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**Copyright Hearing: Radio stations should pay less for declining value of music, broadcasters say**

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By Laurel Hyatt

OTTAWA - Listening to music on radio has declined, so commercial stations should pay lower music tariffs, the Canadian Association of Broadcasters argued in front of the Copyright Board on Tuesday.

While the "gross use" of music is the same as in 2001, there has been a decline in actual listening to music since then, the CAB said. It's calling for the board to reduce total tariffs paid to songwriters, musicians, and other artists to 2.9% of stations' revenues, not including the tiers for revenue levels or music usage. If the board decides against that, then the CAB has proposed individual rates for each collective that would total 5.18%. Right now, stations pay more than 7% in royalties, totaling almost $70 million a year.

The Copyright Board is holding a two-week hearing that consolidates requests from three songwriters', performers', and publishers' collectives to raise their existing tariffs (SOCAN, NRCC, and CSI – a coalition of SODRAC and CMRRA), and two groups that have no existing tariffs and are seeking new royalties (AVLA/SOPROQ, representing record labels, and ArtistI, representing performers). The CAB was successful in persuading the board to hold the first-ever consolidated radio tariff hearing, dealing with all the collectives at once instead of individually.

In their opening statements, the collectives argued with the CAB's interpretation of the data, saying that commercial stations are playing more music than ever before, when measured as a share of overall airtime (80%). Since music is more important to radio, the industry should pay more for it, they argued. "Music has been undervalued, and recent (copyright) rate increases have been too low," said Stephen Zolf, lead counsel with AVLA/SOPROQ.

"The industry is using more music now than it ever has in the past," added Gilles Daigle, representing SOCAN, the Society of Composers, Authors and Music Publishers of Canada. Reducing the rate to a total of 2.9% for all collectives "simply defies common sense," he said.

One CAB statement of case document says that a study it commissioned found that only about 67% of total radio listening is to music. For example, while the morning drive period attracts much higher listenership than other times, that slot has the lowest rate of music use on the programming clock.

Zolf also argued that radio derives great benefits from making copies of music that it uses in its operations. The "efficiencies" of making multiple copies lead to increased profits, Zolf said. The collectives are seeking these reproduction rights, which the CAB opposes. The association argues that making a copy of music is a crucial part of radio operations, such as for back-ups, and that most stations today download their music electronically, which it does not consider to amount to reproduction.

CAB lawyer David Kent also put forward the industry's contention that there should be one tariff to be shared among all collectives, arguing that music represents one "input" to radio programming. "We don't mind how the collectives share it," he said. The value of music to radio does not increase if there are more rightsholders, he said. He likened it to a computer chip, arguing it's worth the same to Dell whether the chip is covered by 1 patent or 100.

Glen Bloom, lawyer for NRCC, the Neighbouring Rights Collective of Canada, representing performers, said Kent's computer chip analogy doesn't work and shows a "fundamental misunderstanding" of intellectual property protection. Adding a fifth patent doesn't make the fees paid to the first four patent holders go down. He asked the board not to grant the radio industry a "windfall" by reducing tariffs. Instead, as more rightsholders come forward in the music industry, radio should accept that it should become more costly to play music, Bloom said.

The CAB says in a statement of case that the AVLA/SOPROQ and ArtistI proposals are "stunningly overreaching" and are a "complete avoidance of the real world issues that are affecting the sound recording industry." As music prices are tumbling because of Internet downloading, the record labels are turning to radio to try to make up for revenue shortfall by requesting a tariff, the CAB argues.

"The collapse of retail music prices and technological advances have led makers of sound recordings to shed costs, reduce payments to artists and otherwise reduce the costs of making, promoting and distributing the sound recordings they now wish to license under tariff," the statement says. "These reduced costs should support price declines in the adjacent radio market. Instead, the labels ignore them and instead seek a price increase of about $55 million per year."

The record labels are also ignoring the "massive promotional benefits" they get from radio airplay, the CAB statement says. The fact that labels "expend great efforts and large amounts of money just to get their sound recordings" on air, and that there is a "massive and ever-increasing oversupply to music" that is "competing for very few airtime slots" shows that getting airplay is of great benefit to the recording industry.

The CAB also asked the Copyright Board to establish a much lower tariff for talk stations, most of whom air less than 5% of programming as music, it says.

In its campaign lobbying MPs against the new and higher tariffs, the CAB called for an end to "copyright pile-on."

The hearing is expected to finish by December 17. The board will not only have to determine the tariff rate and term length, but whether it will combine the collectives' tariffs into one as the CAB requested. It's expected a decision could take several months.

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