

Copyright Board
Canada



Commission du droit d'auteur
Canada

[PN 2022-005 rev. 1]

Publication date: June 17, 2022

Amendment date: March 1, 2023

PRACTICE NOTICE ON FILING OF JOINTLY-SUBMITTED TEXTS IN A PROCEEDING

General Statement

A set of royalty rates, terms, and conditions submitted jointly by parties to a proceeding (a “jointly-submitted text”) can constitute important evidence in the Board's consideration of a proposed tariff. Additional information is generally required by the Board in evaluating the jointly-submitted text.

Under subrule 33(1) of the *Copyright Board Rules of Practice and Procedure*, if a collective society and one or more objectors jointly submit a set of royalty rates and related terms and conditions to the Board and jointly request that the Board approve a proposed tariff based on those royalty rates and terms and conditions, they must file the information enumerated in paragraphs 33(1)(a) - (c), as well as any other information identified by the Board (paragraph 33(1)(d)).

The purpose of this Practice Notice is to clarify and expand on what is required in order to expedite the Board's consideration of the proposed tariffs targeted by the jointly-submitted text.

Failure to provide the information detailed below will result in delays in the Board's consideration of the affected proposed tariffs and may result in the Board not being able to adequately assess the fairness of the jointly-submitted text.

Filing a Submission, pursuant to paragraph 33(1)(a) of the Rules

In filing submissions, under paragraph 33(1)(a) of the *Rules*, Parties must:

1. describe, in plain language, the context in which the Parties agreed to file the jointly-submitted text;

2. indicate whether any users would owe greater royalties pursuant to the jointly-submitted text than under the proposed tariffs identified pursuant to paragraph 33(1)(c) of the *Rules* and, if applicable, a summary of the situations in which this would arise;
3. where available, estimate the total royalties the collective society would expect to collect if all users paid the rates in the jointly-filed text;
4. where the jointly-submitted text is based on a source (e.g., proposed tariff, last-approved tariff, other agreement), describe any changes between that source and the jointly-submitted text, along with an explanation of the intended effect of such changes;
5. describe the extent to which the objector or objectors can represent the interests of all other affected users;
6. describe the extent to which the jointly-submitted text addresses any objections—whether the grounds for these are legal, economic, or other—made to the proposed tariffs identified following paragraph 33(1)(c) of the *Rules*;
7. state whether any of the Parties are aware of other agreements for uses similar to those covered by the jointly-submitted text, and, if so, an indication of the number of such agreements and whether they are substantially similar to the jointly-submitted text;
8. provide any other submissions and evidence in support of the proposition that the jointly-submitted text is fair and equitable; and
9. in all cases, provide evidence to support any claims made.

Filing Agreements, pursuant to paragraph 33(1)(b) of the Rules

In filing agreements, pursuant to paragraph 33(1)(b) of the *Rules*, Parties must include the agreements in their entirety, including any appendices, annexes, and addendums. If any agreement, or portion thereof, was concluded orally, a description of these must be provided.

Identifying Proposed Tariffs, pursuant to paragraph 33(1)(c) of the Rules

When identifying a portion of a proposed tariff pursuant to paragraph 33(1)(c) of the *Rules*, Parties must also describe the activities covered by that portion, as well as any activities covered by the remaining portion of the proposed tariff, and provide examples of both of these.

Providing other required information, pursuant to paragraph 33(1)(d) of the Rules

In addition to the above, and pursuant to paragraph 33(1)(d) of the *Rules*, Parties must provide a blackline comparison between:

(a) the jointly-submitted text, and each proposed tariff identified pursuant to subrule 33(1)(c); and

(b) the jointly-submitted text, and any source identified in the submissions pursuant to item 4 of the guidance for paragraph 33(1)(a), above.

Confidential Information

Parties that wish to file confidential or highly confidential information as part of their joint request must do so under a confidentiality order issued by the Board, pursuant to Rule 46.