



CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.

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BY ELECTRONIC MAIL

March 6, 2015

The Copyright Board of Canada
56 Sparks Street, Suite 800
Ottawa, ON K1A 0C9
ATTN: Gilles McDougall, Secretary General

Dear Mr. McDougall,

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

We write to you in response to Vice-Chairman & CEO Claude Majeau's letter of February 5, 2015, and his request for comments from stakeholders on the matters addressed in the Discussion Paper of the Working Committee on the Operations, Procedures, and Processes of the Copyright Board. We commend the Working Committee for their efforts and observations, and we look forward to their further comments on the confidential treatment of information. With regards to the Working Committee's findings on the identification and disclosure of issues to be addressed during a tariff proceeding, and on the interrogatory process, we submit the following comments.

CMRRA supports any procedural changes that would increase the efficiency and speed with which the Board is able to render decisions, provided that those changes do not come at the expense of fairness. The Board plays an important role as the economic regulator of intellectual property in Canada, and this function should continue to be exercised with care and judgement.

Publicizing Proposed Tariffs

We agree with the Working Committee's observations that new methods should be adopted to notify users of proposed tariffs, but we would caution that such new methods should not place any undue burdens upon collectives. In order to increase the awareness and understanding of proposed tariffs, new forms of electronic notification should be explored and implemented. However, we agree with the Working Committee's concerns regarding mass emails, and echo their comments that compliance with consent and anti-spam requirements could make such communications difficult.

Furthermore, CMRRA does not believe that collectives should bear the burden of having to actively notify potential users. Although it would be reasonable to expect collectives to publicize their own proposal of a new tariff generally, such as on their website, it would not be reasonable to impose an obligation upon them to inform all users whom they expect to be impacted by the tariff. This is especially true in the case of tariffs of first impression, where the proposing collective may legitimately

not be aware of all the different types of users that might be impacted by the tariff. To the extent possible, that burden should be borne by those most likely to deliver the information efficiently. CMRRA is happy to post all of its proposed tariffs on its website.

Early Explanation by Collectives

CMRRA supports the proposal for collectives to provide early explanations of tariffs, but recommends that clear distinctions be drawn for the form and process as between tariffs of first impression and replacement tariffs. There is a real and substantive benefit to having collectives provide a general explanation of the scope of a proposed tariff, in order to explain what rights it is intended to enforce and the types of users that are expected to be targeted. However, as the Working Committee points out, there is a substantive difference between calling for a collective to provide an explanation of a proposed tariff and calling for commitments that might impede a collective's pursuit of its case. This is particularly true in the case of a tariff of first impression, for which much of the case may develop or evolve once a collective has been provided with a better understanding of users' business model(s) via interrogatories. To require binding early explanations of tariffs of first impression could substantively prejudice a collective and create erroneous perceptions about credibility. In particular, detailed explanations and justifications for rate proposals should not be required as part of an early explanation for a tariff of first impression, as these may well logically evolve in the course of a proceeding once a collective is more accurately able to understand users' activities. It is moreover worth noting that requiring such information could obstruct the litigation privilege shared between a collective and its counsel that has been retained for the tariff proceeding.

The Interrogatory Process

We endorse the Working Committee's recommendations that the Board produce a database of orders with precedential value, and guidelines governing the interrogatory process. Likewise, we support the Working Committee's recommendation that the Directive on Procedure mechanism be a process by which parties should be encouraged, but not required, to conduct their interrogatories in a more efficient manner. CMRRA believes that the Board can effectively improve the productivity and speed of tariff proceedings by making these types of efforts to help parties better understand, and thereby facilitate the expedition of, the interrogatory process. Although parties should not be bound or limited in their pursuit of relevant information, there are significant ways by which the Board could help interrogatories to take place more efficiently without taking away from the substance of the process.

Under no circumstances should the Board preclude any party from asking any questions that it believes are relevant and material to making their case in the tariff proceeding. Such involvement could lead to prejudging the evidence, and thereby the issues of the matter at hand, before the parties are afforded the opportunity to properly advocate and present them in context. This would amount to the Board fettering its own discretion by limiting the abilities of the parties to present relevant and material information to inform the ultimate decision. As such, CMRRA supports the Working Committee's recommendation that the Board should only rule on the relevance of an interrogatory when it deals with objections to interrogatories.

In closing, CMRRA welcomes procedural change to the operations of the Copyright Board in tariff proceedings, and appreciates the recommendations of the Working Committee. We believe it is of the utmost importance that the efficiency and productivity of the Board be increased, without inappropriately limiting or derogating from the Board's important function as an economic regulator.

Sincerely,

A handwritten signature in black ink, appearing to read 'Syrtash', followed by a period.

Veronica Syrtash