

Canadian Bar Association IP Chapter - Copyright Board Townhall, June 2, 2022 – 16h00

Good afternoon everyone and thank you John / Amrita for the introduction.

Thank you also to the Canadian Bar Association and its members for once again inviting the Copyright Board to be a part of this event.

It is a pleasure to reconnect with you all.

For this townhall, we have decided to skip the Copyright Board 101 presented last year.

We will focus on the practical results of phase 1 of the modernization of our operations, and our immediate plans for the future.

In particular, we would like to explain how recent changes in Board processes and practices have been deliberate, and motivated by a commitment toward

1. Meeting the expectations of stakeholders and government, in particular as they relate to the new timelines put forward via regulation by the government in 2020; and
2. Establishing the Board as a credible, relevant and useful organization moving into the future.

In the fall, the Chair and I intend to publish a comprehensive report on the success of phase 1 of the Board's modernization initiative.

Today, I will present its highlights at a broad level.

Canadian Bar Association IP Chapter - Copyright Board Townhall, June 2, 2022 – 16h00

Lara, our secretary general, will then provide some additional details on certain activities and commitments that we believe will be of interest to this audience.

We will then have our Q&A session before ceding to our Chair Justice Martineau and our general counsel.

They will together discuss a key part of our next transformation plan.

Please note that our presentations will be in English but feel free to interact and ask questions in the official language of your choice.

Les présentations se feront en anglais mais vous êtes invités à vous exprimer dans la langue officielle de votre choix.

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First, a bit of history

Like the copyright marketplace itself, the Board has been in the change business for decades.

The scope of new rights and exceptions, the proliferation of copyright choices in the daily lives of Canadians, the global significance of the value of copyright industries,

These have all affected the legal scope and economic valuation of activities captured in copyright tariffs or licenses.

As the courts try to keep up with this dynamic, and make sense of it, so does the Board when delivering on its mandate to set “fair and equitable” rates for the use of copyright content.

In 2019, six months after my appointment, the *Copyright Act* experienced its most recent round of changes – specifically dealing with Board mandate and processes.

Our main focus since then has been to prepare the Board to implement the vision laid out by Parliament, and the expectation set in government regulations regarding the timeliness of our decision making.

Canadian Bar Association IP Chapter - Copyright Board Townhall, June 2, 2022 – 16h00

And our little but mighty team of 20 staff, one full-time member, and four part-time members, has done a lot.

In 2019–20, we launched phase 1 of what we call the Board modernization initiative, with a complete review of all our internal processes and practices.

We focused on bringing the Board in line with federal government standards in terms of financial stewardship, HR management, accountability, employee performance, official languages, diversity and inclusion, and information management.

We brought in outside expertise and systems to help organize our work more efficiently, guided by lean management principles.

Efficiency and transparency were placed at the very core of our organizational values, and a new vision for the Board was put forward.

We have improved the online accessibility of Board information and documents by revamping our website, and publishing Board decisions and tariffs in searchable format via Decisia and CanLII.

We have taken up the practice of hosting informal meetings with stakeholders to address issues, solicit ideas, and explore simple solutions for problems that affects the efficiency of our tariff-setting processes.

We intend to continue this practice, because it has yielded good results so far without compromising procedural fairness.

We firmly believe that this type of outreach to stakeholders helps to ensure that Board services reflect their reality.

It complements also the more formal performance measures the Board is currently working on to track its progress.

We have implemented clearer, plain language ways to communicate Board guidance on its processes as well as our decisions.

For me, this is a key element of our commitment toward improving access to justice in a particularly complicated world, especially for small and less experienced parties and stakeholders.

Canadian Bar Association IP Chapter - Copyright Board Townhall, June 2, 2022 – 16h00

I am proud to say that the Board, my mighty team, was quick to adopt these new practices and this new culture of efficiency, transparency and service to Canadians.

And I think it is because of that shift in organisational culture, that we were able to adapt to the challenges of the covid pandemic, maintaining productivity in a fully online environment, and taking into account the effects of the pandemic on our stakeholders, and on the industries implicated, in our proceedings.

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This fiscal year, we will complete phase 1 of our modernisation initiative with the publication of the Board's *Rules of Practice and Procedure* .

The pre-published version for stakeholder consultation should be in the Gazette this month.

There will be a 30 day window in which to submit comments.

Many of you have already weighed in at least once on the new Rules in the context of informal consultations last year, and we have successfully put into practice some of the rules already in less formal ways.

To complement the Rules, the Board has been sharing tools and information online to encourage and simplify participation in Board processes, starting with our guidelines for submitting economic evidence to the Board.

In the coming months, we will be publishing a number of practice notices and explanatory tools to increase the efficiency and clarity of some Board-related activities, including:

- Guidance for joint submission of agreements on tariff text, and
- Principles for the effective management of an interrogatory process.

Now quickly on our backlog, which we know is an issue of interest and concern to some of you.

Canadian Bar Association IP Chapter - Copyright Board Townhall, June 2, 2022 – 16h00

The Board's modernization initiative launched in 2019 was intended to both streamline and accelerate new proceedings, as well as reduce the Board's existing backlog.

This is not a straightforward project.

As you know, unlike in the us, the Board has little control over the number and scope of the tariffs proposed each year by collective management societies.

The Board also has a relatively limited operational capacity to handle numerous complex proceedings at once. We are 20 people.

The same issue of limited capacity is also a challenge for parties, in particular as they face major pressures like the pandemic that affect their businesses and livelihoods.

We know this because parties have told us.

We have been actively engaging stakeholders on our backlog strategy, on how to manage our current caseload and how to limit its expansion in the future.

Lara will speak a little more to our successes and challenges in this endeavour.

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This year, our priority will be enhancing and promoting Board's role as an effective marketplace facilitator, and increasing access to justice to protect the public interest.

As you know, Board decisions affect a broad and diverse range of industries and businesses, from radio stations and online music services to skating rinks, sporting events and festivals.

However, to act as a market facilitator, and to set fair and equitable tariffs in consideration of the public interest and willing buyer, willing seller, the Board must stay connected to trends across all of these

Canadian Bar Association IP Chapter - Copyright Board Townhall, June 2, 2022 – 16h00

marketplaces and of the role copyrighted works play in different business models.

As such, data scarcity is a real and significant limitation to the Board's ability to facilitate the development and growth of copyright markets, particularly those that are rapidly changing and increasingly global and digital.

This lack of data may be exacerbated if fewer parties, including collective management societies, choose to come before the Board.

It could be the case if the value proposition of seeking a tariff from the Board is perceived as having diminished since the 2019 changes to the *Act* and the SCC/York decision.

Second, the Board's ability to protect and serve the public interest may also be compromised if fewer parties come before the Board, or choose to drop tariff processes altogether.

Access to justice is a core part of serving the public interest, and for the Board, it starts with:

- Increasing access to basic information, in a way that is relevant and understandable to a broad and diverse audience by:
  - o Applying plain language principles when communicating with parties and the public, including through our decisions, rulings, orders and notices; and
  - o Clarifying and simplifying our procedures.

Access to justice is also about being able to access resources that can attend to questions of justice in the face of unbalanced power and resources.

In response to these challenges, the Board will continue exploring innovative approaches to ensure that the Board's activities reflect current marketplace realities and best practices, and support efficient negotiations between copyright creators and users.

This includes taking another look at the accessibility and the relevance of our current arbitration regime.

Canadian Bar Association IP Chapter - Copyright Board Townhall, June 2, 2022 – 16h00

Our Chair and our general counsel will discuss later in this townhall

We still have a lot of work on our plate, as you can surely appreciate

So this concludes my broad overview of phase 1 of the Board modernisation initiative.

I will now turn it over to Lara for a deeper dive in some of the issues that have been flagged to us by John as ones of particular interest to this audience.

Happy to answer questions and take comments after Lara's presentation.