

American Federation of Musicians Symphonic Services Division Canada

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The Recording Industry: Adapting to Change

It is time to take a serious look at issues surrounding symphonic recording and the use of recorded product on the Internet. Within the next twelve to fifteen months the AFM will be involved in a series of talks that will establish terms and conditions for musicians involved in content creation for rapidly converging formats. The key upcoming negotiations are for the renewal of the Phonograph Record Labour Agreement (PRLA) and the Symphony, Opera, and Ballet Orchestra Internet Agreement (SOBIA) early in 2002, as well as the CBC Agreement which expires in March of this year. Technology and the industry are evolving at a dizzying pace. If, however, some fundamental principles are kept in the forefront of these negotiations, the end result will be agreements that will encourage Canadian production while compensating Canadian symphonic musicians fairly for their work.

The classical music recording industry is changing. The major recording companies have drastically reduced their activity in the area of classical music, largely because there is already such a wealth of outstanding recordings of the classics including a surfeit of cut-rate recordings by European orchestras. Symphonic organizations, however, still want and need to make and distribute recordings.

Technology is changing. Some market and technology watchers are predicting that CD production and distribution as we know it will be gone in five years. As we speak, people are downloading music from the Internet and burning their own CDs. Classical downloads are still somewhat impractical (it takes days to download a Bruckner symphony) and the end result is generally not of the quality expected from a CD. But new technologies such as broadband will successfully address those issues.

The AFM response to date: Phonograph records/CDs. It is no secret that symphonic organizations often subsidize projects in order to

encourage record companies to record their orchestras. For this reason symphony managers have become major players at PRLA negotiations. In response to pressure from managers for lower rates, both Canada and the U.S. have established reduced rate structures for limited pressings. The U.S. and Canadian Symphonic Limited Pressing Agreements differ from each other in significant ways. The Canadian version is strictly for self-produced local market recordings. All other Canadian commercial symphonic CDs are to be made in accordance with PRLA rates. In contrast, the U.S. Limited Pressing rates can be used by recording companies. Those rates are comparable to Canadian PRLA rates when the exchange rate is taken into account, so that the net result, albeit unintentional, is a fairly uniform North American fee structure for the production of CDs.

The AFM response to date: Internet Product. Earlier this year a joint AFM/management committee developed a new Symphony, Opera and Ballet Orchestra Internet Agreement (SOBIA) that establishes minimum terms and conditions for the creation of Internet Product in the U.S. Under the SOBIA, an Internet Product can be created for streaming (listen only) and/or downloading. The Product can be a live Webcast of a concert or it can be an Internet Recording created by combining and editing tapes from any number of live services (rehearsals or concerts). For most types of projects, the SOBIA does not set a minimum fee. Payment to musicians is determined by local joint committees, and is set out in a separate local agreement for each Internet Product. Revenue sharing might be required by the SOBIA, but there is no minimum formula or percentage. For one type of third party sale the SOBIA does require a minimum up-front fee, but that fee in all cases is far lower than either PRLA or limited pressing rates.

Canada has, to date, exempted itself from the SOBIA. Canada is not, however, without Internet provisions. The current CBC agreement contains terms for use of CBC broadcast product on the Internet. There is also a new guideline agreement for use by Canadian Locals in negotiating terms for the creation of symphonic Internet Product that can be made available for streaming only (i.e. cannot be downloaded). The Canadian terms for

creating downloadable recorded product, remain the same as for making a CD.

Where should Canada go from here? Canada has so far been able to maintain a reasonable amount of recording activity at current PRLA rates.

There is, however, downward pressure on those rates from the global market and from symphonic managements. This will intensify as downloadable Internet Recordings made under the SOBIA begin to make inroads into the CD market. In preparation for the upcoming negotiations, here are some things to keep in mind.

- Any edited recorded product that can be downloaded from the Internet will very soon be the functional equivalent of a CD and should be treated as such.
- Some orchestras will be competing in a global market for Internet and/or CD sales. In order to maintain a level playing field and to prevent undercutting, Canadians need to work with their U.S. colleagues towards establishing minimum AFM terms for such work, applicable across North America.
- Symphonic managements are creating demand for recordings, but they want to be able to make them at the lowest possible cost. To a large extent, it is with them that we are negotiating, and pattern bargaining is a reality that cannot be ignored.
- Although tenured musicians may feel that it is in their best interests to make low-cost recordings for their orchestra, substitute and extra musicians cannot reasonably be asked to forego fair and reasonable compensation for their recorded work.
- OCSM and the AFM must keep in mind the importance of the CBC in the lives of Canadian musicians, and of honouring our traditional obligations to the CBC in terms of providing equitable terms for the creation of recorded product.

In Conclusion. Although not by design, it is clear that current U.S. and Canadian agreements covering the production of CDs are acceptable to Canadians because they establish minimum fees in the appropriate product markets. The focus of Canada's attention should therefore be 1) to work to maintain that parity in PRLA negotiations, and 2) to address the looming problem caused by the failure of the SOBIA to establish reasonable minimum AFM fees for downloadable symphonic recording.

OCSM members are encouraged to examine their orchestras' current and future recording plans and to provide input to the OCSM Executive Board and to the AFM as the Canadian Office continues to prepare for these critically important negotiations.

OTHER NEWS

Musicians of **l'Orchestre Symphonique de Quebec** have received a 9% increase in pay for the current season retroactive to September 2000. There will be an additional 17% increase in the following season, with non-monetary provisions to be renegotiated in 2001. These increases are the result of a voluntary mid-term wage re-opener that took place in response to a new \$2.5 million stabilization grant from the province. The musicians had been living with depressed wages since 1989, when four weeks were cut from the season and seventeen positions were either eliminated or reduced to part-time. Restoring these positions took priority over wage increases in subsequent bargaining rounds. This task is now complete. Both harp and tuba positions have been restored to full-time status under the new agreement, bringing the number of full-time positions in the orchestra to 62. Four new positions will be created for the 2001-02 season.

Tax update. The AFM and Orchestras Canada continue to work closely with the Department of Canadian Heritage towards the development of Canada Customs and Revenue Agency (formerly Revenue Canada) guidelines for determining whether musicians are employees or self-employed for tax purposes. Representatives from the AFM and OCSM will participate in a Joint Industry Task Force that will synthesis current thinking, develop a position paper, and work towards a speedy and favourable outcome for all concerned.

Orchestra-L. For up-to-date information and breaking news from the orchestral world, North America and beyond, OCSM members are encouraged to subscribe to **Orchestra-L**, ICSOM's e-mail information service. Interested people should contact ICSOM Chair Robert Levine at rtl@icsom.org.

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