SOCAN

REPRODUCTION RIGHTS FOR SCREEN COMPOSERS

SOCAN has successfully expanded into reproduction rights, also known as mechanical rights. Administering both the performance right and reproduction right puts SOCAN in an advantageous position to **increase efficiencies, leverage licensing relationships** and **reduce operating costs**, to the benefit of all SOCAN members and clients.

Most recently, SOCAN became the only music rights organization collecting reproduction rights royalties on broadcast incidental copies. SOCAN has agreements in place with all Quebec television broadcasters, certain Bell and Corus channels and now the CBC via the recent Copyright Board of Canada ruling in July. With the Copyright Board ruling SOCAN is now seeking agreements with all remaining unlicensed AV broadcasters for the use of broadcast incidental copies.

I am already a member of SOCAN for performing rights. Does this mean that SOCAN now administers my reproduction rights as well?

Not without your express consent. If you choose to have SOCAN administer your reproduction rights together with your performing rights, you need to assign those rights via a Reproduction Rights Representation and License Agreement.

I was (or still am) a SODRAC member. Does this mean that SOCAN now administers my reproduction rights as well?

SOCAN acquired SODRAC back in 2018, but your transfer to SOCAN Reproduction Rights is not automatic. We need your express consent to transfer your rights.

If you choose to have SOCAN administer your reproduction rights together with your performing rights, you need to assign those rights via a Reproductions Rights Representation and License Agreement. This will simultaneously terminate your SODRAC membership. There will be no gap in the management of your reproduction rights, and you will be benefit with more advantageous administration fees than SODRAC.

Do I have to have a publishing company for SOCAN to administer my reproduction rights?

No. As long as you fully control your reproduction rights and have not assigned them to any third party, you are able to join SOCAN for Reproduction Rights. That said, you may wish to create your own publishing company for fiscal or strategic reasons, and then join SOCAN Reproduction Rights under your publishing company

The AV producer I am working with is asking me to assign all of my rights to its production company? Am I protected by SOCAN?

This is often called a buy-out. You are being asked to consent to clauses in your contract that surrender full control of your work upfront in exchange for a lump sum payment. By doing so you are waiving any share of the future income that might be derived from all types of exploitations of the work, including broadcast incidental copies, for the entire duration of the copyright.

SOCAN is internationally recognized as the sole party negotiator for performance rights on behalf of its members. By doing so, SOCAN protects individual bargaining parties and promote balanced outcomes in negotiations between rightsholders and users such as broadcasters and video-on-demand platforms. SOCAN can now also represent you exclusively for your digital and traditional AV rights for reproduction rights. By successfully negotiating with users for performance rights and reproduction rights royalties, SOCAN makes it easier for its members and clients to retain their right to be paid these royalties when they negotiate directly with producers since the user has already agreed to pay them to SOCAN.

What are "broadcast incidental copies," which SOCAN seems to be able to collect in addition to performance royalties?

Every time an audiovisual work is copied, so are the musical works embedded in it. Broadcast incidental copies are post-synchronization copies of the music, made each time the audiovisual work as a whole is copied. Broadcast incidental copies are not a synchronization right. Synchronization is the process of incorporating a musical work into an audiovisual work.

Broadcast incidental copies are essentially copies of audiovisual content that contains copyright music, where the copies are made for internal use to facilitate the actual broadcast on different platforms. For example, a film/TV program is delivered to a broadcaster and several internal copies are made in order to facilitate that program being offered on TV, online, on demand, archives, mobile devices and so forth.

These copies can only be deployed using digital servers and reproduction technology triggering the reproduction right.

The Supreme Court of Canada has reaffirmed that a license is required for broadcast incidental copies, in addition to a synchronization license. Both licenses are distinct, and a broadcast incidental copy is therefore an additional reproduction right royalty to complement your performance royalties.

Where are reproduction royalties for broadcast incidental copies being collected? In Canada? Europe? In the United States?

SOCAN is presently collecting broadcast incidental copies licenses from the following Quebec-based broadcasters:

- Bell media (Canal D, Canal Vie, Investigation, Vrak and Z Télé)
- Corus Entertainment (Cartoon Network, Historia, Disney, Série+, Télétoon and teletoon)
- TVA Group (TVA, Addik TV, Casa, Évasion, LCN, Moi & Cie, Prise 2, TVA Sport, Yoopa and Zeste)
- CBC/SRC (ARTV, Bold, News Network, RDI, Documentary and Explora)
- Télé-Québec
- TV5 (Canada and World)
- V (including Musique Plus and Musimax)

SOCAN is also collecting royalties for broadcast incidental copies from all of its counterparts in Europe, through our reciprocal agreements with sister-societies. SOCAN is not collecting royalties for broadcast incidental copies in the United States, as this right is not yet recognized there, nor collected by our US foreign counterparts. SOCAN is, however, collecting on reproduction rights in the United States for digital audio and AV platforms and is presently negotiating with all major video-on-demand providers for reproduction rights.

Why are broadcast incidental copies royalties only being collected from Quebec-based broadcasters?

In Quebec, there is a legal act in place surrounding how producers can engage with and retain the professional services of any artist, including songwriters and composers. This act allows the introduction of a reserve clause into all commissioned standard contracts and making it possible for SOCAN to collect on subsequent reproductions made the production house.

In negotiations with CBC, the existence and value of the broadcast incidental copy was rejected by CBC and all negotiations were halted until the matter was resolved in July 2020. SOCAN will once again engage in negotiations with the remaining Canadian roadcasters.

What is a reserve clause? Where can I find one?

Synchronization licenses in the film/TV market are negotiated in many ways, one of which is a full buyout. Some copyright owners can reserve some rights. This reservation happens when the TV producers acknowledges and agrees that your license to them does not extend to any subsequent third-party reproduction. Consequently, any third parties shall be required to pay or negotiate royalties payable to SOCAN or to one of the foreign companies via SOCAN reciprocal agreements.

SOCAN is in the process of defining different versions of reserve clauses that you can adapt to your specific contracts.

Will AV producers be familiar with reserve clauses? How likely they are to accept this?

The buyout depends entirely on the bargaining power of creators, particularly those in their early stages of their career.

If creators want to earn a living from their work they don't want to be excluded from royalties earned on the larger platforms that represent a large part of the AV market. They can only hope to do so under the rules laid down by the producer who, typically, has the bulk of the negotiating power.

Reserve clauses have been accepted in Europe and in Quebec mainly because the applicable legislation in those territories has been more protective of creators in general.

AV Producers based in English Canada may not be as familiar with reserve clauses and may resist it at first. And the ever-present threat of a boycott is still a reality. By successfully negotiating with the end users of the productions, e.g., digital AV and broadcasters for performing rights and reproduction rights royalties, SOCAN makes it easier for its members to retain the right to be paid these royalties when in negotiations with producers since the end-user has already agreed to pay them to SOCAN.

It is to the benefit of all screen composers to move away from the buyout model, with respect to reproductions rights, and towards a remuneration model proportional to the income derived from the exploitation of the audiovisual productions. In order for broadcast incidental copy royalties to be collected for productions outside of Quebec it will take writers, publishers, associations, and collectives working together for the common goal.

SOCAN musique. monde. connectés.
music. people. connected.