



Department of Innovation, Science and Economic Development

Department of Canadian Heritage

Copyright Board of Canada

By email only to cbconsultations@canada.ca

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Consultation on Options for Reform to the Copyright Board of Canada- Submission by the International Publishers Association

The International Publishers Association (IPA) is the world's largest federation of national, regional and specialist publishers' associations. IPA is an accredited non-governmental organisation (NGO) enjoying consultative relations with the United Nations. Its membership comprises 70 organisations from 60 countries in Africa, Asia, Australasia, Europe and the Americas. Through its members, IPA represents thousands of individual publishers around the world who service markets containing more than 5.6 billion people. Our Canadian members are the Association of Canadian Publishers, the Canadian Publishers' Council, and L'Association nationale des éditeurs de livres.

IPA was founded in 1896. Its initial aim was to ensure that countries throughout the world showed respect for copyright, and properly implemented the (then) new international copyright treaty, the Berne Convention for the Protection of Literary and Artistic Works. Today, the promotion and defence of copyright is still one of IPA's main objectives. It pursues that objective by working with its members to ensure the adequacy of domestic legislation in light of international norms, and to advocate for the effective enforcement of copyright.

IPA, after consulting with its Canadian members, wishes to respond to the consultation for the reform of the Copyright Board in relation to matters arising from point 6 of the Consultation Paper, being the powers of the Board to set licence terms and tariffs.

The July 2017 Federal Court decision in *Access Copyright v York University* interpreted section 68.2(1) of the Copyright Act as meaning that the tariff set by the Copyright Board and upheld by the Court was binding against York University. This meant that Access Copyright was entitled to collect the royalties specified in the tariff from York University, or to sue York University to recover them. IPA endorses that decision as both the correct interpretation of the statute, and beneficial for all parties. It ensures an effective and copyright-compliant way to provide user access on campus, while securing equitable remuneration for copyright owners through a level of payment adjudicated by the Board.



However, although the Federal Court has correctly determined that tariffs are mandatory, there are users who believe that the mandatory tariff does not oblige them to enter into licenses under the certified tariff, thereby in effect opting out of the tariff. This attitude is, as we understand it, prevalent in the education sector, where most institutions in Canada are refusing to pay under certified tariffs, yet continue to make reproductions of published works without permission, as a result of which rightsholders, including publishers serving the education sector, are not being fairly compensated for the use of their works. The resulting uncertainty is leading to expensive litigation, the cost of which is borne by rightsholders.

If a user is not obligated to abide by the Board's tariff, there is no rationale for the Board to set a tariff. Logic therefore supports our assertion that the tariff issued by the Board should bind users of copyright works to pay the tariff set by the Board. To avoid any doubt or dispute on this, IPA argues that Parliament needs to resolve the nature, scope and effect of a tariff decision. IPA therefore respectfully submits that this review presents the Government of Canada with the opportunity to clarify, by amending the legislation, that a tariff decision by the Board, under any applicable section of the Copyright Act, is binding on all parties.

Further, to encourage prompt compliance with tariff decisions, the IPA supports its Canadian members in their request for meaningful remedies so that the Board's tariff regime operates effectively. We defer to them on how that can best be achieved.

Other matters arising from this review are best addressed by our Canadian members and do not form part of the IPA submission.



José Borghino
Secretary General, International Publishers Association