

# Canadian court scraps royalty for online downloads

July 12 2012, by CHARMAINE NORONHA

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(AP) — Canada's Supreme Court ruled Thursday that songwriters and music publishers are not entitled to royalties for song and video game downloads. It also determined that artists should be compensated when music is streamed online.

The high court ruled that downloading an individual file is not considered a communication to the public within the Copyright Act. However, streaming [music](#) online is not a private transaction and should be subject to fees currently in place.

Streaming refers to watching or listening to videos and music online while downloading refers to saving a file to your hard drive.

The [Supreme Court](#) partly overturned a lower court decision that had allowed an organization representing musicians and the recording industry, known as the Society of Composers, Authors and Music Publishers, to collect tariffs for both activities for its members.

"Although a download and stream are both 'transmissions' in technical terms ... they are not both 'communications' for the purposes of the Copyright Act. This is clear from the (Copyright) board's definition of a stream as a transmission of data that allows the user to listen or view the content at the time of transmission and that is not meant to be reproduced," the court said in its ruling.

"Unlike a download, the experience of a stream is much more akin to a

broadcast performance."

That decision was linked to another that dealt with software companies that sell their video games online. The court ruled 5-4 that those firms shouldn't pay royalties for the music that's featured in those video games every time a consumer downloads it online.

"There is no practical difference between buying a durable copy of the work in a store, receiving a copy in the mail, or downloading an identical copy using the Internet," wrote Justices Rosalie Abella and Michael Moldaver.

"ESA (Entertainment Software Association) has already paid reproduction royalties to the copyright owners for the video games."

Copyright royalties are approved by the Copyright Board of Canada, and if those who have to pay them disagree, they can ask for a judicial review and fight them at the Federal Court of Appeal.

The court's decision on downloading and royalties, among five copyright-related cases settled Thursday, means telecommunications companies that offer music services won't have to pay as much to copyright collection agencies.

In another of the rulings Thursday, the justices said online music stores will not have to pay royalties on song previews to publishers and songwriters.

The high court ruled song previews — what a customer would listen to before purchasing digital music from online retailers such as an iTunes — constitutes research under copyright legislation and thus the consumer should not pay a royalty.

"Short, low-quality previews do not compete with, or adversely affect, the downloading of the works themselves. Instead, their effect is to increase the sale and dissemination of copyrighted musical works," said the ruling.

The court also determined that record labels and recording artists should not be eligible for royalties from movie and TV soundtracks, as they are considered categorically different than traditional sound recordings.

Eric Baptiste, the CEO of the Society of Composers, Authors and [Music Publishers](#), commended the high court's ruling on streaming but was disappointed with the other rulings.

"We will continue to fight for the legal rights of our members to be compensated fairly for their work," he said.

The fifth ruling found that photocopying textbooks for classroom use in public schools does not infringe copyright laws, and should not be subject to a tariff, contrary to a previous Copyright Board conclusion that photocopies did not constitute "fair dealing" and required a fee. However, the matter will return to the [Copyright](#) Board for reconsideration.

All five cases were initially heard by the Supreme Court last December.

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