

March 6, 2015

BY EMAIL

**Copyright Board of Canada
Suite 800 - 56 Sparks Street
Ottawa, Ontario K1A 0C9**

Attention: Mr. Gilles McDougall, Secretary General

Dear Mr. McDougall:

Re: Discussion Paper of the Working Committee on the Operations, Procedures and Processes of the Copyright Board

Access Copyright welcomes the opportunity to provide comments on the Discussion Paper prepared by the Working Committee on the Operations, Procedures and Processes of the Copyright Board circulated by the Board on February 5, 2015 (the "Discussion Paper"). We commend the efforts made by the Working Committee and fully support its goals of improving the efficiency and productivity of the Board's operations. In this submission, we have focused on areas where Access Copyright has a suggestion to improve the transparency, efficiency and/or predictability of a process or procedure contemplated in the Discussion Paper.

The Interrogatory Process

Access Copyright agrees that interrogatories are an integral component of tariff proceedings and remain the appropriate form of discovery before the Board. However, we are concerned that the recommendations to add additional steps to the objection and deficiency stages of the interrogatory process (as outlined in Recommendations #27 and #31) might have the effect of prolonging an already lengthy process, rather than encourage the efficiency sought by the Working Committee.

As an alternative to adding a right of reply, Access Copyright submits that the interrogatory process could be streamlined by requiring each party to file a statement of issues prior to filing interrogatories. As noted on page 13 of the Discussion Paper, the Board has at times asked parties to file statements of issues to help focus the issues early on in the proceedings. We propose that the Board make the filing of statements of issues a required step early in tariff proceedings. When filing replies to objections to interrogatories with the Board, the responding party could be required to explain how the information sought in the interrogatory is relevant to the issues identified in its statement of issues and why the

requested information is necessary to prove its case. We believe that this would focus the parties earlier in the process, increase the transparency of the interrogatory process and provide the Board with the necessary information to issue its ruling on objections to interrogatories expeditiously.

Civil Adversarial Model

A footnote on page 5 of the Discussion Paper notes that the Committee considered the option of moving away from the civil adversarial model but concluded that a departure from this model would require additional resources. Access Copyright agrees with this conclusion and submits that a more comprehensive adoption of the civil adversarial model would improve the efficiency and increase the predictability and transparency of tariff proceedings. Introducing more rules into the process could assist all parties (including those who are new to the Board's process) in understanding the processes, rules and procedures that they would be required to follow when appearing in front of the Board. We are not suggesting that any civil adversarial practice rules implemented by the Board must be rigidly applied; instead, they could be varied by the Board on application by a party.

Representativeness of Committee

Access Copyright has the utmost respect for all members of the Committee and appreciates the time and energy they have devoted to improving the Board's operations. However, we believe that the Committee might be well served by an employee of a collective and of a user group. These are the parties that are responsible for paying the costs associated with participating in tariff proceedings and that stand to benefit the most from improvements in efficiencies in the Board's procedures.

Appointment of Board Chairman

Any changes to the Board's processes and procedures will only achieve the desired outcomes of improved efficiency and productivity if the Board has sufficient resources and staff to implement these changes. Access Copyright is concerned that the Board has now been without a Chairman for nine months. The delay in appointing a Chairman will continue to seriously undermine the collective administration of copyright. While we appreciate this decision is out of the Board's hands, we encourage the Federal Government to appoint a new Chairman as soon as possible to enable the Board to fulfill its mandate.

Next steps

We look forward to continuing these discussions and welcome any opportunity to make further submissions at the appropriate stage(s) of the Committee's review of the Board's processes and procedures.

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The Canadian Copyright Licensing Agency

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Erin Finlay". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Erin Finlay
General Counsel