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File M15-001

March 9, 2015

VIA EMAIL: gilles.mcdougall@cb-cda.gc.ca

Mr. Gilles McDougall
Secretary General
Copyright Board of Canada
56 Sparks Street, Suite 800
Ottawa, ON K1A 0C9

Dear Mr. McDougall:

Re: MROC's Comments on the Discussion Paper of the Working Committee on two aspects of the Operations, Procedures, and Processes of the Copyright Board

Further to the Copyright Board's February 5, 2015 request for comments, I am pleased to make on MROC's behalf the following submissions with respect to the Recommendations of the Working Committee (the "Committee").

MROC's Stake in these Discussions

Musicians' Rights Organization Canada (MROC) is one of five copyright collectives who are members of Re:Sound and who distribute to their constituents their share of Re:Sound's revenues, both from Re:Sound's own set of tariffs and from tariffs collected by CPCC and in turn allocated to Re:Sound. MROC's constituents are musical performers: musicians and vocalists. As such, MROC's interests align with those of Re:Sound.

In addition, for Tariff Years 2010 through 2013, jointly with ACTRA PRS, MROC proposed four annual tariffs covering the reproduction by broadcasters of their performers' performances (the so-called "broadcast mechanical" tariffs). Reproduction rights fall outside the neighbouring rights regime and therefore outside the scope of Re:Sound's tariffs.

The MROC-ACTRA PRS proposed broadcast mechanical tariffs were withdrawn in 2014 for a number of reasons. However, to the extent that cost considerations influenced the ultimate decision to withdraw the tariffs, the broad mandate of the Committee "to look into the operations, procedures and processes of the Board so as to make them more efficient and more productive" is of great interest to MROC. MROC may file proposed tariffs in future years.

General Comments on the Committee's Mandate

The Committee makes some innovative recommendations concerning the wider publication of proposed tariffs, making their rationale more transparent, and making the interrogatory process fairer. Those recommendations are laudable. However, except in a few instances, it is not clear that implementing them will fulfill the primary mandate of the Committee – to make the process more efficient and productive – and, in some cases, the opposite result is achieved.

What appears to be the greatest impediment to the Board's productivity is its lack of resources. Without sufficient personnel and funding, the Board cannot be expected to handle the certification process expeditiously. And it is the speed at which tariffs are being certified that is the single most common complaint about the process.

The Committee cites the Standing Committee's consensus that "it takes too long for the Board to render its decisions, largely because of a lack of resources." It also cites the Government's response which refers to the Board's then current review of its internal procedures, now well past the predicted fall 2014 timeframe; and which puts off to the next mandated Parliamentary review of the Copyright Act any consideration of the "broader framework in which the Copyright Board operates." As such, and in fairness to the Committee, its mandate was limited to making recommendations within the Board's existing framework. But it is doubtful that fine-tuning existing operations, procedures and processes can be as effective as major structural change.

Notwithstanding the foregoing question, MROC's comments herein will focus on how effective the Committee's recommendations are likely to be in achieving the goal of streamlining the operations, procedures and processes of the Board. Although our comments focus on cost savings, it is fair to assume that reductions in timelines and in the number of procedural steps will normally result in cost savings.

Comments on the Specific Recommendations

Recommendations 1 through 5:

While the case for wider dissemination of information is attractive on its own merits, the Committee does not explain how such wider dissemination will improve efficiency. The additional cost, to whomever bears it, results in lower efficiency. Following the Committee's recommendations would ensure that some smaller users receive actual notice of new tariffs but that goal goes to openness and fairness, not efficiency. The Committee does not suggest, for example, that receiving actual notice of a proposed tariff will reduce the costs of a potential objector.

Recommendations 6 through 8:

The idea of early explanations is also attractive insofar as it might reduce the burden on objectors to second-guess the underlying rationale of a particular tariff and thereby incur greater expense. However, the Committee has had to introduce a number of safeguards to prevent abuse of the proposed process: restricting the disclosure of information to "material changes", soft compliance, and making the disclosed information non-binding. Then in Recommendation 8, the Committee recommends requiring

the collective to notify potential users, which, as we point out above, would increase costs.

There is nothing conclusive in the Committee's report that these recommendations will either increase or decrease the overall efficiency of the process. Giving potential users some insight about a collective's rationale might just as easily provide additional ammunition as remove superfluous issues from the table.

Recommendations 9 through 11:

These recommendations call for an extra layer of exchanges, again adding costs and slowing the process. They also flow directly from the Committee's Recommendations 6 through 8 and are accompanied by parallel safeguards. For the same reasons that transparency on the part of the collectives may as easily result in inefficiencies as efficiencies, concomitant user transparency leads to the same uncertain outcome.

Recommendations 12 through 14:

These recommendations flow from the implementation of recommendations 6 through 11. Each recommendation entails additional cost, however nominal, and therefore represents reduced efficiency and productivity.

With respect to all the recommendations on exchanging rationales earlier on, unless there is good reason to believe that moving up the process will reduce costs later on – to the point that the overall costs are reduced – there seems to be no efficiency-based reason to implement these recommendations.

Recommendations 16 through 22; 26 through 28, 30 through 32; 36 through 37:

With the exception of recommendation 20, these recommendations appear to support the *status quo*. By their very nature, they do not entail any improved efficiencies. Recommendation 20, on its face, creates an additional layer of exchange. Unless it is quite apparent that it will lead to efficiencies in the later proceedings, it should be employed sparingly.

Recommendations 23 through 25:

These recommendations seem to dilute the Board's infrequently used prerogative to consolidate interrogatories. To the extent that the Board was trying to achieve greater efficiency, these recommendations appear to be at cross-purposes with the goal of streamlining the processes.

Recommendations 29 and 33:

These recommendations to standardize in a table format the objections and deficiencies to be ruled upon is not likely to increase costs and is more likely to reduce the workload of the other participants in the process.

Recommendations 34 and 35:

Although the Board is called upon at its own expense to create new tools, both recommendations here are likely to result in global efficiencies.

Recommendations 38 through 40:

These recommendations take into account proportionality and are good recommendations that should reduce costs for those of limited means.

Recommendations 41 through 43:

These recommendations would result in parties “doing their homework”. This would entail higher costs for the proponent but should result in greater efficiency globally.

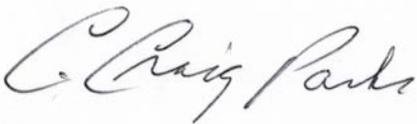
In Conclusion

The above comments should be read in the context of MROC’s focus on the Committee’s mandate to streamline processes and improve efficiency. MROC does not necessarily object in principle to a particular recommendation of the Committee, but rather because it does not meet the stated goals of the exercise.

As we said at the outset, it is doubtful that those goals can be met within the present framework of the Board. We are hopeful that the Government will reach the same conclusion when it conducts its Parliamentary review of the Copyright Act.

MROC looks forward to its continued participation in the Committee’s work on the remaining issues before it.

Yours very truly,

A handwritten signature in black ink, reading "C. Craig Parks". The signature is written in a cursive style with a large, prominent initial "C".

C. Craig Parks