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HOTEL ASSOCIATION OF CANADA
ASSOCIATION DES HÔTELS DU CANADA

RCC RETAIL
COUNCIL
OF CANADA

**Written Submission to the Standing
Committee on Industry, Science and
Technology in relation to its Statutory
Review of the *Copyright Act***

December 2018

Introduction

Thank you for the opportunity to submit comments in relation to the Committee's Review of the *Copyright Act*.

The Hotel Association of Canada is the leading voice of the Canadian hotel and lodging industry. For over 100 years, it has worked to enhance the prosperity of the industry through strong member engagement, effective advocacy, and the provision of value added programs and services. The Hotel Association represents more than 8,200 hotels, motels and resorts that encompass the \$20.8 billion Canadian hotel industry which employs 306,600 people across Canada.

Restaurants Canada is a national, not-for-profit association representing Canada's diverse and dynamic restaurant and foodservice industry. With more than one million employees; 80,000 locations; and 18 million customers a day, the restaurant industry is the number one source of first jobs for young people. We help build neighbourhoods, drive tourism, and fuel Canada's agri-food production. Restaurants Canada members comprise 30,000 businesses in every segment of the industry, including restaurants, bars, caterers, institutions and their suppliers.

Retail is Canada's largest employer with over 2.1 million Canadians working in our industry. The sector annually generates over \$76 billion in wages and employee benefits. Core retail sales (excluding vehicles and gasoline) were \$369 billion in 2017. Retail Council of Canada members represent more than two-thirds of core retail sales in the country. RCC is a not-for-profit industry-funded association that represents small, medium and large retail businesses in every community across the country. As the Voice of Retail™ in Canada, we proudly represent more than 45,000 storefronts in all retail formats, including department, grocery, specialty, discount, independent retailers and online merchants.

The Hotel Association of Canada, Restaurants Canada and the Retail Council of Canada continue to hear concerns from their collective members about delays in Copyright Board processes, particularly as they relate to decision-making procedures for proposed tariffs collected by SOCAN and Re:Sound.

We recognize that the Government of Canada has acknowledged the widespread importance around the copyright tariff-setting process and the timeliness of decision making at the Copyright Board. In response to the proposed legislative reforms to the Copyright Board, which include structural changes to the *Copyright Act*, we wish to provide comment under the headers below, as outlined by Innovation, Science and Economic Development Canada in its *Factsheet: Copyright Board Reform*.

Clearer rules and processes

Consultations indicated that the current decision-making framework, which includes evolving Board practices, previous Board rulings, decisions from reviewing courts, and practice notices, is not clear to all prospective participants. These reforms would provide clear markers to guide participants and the Board so that they can prepare and engage more efficiently in proceedings.

Response: We understand the will to present amendments to give the Board a clearer mandate. As efforts are ongoing to build a culture of efficiency, it is important to note that the timeliness of processes and decision-making must be considered. With the high volume and frequency of proposed tariffs, respecting and communicating timelines appropriately should be a

priority. Proposed tariffs should be settled as efficiently as possible, as our associations do not have the necessary in-house resources to address these matters on a full-time basis, nor the resources to hire outside legal counsel, which comes with hefty fees.

Streamlined timelines

Delays in tariff setting are in large part structural and have impaired the efficiency of copyright markets in Canada. Users wait years to balance their books, and collectives cannot fully distribute royalties to their members until royalty rates are determined. Online music streaming services have cited long delays in the tariff-setting process and the resulting price uncertainty as a disincentive to entering the Canadian market, thereby reducing opportunities for Canadian creators and consumers. These reforms would provide the means for faster and more prospective proceedings.

Response: We agree that tariff proposals should be effective for a longer period, as it does not make sense for most tariffs to be valid for only one year. In fact, this creates a substantial backlog in accepting proposals, which has a negative impact and results in many tariffs being applied retroactively. This goes contrary to one of our main goals, which is to add predictability to the system.

However, multi-year tariffs should have their yearly increases established from the start, which would result in much-needed flexibility and improved transparency. For example, if a 3-year tariff is accepted in 2020, it should remain the same until the end of 2022, unless a built-in increase has been previously specified.

We also agree on the proposed reduction of the objection period from 60 days to 30 days. We understand that everyone must work a little faster and it is our hope that other partners will also do their part.

Finally, with regards to the decision-making deadlines, it is vital to ensure that interested stakeholders have a reasonable amount of time to provide comment on proposed regulations before they are finalized.

Letting willing buyers and willing sellers agree

Collectives and users of communication and public performance rights for music currently have to go to the Board to establish royalty rates. Currently, the Copyright Act does not expressly allow these parties to negotiate directly. This is a significant obstacle for efficient rights management in the music industry. By allowing more direct agreements and withdrawal of proposed tariffs that are no longer required, these reforms would ensure that the Board is only adjudicating matters when needed, freeing resources for more complex and contested proceedings.

Response: We agree that the new proposal could insert more market-driven incentives into the system and might help businesses and content producers conclude deals and settlement agreements that make better sense. We have been reassured that our members could go back to the Board should there be a dispute, but that there is also an enhanced possibility to negotiate a straightforward deal with content producers.

As these provisions would be new, we strongly recommend that the Board monitor the situation closely and represent the common interest. We remain cautious of a potential increase in cost

determined through a side deal between a small number of parties that may not represent the overall industry. In fact, the system would not be better served by run-to-the-bottom pricing, dictated by a single deal detrimental to content producers. We believe there is place for fairness and that the Board is best suited to continue its work as a neutral arbitrator.

We also agree with the “no consensus, no change” mantra; however, we are committed to working together to encourage our members to be open to the new system. Collectively, our associations are willing to meet and collaborate with SOCAN, Re:Sound and others, as well as to advise the Board, on general agreements of potentially better value which we could relay back to our own memberships.

Expected outcomes

All in all, the reforms seek to ensure that royalty rates are determined faster and with more certainty while continuing to protect the public interest. They seek to reduce litigation and transactions costs for users and creators alike, and allow royalties currently kept in reserve or on contingency to be put to more productive uses. Users would know the cost of royalties earlier, and collectives could more rapidly pass on those royalties to their members.

Response: Collectively, our goal is to eliminate the application of tariffs on a retroactive basis. As a result of the new regime, it is our hope that this can be achieved. In itself, tariffing for past use is an indication that the system is broken, and amendments are urgently needed. We understand that the Board and relevant participants will need to act more quickly when responding to proposed tariffs or filing objections, for example, and we remain committed to playing a key role in this regard.

Finally, we strongly recommend the introduction of simplified language when communicating tariffs and objections. At times, the language and jargon used is complex and makes it very difficult to understand the procedures, resulting in the unintended consequence of additional delays. Plain English and French should be used as much as possible.

On behalf of Canada’s hotel & lodging, restaurants and retail sectors, we wish to thank the Standing Committee on Industry, Science & Technology for the opportunity to present our views.