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RADIO STATIONS MAY EXCLUDE PRODUCTION COSTS FROM ADVERTISING REVENUES

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PRECIS: The Federal Court has held that a radio station that produces and broadcasts an advertisement for a client is permitted to exclude the fair market value of the production services furnished to advertisers from the revenues generated from the broadcast of advertisements to which the services relate and on which royalties have to be paid.

In *Astral Media Radio Inc v Society of Composers* [2008 FC 1198] the Federal Court held that a radio station that produces and broadcasts an advertisement for a client is permitted to exclude the fair market value of the production services furnished to advertisers from the revenues generated from the broadcast of advertisements to which the services relate and on which royalties have to be paid.

The plaintiffs are radio broadcasters operating under licences which require them to pay royalties. They submitted that the income base used to determine the royalties should not comprise the expenses of any production services provided to advertisers.

The Society of Composers, Authors and Publishers of Canada (SOCAN) and the Neighbouring Rights Collective of Canada (NRCC) grant licences and collect royalties for the benefit of music composers and publishers and music performers and sound recording owners, respectively. In accordance with Section 67.1 of the Copyright Act, SOCAN and NRCC file proposed tariffs regarding the payable royalties, which are previously approved by the Copyright Board of Canada. The tariffs in question are based on the Regulations defining Advertising Revenues.

The defendants questioned the court's jurisdiction and claimed that no such exclusions of a radio station's production costs were to be made. They sought declaratory relief in order to interpret the regulations correctly.

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The court stated that it had the proper jurisdiction regarding the action in question and that the plaintiffs had standing to bring the action since:

- there was an issue as to the appropriate meaning of the term 'advertising revenues' appearing in the regulations; and
- they were directly affected and therefore had an interest as to its correct interpretation.

The court also mentioned that a radio station should not be treated in a different manner to an advertising agency when providing identical services, since this would result in illogical and inequitable outcomes. In fact, if the defendants' interpretation was retained, a radio station that invoices separately would end up paying a lower tariff than one which does not, for the provision of the same services.

In addition, Justice Zinn was of the opinion that the interpretation of the regulations should take into account that the tariffs exist to secure an equitable remuneration and should not distort them in a way that would favour either radio broadcasters or copyright owners.



