEETINGS:

Held once a month, generally the 3rd Tuesday of each month
6:30 p.m. Cocktails & Networking
7:00 p.m. Dinner & Meeting

CONTACT INFORMATION

P.O. Box 57962
Sherman Oaks CA 91413

Phone: 818-379-3312

VISIT OUR WEBSITE

www.theccc.org

Here you will find the latest information on upcoming meetings and other events. Make meeting reservations, join, or renew your membership online.

NEXT MONTH

November 18th
Film & TV Sound Tracks

Mechanical licensing in Canada used to be similar to mechanical licensing in the U.S. The Canadian copyright law provided for a per song mechanical rate, and a non-exclusive licensing agency, The Canadian Music Reproduction Rights Agency Ltd. (CMRRA), handled most of the licensing on behalf of the publishers.

In 1988 a crazy thing happened. The Canadian copyright law was amended and the statutory mechanical rate was abolished. This could have caused anarchy in the mechanical licensing process as each mechanical license would have been subject to individually negotiated mechanical rate. Fortunately, publishers and record companies realized that they had to come to some sort of an agreement which would set mechanical rates. Negotiations resulted in an agreement dated October 1, 1990 between the CMRRA on behalf of its publisher principals, the Canadian Recording Industry Association (CRIA), and various Canadian record companies. The 1990 agreement established a specific rate for mechanical licenses as well as other procedures and limitations in respect of Canadian mechanical licensing.

The October 1, 1990 agreement has since been replaced by a new agreement dated January 1, 1998. Below are some of the major provisions:

- The mechanical rate for recordings sold or distributed in the applicable periods are as

follows (stated in Canadian Dollars):

- January 1, 1998 - December 31, 2000: \$.071 for 1st five minutes and \$.0142 per each additional minute.

- January 1, 2000 - December 31, 2002: \$.074 for the 1st five minutes and \$.0148 per each additional minute.

- January 1, 2002 - December 31, 2004: \$.077 for the 1st five minutes and \$.0154 per each additional minute.

- The impact of Controlled Compositions Clauses is limited.

- The impact of aggregate caps is limited. The minimum per song royalty payable shall be no less than 50% of the under five minute rate. For albums released since October 1, 1990 the album cap will be no less than 12.

- The impact of free goods provisions is limited. Royalties on free goods will be paid at the greater of 85% or the percentage stated in the applicable Controlled Compositions Clause.

- Rate reductions are granted for budget recordings. 75% of the rate otherwise payable for recordings selling for 55% or less than front line product.

- Reserves shall be liquidated within 5 quarters.

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That's all very interesting, but what does it have to do with music licensing? Well, the entire system depends on the use of copies of songs which reside on the station's hard disk file server. The right to copy songs belongs to their publishers, and for years radio stations paid nothing for the right to make these copies.

CMRRA wasn't satisfied with this state of affairs, and in 2000 we filed a tariff with the Copyright Board of Canada seeking compensation for the use of these copies. The tariff would come into effect from 2001 onwards, and we finally had our hearing before the Board in 2002. Nearly a year later, the Board issued its decision, and it's great news for our clients. Radio stations will now pay 0.8% percent of their revenues in return for the right to make and use copies of our songs (there are lower rates for very small stations).

We've already collected more than \$14 million as a result of this decision, and we're coming up to our first distribution. This is a "license it or lose it" kind of right. Due to a curious aspect of Canadian copyright law, broadcasters enjoy an exemption for works that are not made available through our collective license. Since they're going to copy your songs in any event, it's a no-brainer to join CMRRA for this purpose. We don't "tie" this service to any of our other licensing programs, so if you haven't yet joined the thousands of music publishers and copyright owners who have signed up, we'd love to hear from you. You can download our brochure from our web site (<http://www.cmrra.ca>) or just

give us a call and we'll be happy to answer your questions.

Private Copying Levy

Canada's copyright law was amended in 1997 to add a levy on the sale of blank audio recording media, after years of lobbying by the music industry. The levy is applicable to analog and digital media, including cassettes, CD-R's and Mini-Discs. We're now waiting for the results of a hearing held last January for a new tariff which will, we hope, extend the levy to include MP3 devices such as the Apple iPod, recordable DVD's and other media.

The levy is collected for the benefit of songwriters, music publishers, performers and producers of recordings. CMRRA, along with other related collectives, is a member of the Canadian Private Copying Collective (CPCC), the "umbrella" collective which argues the levy before the Copyright Board of Canada and collects the levy.

The proceeds of the levy have been impressive! More than \$50 million has already been collected, and distributions are now under way. If you're a music publisher whose songs have received airplay or been sold on CD in Canada, you probably qualify for a piece of the proceeds. Please visit our web site or contact us for information on how to get started!

Online Licensing

There are far more unanswered questions than answered ones in the world of online music, but CMRRA has managed to make major progress: on October 8, we signed our first agreements for online licensing of streaming and downloading services doing

business in Canada. Our deal, however, differs radically from that which currently prevails in the USA.

At present, the record companies who are licensing their recordings to online services in the USA have also undertaken to obtain and deliver mechanical licenses to the online services. Effectively, they're "sublicensing" the mechanical licenses they obtained from the original publisher. When we began our negotiations with the labels and the services, this is the situation they tried to force on us.

What? What's wrong with sublicensing? Plenty.

To start with, we believed it was vital to maintain a direct contractual relationship between ourselves and the ultimate users of our clients' rights. Interposing the record companies between us would deprive us of the right to conduct effective audits, and would render us unable to obtain direct information about rights usage and sales.

It was a tough, long negotiation, but we finally succeeded in our opposition to sublicensing; the ultimate deal would allow us to license services such as MusicNet, Napster (the former pressplay) and others directly.

The services had a problem, though: they didn't want to be in the business of keeping track of who owned which song. They had no expertise in this kind of licensing or administration, and they didn't know how they could meet our standards. Finally, we came up with the answer: CMRRA will be taking on the job of monitoring the services' song usage, and we'll be maintaining the licensing data and producing the royalty statements.

It's a breakthrough in rights administration. Here's how it will work:

- The services will advise us of all the songs they add to their repertoires

- CMRRA will research song ownership and issue licenses to the extent we represent the songs being used. We'll keep track of the songs for which the services haven't obtained licenses - more on this in a moment.

- At the end of each quarter, the service will advise us of all their activity in the past three months, with full information about all the songs that have been streamed or downloaded to their Canadian customers. We'll identify the percentage of such usage that's represented by CMRRA-licensed songs and call that our "market share".

- The royalty will be determined by multiplying the service's income during the quarter times the royalty rate, times our market share, and the service will pay us that amount.

- CMRRA will produce royalty statements for our clients from this data, and distribute payment.

- The unlicensed songs will go onto a "pending list" for the service, but the service will retain liability for the use of unlicensed songs. CMRRA isn't providing them with any indemnity, and the risk remains that of the service. (An important difference between Canadian and US copyright law is that one co-publisher of a song can't bind the interests of another. A song isn't fully licensed until the user has licenses totaling 100% of the song ownership.)

- CMRRA will make the pending lists available to the public on our CMRRA Direct web site, much as we now make record company pending lists accessible to our clients on the mechanical licensing side.

We think this is the way licensing and royalty accounting

should be done. The details of song ownership are complex, and they change frequently. Our experience on the mechanical side has taught us that record companies do a haphazard job (at best) of changing their royalty payment systems to take ownership changes into account. Getting these details right matters far more to publishers than to users - and this new system puts the job in the right hands.

Now, about that royalty rate... We knew, long in advance of the negotiations, that the structure and amount of the royalties to be paid for streaming and downloading would be the most complex and controversial aspect of this negotiation. And we've long believed that the best way to fight unlicensed, unauthorized downloading (call it by its right name: theft!) are legitimate, licensed online services.

That's why we agreed to an unprecedented solution: the agreement we've entered into provides that we've granted the rights on behalf of our clients to online services, and that the services will pay us an advance. But the actual rate negotiation will form "Phase II" of this process. We've agreed to attempt a voluntarily negotiated agreement on the structure and amount of the royalties for six months. If, after that effort, we still have no agreement, we'll go to private, binding arbitration. The agreement runs only to the end of 2004, so we've got to get it right as quickly as possible.

The rate negotiation will doubtless be intense and combative - but the fact that we've now entered into agreements with online services means that there's finally going to be a legitimate, licensed alternative to the ills of unlicensed downloading. That's no small achievement.

Most of CMRRA's clients, including the multinational publishers and hundreds of others, have now signed up to have their songs included in this program. If

you're a CMRRA client already and haven't joined up, we urge you to do so as soon as possible so that we can get your songs licensed. If you're not yet a CMRRA client, you can join up for this service only - or for any other combination of the services we offer.

We welcome your questions, and your participation in this breakthrough licensing program. At CMRRA, our motto has long been, "We're in the client service business." We'd love to be of service to you - just give us a call at (416) 926-1966 or visit us on the web.

A Short List of writers and artists from Canada.

Bryan Adams
Bachman Turner Overdrive
Barenaked Ladies
Terri Clark
Leonard Cohen
Holly Cole
Crash Test Dummies
Celine Dion
Nelly Furtado
The Guess Who
Dan Hill
Diana Krall
Avril Lavigne
Gordon Lightfoot
k.d. Lang
Sarah McLachlan
Joni Mitchell
Alanis Morissette
Anne Murray
Nickelback
Oscar Peterson
Rush
Shania Twain
Simple Plan
Hank Snow
Sum 41