

September 29, 2017

The Honourable Mélanie Joly
Minister of Canadian Heritage
House of Commons
Ottawa, Ontario
K1A 0A6

The Honourable Navdeep Bains, P.C., M.P.
Minister of Innovation, Science and Economic Development
House of Commons
Ottawa, Ontario
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Copyright Board of Canada
56 Sparks St., Suite 800
Ottawa, Ontario
K1A 0C9

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Dear Sir/Madam,

**Re: A Consultation on Options for Reform to the Copyright Board of Canada –
Comments of the Canadian Media Producers Association**

The Canadian Media Producers Association (CMPA) welcomes the opportunity to provide these written comments in response to *A Consultation on Options for Reform to the Copyright Board of Canada* (the “Consultation Paper”) launched by the Department of Innovation, Science and Economic Development (ISED), the Department of Canadian Heritage (PCH) and the Copyright Board of Canada (the “Copyright Board”) on August 9, 2017.

A. The CMPA

The CMPA represents the interests of more than 350 companies engaged in the development, production and distribution of English-language television programs, feature films and digital media productions in all regions of Canada. Our member companies develop high-quality original content in the financially risky genres of drama, comedy, documentary, children's and youth, and variety and performance programming for Canadian and international audiences. Independent producers are also among Canada's leading digital entrepreneurs, having consistently been at the forefront of exploiting the unique potential of the Internet to deliver Canadian programming to audiences on new platforms and in new ways. As an association representing a wide and diverse membership of copyright holders and users (with virtually all producers falling into both categories to varying degrees), we recognize that issues involving copyright often involve a delicate balancing act.

The Canadian Retransmission Collective (CRC) and Producers Audiovisual Collective of Canada (PACC) are two copyright collective societies founded by the CMPA. They collect and distribute royalties for specified uses of producers' audiovisual works. In setting up these organizations, the CMPA understood that it can be difficult and time consuming for rightsholders to manage and monitor all copyright-protected uses of their rights. Similarly, it can be cumbersome and inefficient for a user to seek permission from each and every individual rightsholder for every copyright-protected use it makes. When the system is working properly, the collective management of rights is an efficient and cost-effective way to ensure that Canadian copyright owners receive fair compensation when their content is used and users have easy, affordable access to that content.

The CMPA fully supports and adopts the submission filed by the CRC and PACC in this consultation. We leave the technical submissions on Board processes to these collectives, but wish to make the following general comments in order to highlight the impact of the Copyright Board's decision-making processes on Canadian independent producers.

B. The Consultation Paper

i. Context of Potential Reforms (s. 1)

The CMPA agrees with the premise of the Consultation Paper that the role of the Copyright Board is to help facilitate an efficient market for the use of copyright-protected works and that this function largely depends on the timeliness of decision-making at the Copyright Board. To achieve this objective, our current system of collective administration of copyright requires a "re-tooling", particularly in light of unprecedented technological growth and the resulting changing uses of copyright-protected content.



We also agree that any reform to the Copyright Board ought to: (i) seek to shorten the amount of time taken by the Board's processes; (ii) enable the Board to render sound decisions; (iii) reflect principles of procedural fairness; and (iv) instill public and stakeholder confidence in the Board.

ii. Enabling the Board to Deal with Matters More Expeditiously (s. 2.1)

Canada's independent producers rely on the royalties generated from the exploitation of their copyrights, including those collected and distributed under the retransmission regime in the *Copyright Act*. The primary sources of a producer's income come from the exploitation of its intellectual property. Collective licensing provides an efficient mechanism for Canadian production companies to recoup investments in their intellectual property and to develop and build upon that intellectual property. The royalties collected and distributed under the Copyright Board's collective licensing regimes incentivize creativity and innovation and help build well-financed, stronger Canadian companies and stronger Canadian productions.

Copyright royalties are used by producers to fund their operations, create, develop, produce and distribute original creative content and develop innovative lines of business. These royalties are often invested by producers into their highest risk undertakings – the development of their next great shows, the most risky and speculative phase of any production.

Obviously, timely certification of tariffs will result in a timelier collection and distribution of royalties. The longer a producer, or other rightsholder, must wait to receive royalties that are due, the less money that is available to develop the next project and the longer Canadian audiences have to wait for that next great show. From a cash flow perspective, a producer incurs hard costs as a result of delays in the certification and collection of royalties: its funding pool available to invest in the development of future intellectual property is depressed and it is less able to take the risks necessary to develop its next hit show.

As noted in the Consultation Paper, one of the Copyright Board's functions is to "facilitate the development the growth of markets in Canada that rely upon copyright." When there is uncertainty in the marketplace about the value of a copyright – which, in the retransmission regime, results when the certification process takes too long – both users and rightsholders need to have recourse to the Copyright Board to quickly solve that impasse. If the impasse is not resolved quickly and efficiently, the market for the exchange of copyright-protected content is broken. Ultimately, the incentive to create copyright-protected works may disappear, resulting in an under-provision of content. This is a hallmark of an inefficient system. In those situations, both rightsholders and users depend heavily on the Copyright Board to right the market – in other words, to ensure that the market functions properly, that users are free to use content, that users know the rates they will have to pay for that usage and that producers are able to invest and leverage the royalties effectively.



For all of these reasons, the CMPA applauds the Government's focus on and supports initiatives aimed at ensuring efficiencies at the Board and the timeliness of its decisions.

iii. Preventing Tariff Retroactivity or Limiting its Impact by Other Means (s. 2.3)

The CMPA supports the notion of limiting tariff retroactivity by shortening the time frames in the Board's processes, but strongly opposes any measure that would eliminate tariff retroactivity in its entirety. Unless the Copyright Board is mandated to certify tariffs prior to their commencement in every case, eliminating tariff retroactivity would remove any incentive on user participants to limit their contributions to delays in tariff proceedings. Eliminating tariff retroactivity would only and fully benefit the user, who could use a copyright-protected work without paying the true (i.e. ultimately certified) value for the use of that work, and would harm the rightsholder, who would be unable to collect the royalties due to it for the use of its copyright. Maintaining the retroactive effect of a tariff provides discipline in the system that helps to ensure all parties are focussed on resolving the matters in issue in a timely way.

C. Conclusion

The CMPA, like the Government, regards the retrofitting of Canada's Copyright Board for the digital age as an opportunity to create an administrative framework that promotes opportunities for the use of copyright-protected content; that fosters investment and innovation in the high-value, high-skilled industries of the future; that ensures copyright owners are fairly paid when their content is used and that ensures that Canadians have access to a full range of Canadian content on the platforms and devices of their choice at fair prices.

We thank the Government for providing the CMPA, our members and all stakeholders with an opportunity to share our views on this important consultation.

Sincerely,



Erin Finlay
Chief Legal Officer

