

March 20, 2015

Mr. Claude Majeau
Vice-Chairman & CEO
Copyright Board Canada
56 Sparks Street, Suite 800
Ottawa, Ontario
K1A 0C9

RE: Copyright Board discussion paper on Two Procedural Issues

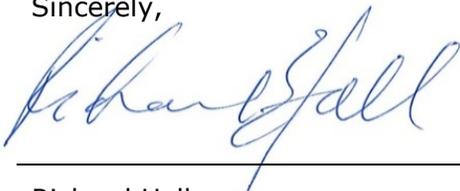
Dear Mr. Majeau:

Please find attached the joint response of the Hotel Association of Canada and Restaurants Canada in regard to the recommendations laid out in the above described discussion paper.

In reviewing the discussion paper, some general comments should be made:

1. As stakeholders, we believe it is incumbent on the Collectives to publicize proposed tariffs as widely as possible, whether using electronic or other means;
2. As an outcome of the current review, and in the interest of promoting transparency, justice and fairness, we urge the Board to pursue the use of simple language (e.g., "Plain English") as a key objective in the administration of its operations, procedures and processes. This is of particular importance as the continued development of new music delivery platforms will likely bring an increased number and diversity of new stakeholders – without legal resources – to the music royalty tariff setting process;
3. Relatedly, the Collectives should be required to highlight material changes in proposed tariffs that are likely to have a significant impact on the royalty paying businesses involved, as best possible in the context of the Collectives' knowledge of the industry sector affected;
4. Proposed tariffs should be settled during as short a timeline as possible, to help reduce the burden placed on less adequately resourced industry associations to maintain these files as active - sometimes over a period of several years. Commitment to more prompt resolution will also lessen the possibility that licensed music users will receive retroactive invoices covering time periods remote in the past;
5. It is noted that all current members of the Working Committee conducting the review of the Board's operational methods are drawn from the legal profession. In the interest of promoting increased accessibility to the Board's decision making process, and introduction of the use of simpler and more accessible language, we strongly advocate an "end user" representative be appointed. (This can be a consumer, community group or industry sector representative.)

Sincerely,



Richard Hall
Federal Policy Director
Restaurants Canada



Antony P. Pollard
President
Hotel Association of Canada

**Response of the
Hotel Association of Canadian and Restaurants Canada
to recommendations made by the
Working Committee on the operations, procedures and process of the Copy Board
in the discussion paper of February 4, 2015**

Section II- Identification and disclosure of issues to be addressed during a tariff proceeding

A- Publicizing proposed tariffs

Recommendations

1. The Board, with the cooperation of collectives and users' representatives, should develop and implement new ways of notifying current and potential users of the filing of proposed tariffs. Electronic notice should be favoured over other forms of communication; paper notification, including letters and newspaper notices, should be used exceptionally or not at all.

Response: Notification of proposed tariffs should ultimately be the responsibility of the Collectives.

2. New forms of notification should be implemented progressively, on a "best efforts" basis, according to what is technically feasible, financially reasonable and legally permissible. More should be done as technology makes more direct, personal forms of notice easier and more cost effective.

Response: Agreed.

3. Consideration should be given to a variety of options (posting notice of proposed tariffs on a collective's website; notification by a collective to all known users; emailing by a trade association to its members) so as to select the form of communication which is most efficient for each user type in each situation. In this regard, the Board should attempt to identify trusted third parties through who more loosely organized user groups could be notified that proposed tariffs have been filed.

Response: Agreed.

4. The Board, with the cooperation of collectives and users' representatives, should assess the limits, if any, that anti-spam or other similar legislation may impose on communicating electronically with users about a proposed tariff. These limits should be taken into consideration in selecting additional means of publicizing proposed tariffs.

Response: Agreed.

5. The Board should consider installing an RSS or other form of feed or information syndication (e.g. a Twitter account) allowing anyone to request in advance to be notified of the filing of proposed tariffs; collectives should be asked to consider doing the same or posting on their web sites links to the Board's own notices in this regard.

Response: Agreed.

B- Early explanation by collectives of the content of a proposed tariff

Recommendations

6. A collective should be required to provide, with the proposed tariff, information about the content of a tariff of first impression and of the nature, purpose and ambit of any proposed material change to an existing tariff. Some of the information could be published with the proposed tariff in the Canada Gazette; all of the information should be posted on the Board's web site. This requirement should be enforced through "soft" compliance measures.

Response: Agreed. Collectives should prominently highlight material changes in proposed tariffs that are likely to have a significant impact on royalty paying businesses, to the best of their ability given their knowledge of the industry sector involved. Rationality for proposed tariff price increases should also be included.

7. Information provided with the proposed tariff should not bind the collective. The time at which a collective commits to a course of action should remain when it files its statement of case.

Response: Agreed.

8. Subject to the considerations raised in Part II-A above, collectives should be asked to notify existing users when a collective asks for significant changes to an existing tariff. Any such notice should also indicate how a user may object to the tariff.

Response: Agreed.

C- Early explanation by objectors of the purpose of their objection

Recommendations

9. Objectors should be required to state in their objection the reasons therefor, either in their notice of objection or as soon as possible thereafter. They could be encouraged to suggest, to the extent possible, alternatives to the terms they find objectionable. This requirement should be enforced through "soft" compliance measures.

Response: Agreed.

10. Reasons provided pursuant to Recommendation 9 should not be binding on the objector. The time at which an objector commits to a course of action should remain when it files its statement of case.

Response: Agreed. As in the instance of Recommendation 7 above, statements made in the initial notice of objection should not bind the objector.

D- The collective's reply

Recommendation

11. A collective should be asked to provide as detailed a reply as possible to the objections it receives, on the same "without prejudice" basis as in Part II-B above. The same or similar "soft" measures outlined in Part II-B above should be used to enforce compliance with this requirement.

Response: Agreed.

E- Sharing tariff explanations, objections and replies amongst participants and with the public

Recommendations

12. As a rule, and subject to any requirement of the Privacy Act, all information filed with the Board pursuant to Parts II-B to D above should be supplied to all participants.

Response: Agreed, in the interest of promoting transparency and full potential stakeholder participation.

13. All information filed with the Board pursuant to Parts II-B to D above by anyone other than individuals acting on their own behalf also should be posted on the Internet.

Response: Agreed, for the reasons given in response to Recommendation 12.

14. The Board should identify the ways in which it can deal with privacy issues before making available to the public, on the Internet or otherwise, objections filed by individuals acting on their own behalf, with a view to providing the widest possible public access to information filed with the Board.

Response: Agreed.

F- Requiring further explanations for a proposed tariff or an objection thereto

Recommendation

15. Any request for information in addition to the information filed pursuant to Part II-B, II-C or II-D above should be dealt with on a case-by-case basis.

Response: Agreed.

Section III- Interrogatory process

A- Is there a need for any discovery before the Board?

Recommendation

16. Parties should continue to be allowed to seek information from each other in advance of hearings.

Response: Agreed.

B- Are interrogatories the appropriate form of discovery before the Board?

Recommendation

17. Interrogatories should remain the preferred form of discovery before the Board.

Response: Agreed.

C- Should interrogatories be exchanged and answered before or after issues are identified?

Recommendation

18. As a rule, interrogatories should be exchanged, and the responses thereto provided, after a collective has replied to objections pursuant to s. 68(1)(a) of the Act but before any party is required to file its statement of case.

Response: Yes, as a required obligation.

D- Should the Board participate in the interrogatory process before the date set to file objections to interrogatories and if so, how? How early should the Board provide case-specific guidance?

Recommendations

19. Parties should remain free to pursue the interrogatories they wish.

Response: Agreed.

20. The Board should convene a preparatory meeting between the parties and the Board after the collective has replied to objections and before interrogatories are exchanged. The purpose of the meeting would be to identify tentatively what the relevant issues appear to be and to discuss what information may be required in order to address those issues, with a view to helping the parties exchange interrogatories that are better focussed and more relevant. Minutes of the meeting should be prepared and circulated.

Response: A possibility, given parties involved are provided with adequate notice time to sufficiently prepare.

E- When should the Board rule on the relevance of a question? When, if at all, should it rule that a question, while relevant, concerns an issue that is either uninteresting or unhelpful?

Recommendations

21. As a rule, the Board should rule on the relevance of an interrogatory only when it deals with objections to interrogatories.

Response: Agreed.

22. The Board should exercise caution before advising parties that it does not wish to hear relevant evidence that the Board considers uninteresting or unhelpful. Greater caution should be exercised if a ruling is being contemplated early in the process.

Response: Agreed.

F- In instances involving more than one collective or objector, should interrogatories be consolidated? By whom?

Recommendations

23. The Directive on Procedure should encourage, but not require, parties to consolidate their interrogatories in a single set, irrespective of the number of parties to whom the questions are being addressed.

Response: This should be a requirement on the part of the Collectives.

24. A person being asked similar questions from two or more other parties should be allowed to apply to the Board for an order requiring these parties to consolidate their interrogatories.

Response: Our response is subject to further consideration.

25. As a rule, the Board should not consolidate interrogatories.

Response: Agreed.

G- Who should receive a copy of the interrogatories?

Recommendation

26. Subject to the comments about consolidation in Part III-F, above, interrogatories should continue to be exchanged only between the party who asks the question and the party who answers it.

Response: Interrogatories should be made available to all interested parties if requested, and the Board maintain an up-to-date listing on its website.

H- Objecting to interrogatories

Recommendations

27. A party who is asked a question should continue to be allowed to object to it. The requirement that parties first attempt to resolve the issue should be maintained. The party proposing the interrogatory should continue to be required to explain the relevance of the question. The party being asked the question should be allowed to reply to the explanation.

Response: Agreed.

28. The party who objects to an interrogatory should file with the Board, at the time it files its reply, the information required to deal with the objection.

Response: A party should be able to file its objection with the supporting information required to follow in a timely fashion.

29. The information required to deal with an objection should be filed in the form of a table that includes a column in which the Board will enter its ruling. Rulings on objections to interrogatories should be issued in that form; as all other rulings of the Board, they should be part of the public record and put on the Board's web site.

Response: Agreed.

I- Who should receive responses to interrogatories?

Recommendation

30. Only the party who asked an interrogatory should receive the response to it, as is currently the case.

Response: Disagree. Interrogatories should be made available to all interested parties if requested, and the Board maintain an up-to-date listing on its website.

J- Dealing with deficient responses to interrogatories

Recommendations

31. A party who asked a question should continue to be allowed to challenge the sufficiency of the response to that question. The requirement that parties first attempt to resolve the issue should be maintained. The party who provided the answer should continue to be required to explain why it considers the response sufficient. The party asking the question should be allowed to reply to these explanations.

Response: Agreed.

32. The person who claims a response is deficient should be the person who files with the Board, at the time it files its reply, the information required to deal with the deficiency claim.

Response: Agreed.

33. The information should be filed in the form of a table that includes a column in which the Board can enter its ruling. Rulings on deficiency claims should be issued in that form; as all other rulings of the Board, they should be part of the public record and put on the Board's web site.

Response: Agreed.

K- Are the principles the Board uses to deal with interrogatories sufficiently clear? Should they be organized and communicated in the form of guidelines? In another form?

Recommendations

34. The Board should pursue the creation of a database of orders of precedential value, including rulings that deal with interrogatories.

Response: Agreed.

35. The Board should consider developing more specific guidelines dealing with the interrogatory process.

Response: Agreed. The guidelines should be written akin to the "Plain language" initiative of the United States government.

L- Generating new documents in response to an interrogatory

Recommendation

36. The current principle according to which a responding party provides what it has, in the form it exists, should continue to apply.

Response: Agreed.

M- Should discovery extend to all that may be relevant? Should the Board limit discovery to what it expects to be necessary to arrive at a fair tariff?

Recommendation

37. Where appropriate, the Board should continue to limit what a party must provide in response to an interrogatory to only as much relevant information as is necessary for the Board to arrive at a fair tariff.

Response: Discovery should extend to all that is relevant, without the Board potentially prematurely limiting information, to ensure transparency and enable all stakeholders to intervene in the most effective manner possible.

N- Should the interrogatory burden vary according to the importance of the amounts at issue? The importance of an objector's stake? The significance of a party's resources?

Recommendation

38. Consideration should be given to how and to what extent the interrogatory process should be tailored to the importance of the amounts at stake as well as the resources of the parties involved.

Response: This is a question of judge that should be the prerogative of the Board to decide; however, issues involving questions of principle should be considered as well in setting the interrogatory burden and not merely the monetary amounts at stake.

39. In appropriate instances, the Board may wish to recommend to objectors with limited means that they use the comments provision of the Directive on Procedure to communicate their point of view to the Board.

Response: Comments should be allowed to be filed by any interested party and any time during the tariff setting process and be considered as part of the submitted evidence.

40. The Board should ensure that the interrogatory burden of any party, including a collective, is not out of proportion with the amounts at stake.

Response: See response to recommendation 38.

O- How should the Board deal with excessive filings of responses to interrogatories with statements of case?

Recommendations

41. Parties should file with their statement of case all the responses to interrogatories on which they expect to rely, and only those responses.

Response: Disagree. There should not be time limits in this regard.

42. Parties should fully correlate the responses they file with their statement of case.

Response: Agreed.

43. The Directive on Procedure should clarify that the extent to which a party is authorized to rely on a response that was not filed with its statement of case during the course of a hearing. However, the Committee was unable to agree on what that extent ought to be.

Response: Abstained.