



September 29, 2017

To Whom It May Concern:

Thank you for the opportunity to submit comments to the consultation regarding options for reform to the Copyright Board of Canada (Board).

[Creative Commons](#) (CC) is a nonprofit organization that stewards simple tools to make it easier to share and build upon the creativity of others, consistent with the rules of copyright. We provide standard, free, open licenses and other legal tools to mark creative work with the freedoms the creator wants it to carry. Authors have applied CC licenses to over 1.2 billion copyrighted works of every type: from photos and video, to scholarly research, data, and educational resources. CC Canada is the Canadian affiliate of Creative Commons, focusing on Canadian-specific issues and activities.

Canadian copyright law is a carefully crafted regime, internationally recognized as a balanced approach between the needs of creators and the rights of the public. Copyright is designed to serve artists, creators, educators, students, countless sectors of Canadian civil society, and above all the public interest. A balanced and well managed copyright framework promotes, innovation, free expression, knowledge and research, creativity, the public domain, and protects and builds a shared cultural commons. As one of the principal public bodies responsible for stewarding elements of this framework, the Copyright Board bears significant responsibility. This requires the Board to operate in a transparent manner, to ensure public accountability as well as to promote public understanding of both copyright and the Board's work.

It is not enough for the Board itself to be transparent in its operations and decisions. It is equally important that transparency be required of the collective management organizations (CMOs) that the Board regulates, and all tariffs themselves. Across-the-board transparency is essential to ensuring that the Copyright Board, the federal government, the general public and the institutions who pay for compulsory licenses are able to understand how the funds raised from their fees are distributed, and to evaluate the effectiveness of the CMO model overall.

It is in the Board's power to require transparency from CMOs, in fulfillment of its public interest duties, because it sets not only royalties, but also has a say in their related terms and conditions. Therefore, the Board can (and should) require terms and conditions that ensure meaningful transparency and disclosure.

This is especially important as we know that a significant portion of the fees levied via compulsory licenses are paid by public institutions whose funds come from the public at large.

It is a positive development that the Board is considering requiring collective societies to provide more information during the process of tariff proceedings, and this information should be made available for inspection by the public.

We strongly recommend the Board require any organization that is permitted to charge compulsory license fees to disclose annually their budget, including individual payments made to authors and publishers, revenues collected and broken down by source, marketing and communications, funds allocated to lobbying, enforcement, and legal fees, and the salaries and bonuses of staff and administration. In the absence of meaningful data, the public is asked to go on faith that these programs are actually benefiting artists and publishers, and that public funds are being stewarded into a government-enforced monopoly appropriately.

A related issue that should be considered is the relationship between open licensing and the licenses offered by CMOs. There are over a billion Creative Commons licensed works available on the web for reuse for free. However, typically CMOs issue blanket “all you can eat” licenses for only the content within their repertoire, which usually excludes all Creative Commons material. Therefore, the blanket licenses have the effect of discouraging users from using works that aren't a part of the blanket agreement. And it harms creators who share their work freely under CC licenses, and others who do not wish to be a part of the CMO licensing scheme.

Lastly, the Copyright Board is an entity meant to regulate in the public interest, and is responsible for far-reaching decisions that fundamentally impact Canadians' ability to create and share knowledge, culture, and art in their everyday lives. This is especially the case given that the Board, as an administrative tribunal, is meant to be a more accessible bridge between citizens and their laws. However, what is lacking is a clear and accessible avenue for public participation in proceedings before the Board. The Copyright Board should provide for public interest interventions through less rigid procedural restrictions, and by providing a costs immunity and recovery mechanism for public interest interveners, perhaps modelled on those used by the Canadian Radio-television and Telecommunications Commission. Promoting meaningful public participation would include, for example, widely disseminating accessible notices of proceedings and related materials, in advance and through multiple channels of distribution that are more likely to reach the public; and setting out clear processes and dates in advance wherever possible.

These changes will help the Copyright Board gain public confidence and truly embody the balance that sits at the heart of Canada's copyright regime.

Regards,

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