

Mr. McDougall,

We write on behalf of the Copyright Collective of Canada (CCC). We write in response to Mr. Majeau's letter of 5 February 2015, and the invitation for stakeholders to comment on matters addressed in the discussion paper entitled: "Discussion Paper on Two Procedural Issues: Identification and Disclosure of Issues to be Addressed During a Tariff Proceeding and Interrogatory Process."

We thank the Copyright Board of Canada and the Working Committee for its work on these important issues.

Below are CCC's comments in respect of two issues identified in the discussion paper: Issue II (B), "Early Explanation by Collectives of the Content of a Proposed Tariff"; and Issue III (L), "Generating New Documents in Response to an Interrogatory".

### **Issue II (B): Early Explanations by Collectives of the Content of a Proposed Tariff**

It is stated in the discussion that "when a proposed tariff is intended to replace an existing tariff, the collective could be asked to identify and explain any proposed material change, as well as any change which, while not necessarily material, may require some explanation so as to avoid unnecessary confusion..."

On this issue, the Working Committee has recommended, among other things, that "a collective should be required to provide, with the proposed tariff, information about the content of a tariff of first impression and the nature, purpose and ambit of any proposed material change to an existing tariff[...]"

It is the Copyright Collective of Canada's view that a collective should not be required to provide an explanation of the nature, purpose and ambit of any proposed change, material or otherwise, at the time of filing a proposed tariff.

A party's right to prepare its case in private, without interference or fear of premature disclosure has long been protected as a right by litigation privilege. As stated by the Supreme Court of Canada in *Blank v. Canada*, [2006] 2 S.C.R. 319 litigation privilege "[...] is to ensure the efficacy of the adversarial process [...] And to achieve this purpose, parties to litigation...must be left to prepare their contending positions in private, without adversarial interference and without fear of premature disclosure."

Requiring a collective to disclose all or part of its case at the time of filing a proposed tariff will risk undermining its right to the protection afforded by litigation privilege, and consequently place it at a strategic disadvantage in the adversarial process.

### **Issue III (L): Generating New Documents in Response to an Interrogatory**

As stated in the discussion, "in principle, a responding party only needs to provide what it has, in the form it exists." The Working Committee's recommendation is that the Board continue to apply this principle.

The Copyright Collective of Canada is in agreement with the Working Committee's recommendation. A party should not be obligated to create new documents or alternatively try to compel or otherwise seek documents or information from third parties in order to respond to interrogatories. Where a responding

party does not have requested documents or information, it is a complete answer to state that such is the case.

Should you or the Board have any questions, or if I may otherwise be of assistance, please do not hesitate to contact me.

Yours very truly,

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