



Attn: Gilles McDougall, Secretary General
Copyright Board of Canada
Suite 800 – 56 Sparks Street
Ottawa, Ontario K1A 0C9

SENT BY EMAIL

Tuesday, March 10, 2015

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

Dear Mr. McDougall:

Thank you for providing stakeholders with the opportunity to comment on the Copyright Board of Canada's "Discussion Paper on Two Procedural Issues: Identification and Disclosure of Issues to be Addressed during a Tariff Proceeding and Interrogatory Process" ("Consultation Paper") dated February 4, 2015.

The Entertainment Software Association of Canada (ESAC) is a non-profit trade association representing leading video game companies in Canada. ESAC appreciates the efforts undertaken by the Board and the ad hoc committee to review and address a number of ongoing issues regarding the operations, procedures and processes of the Board for the purpose of enhancing the Board's overall efficiency and productivity. Indeed, achieving a respectful balance between the competing interests of those proposing and objecting to copyright tariffs, the Board's own priorities and limitations, and the need to enhance and streamline the current tariff process is necessary to ensure the Board's success in the future.

We note that a group of Broadcasting Distribution Undertakings ("BDUs") have submitted comments on the Discussion Paper. We support and incorporate the recommendations of the BDUs by reference into this letter.

We respectfully submit the following additional comments addressing Intervenors and Amici Curiae.

Intervenors & Amici Curiae

Currently the Board procedures allow anyone to act as an Intervenor in a proceeding insofar as the Board finds it useful and the Intervenor has a demonstrable interest in the proceeding. However, the Board's procedures indicate that the contemplated level of participation of an Intervenor and the potential for an Intervenor to unduly postpone a proceeding are grounds for the Board to deny a request to

intervene. Participants are also permitted to object to the request of an Intervenor, despite the fact that Intervenor have the same rights and obligations as other participants, unless the Board directs otherwise, and must comply with the rules and deadlines as set out in the directive. In addition, the Board encourages Intervenor to make their request to intervene and describe their interest in the proceedings as early as possible.

ESAC is of the view that valuable interventions and input should not be negated or discouraged as a result of timing constraints. Furthermore, we believe that participation should be permissible by anyone at any time during a proceeding, not least because issues may not be known or clearly stated until well into a proceeding. We encourage the Board to integrate procedures that increase clarity and transparency of issues earlier in Board proceedings. ESAC supports proposals that facilitate this goal, including a requirement of Parties to file a statement of issues prior to filing interrogatories.

In addition, it is our view that the Board is best served in cases where it has the most relevant, useful and rich market information when contemplating the complex issues and positions before it. As such, we encourage the Board to facilitate and promote the participation of Intervenor and amici curiae in Board proceedings when they can contribute valuable contextual information that may assist the Board with (1) understanding the context of relevant and related marketplace practices and (2) better measuring the direct and indirect impact of their decisions prior to publication. To achieve this objective, in part, we propose that the Board consider taking certain steps to present information on the matters before it in a manner that is accessible to the general public. For example, the Board could include a general, plain-language description of the all proposed tariffs and decisions. With this in mind, we ask that the Board ensure that its procedures facilitate and promote Intervenor and amicus curiae participation in all cases where there is a demonstrable interest, contextual contribution or useful expertise that can be contributed to a matter before the Board.

ESAC appreciates the opportunity to submit these comments and looks forward to working with the Board in an ongoing and collaborative manner to address these issues. Should you have any questions or require additional information we would be happy to engage in further discussions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tanya Woods', with a long horizontal line extending to the right.

Tanya Woods
Vice-President, Policy and Legal Affairs
Entertainment Software Association of Canada