

Copyright Board of Canada

2006-2007

Estimates

**Part III - Report on Plans and
Priorities**

Maxime Bernier
Minister of Industry

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SECTION I – DEPARTMENTAL OVERVIEW

Minister's Message

Portfolio



As Minister of Industry, I am proud to present this report on the Copyright Board of Canada's anticipated achievements and results over the next three years. Through the efforts of the Copyright Board of Canada and its Portfolio partners, we are working to ensure that Canada has the necessary business and innovation environment to foster a culture of discovery and creativity to fuel economic success and support our enviable quality of life.

Today, we operate in a globalized economy where electronic commerce drives complex and interconnected supply chains from around the world and anyone can be our competitor. To thrive, we need a dynamic and adaptable economy – one with a highly trained work force and nimble businesses striving for competitive growth and development.

Looking ahead, we see the need to enhance Canada's business environment, including improving the critical ground rules that ensure stability, equitable conduct and competition for consumers, investors and businesses. Used strategically, these efforts can encourage investment in innovation, afford easier access to capital, support risk-taking and entrepreneurship, and ensure the efficient and productive allocation of resources.

We are working to reduce barriers to and within our markets and to encourage more domestic and foreign investment. We are supporting and defending our industries. We are working to improve business and consumer confidence. And we are supporting science, technology, research and development to encourage our industries, our businesses and our workforce to keep pace with technological change and drive innovation throughout our economy. And the demand for innovation across the Canadian economy – including in the areas of health care, climate change, productivity and the competitiveness of Canadian firms – continues to rise.

As presented in this report, the Copyright Board of Canada's initiatives will help make Canada a better place to innovate and do business. Indeed this report describes the organization's programs, policies and priorities for the next year as we meet the challenges of building a world-leading innovative 21st century economy.

The Industry Portfolio consists of:

- Business Development Bank of Canada [1]
- Canadian Space Agency
- Canadian Tourism Commission [1]
- Competition Tribunal
- Copyright Board of Canada
- Industry Canada
- National Research Council Canada
- Natural Sciences and Engineering Research Council of Canada
- Social Sciences and Humanities Research Council of Canada
- Standards Council of Canada [1]
- Statistics Canada

[1] Federal Crown corporations do not prepare Reports on Plans and Priorities.

It is my pleasure to present the *Report on Plans and Priorities* for the Copyright Board of Canada.

Maxime Bernier
Minister of Industry

Management Representation Statement

March 2006

Report on Plans and Priorities 2006-2007

I submit, for tabling in Parliament, the 2006-2007 Report on Plans and Priorities (RPP) for the Copyright Board of Canada.

This document has been prepared based on the reporting principles contained in the *Guide to the preparation of Part III of the Estimates: Reports on Plans and Priorities and Departmental Performance Reports*:

- It adheres to the specific reporting requirements outlined in the TBS guidance;
- It is based on the department's approved accountability structure as reflected in its MRRS;
- It presents consistent, comprehensive, balanced and reliable information;
- It provides a basis of accountability for the results achieved with the resources and authorities entrusted to it; and
- It reports finances based on approved planned spending numbers from the Treasury Board Secretariat.

Stephen J. Callary
Vice-Chairman and Chief Executive Officer

Program Activity Architecture Crosswalk

2006 - 2007	
<u>Strategic Outcome</u> Fair decision-making to provide proper incentives for the creation and uses of copyrighted works	
(\$ thousands)	<u>New Program Activity</u> Render Decisions and Issue Licences
<u>Old Program Activities</u>	
1. Hold pre-hearing conferences and conduct hearings	936
2. Render decisions	891
3. Improving the efficiency of the regulatory process	321
4. Consultations with key stakeholders	197
5. Issue licences	235
Total	2,580

Note: The five old Program Activities were regrouped into a single new Program Activity, which corresponds to the unique Business Line the Board always had in the past.

Raison d'être

The Copyright Board of Canada is an independent administrative agency that has been conferred department status for purposes of the *Financial Administrative Act*. The mandate of the Board is set out in the *Copyright Act* (the "Act"). The Board is empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyrighted works when the administration of such works is entrusted to a collective administrative society. The Board also sets fair and equitable terms and conditions so as to permit the use of works when the owner of the copyright cannot be located.

The *Act* requires that the Board certify tariffs in the following fields: the public performance or communication of musical works and of sound recordings of musical works, the retransmission of distant television and radio signals, the reproduction of television and radio programs by educational institutions and private copying. In other fields where rights are administered collectively, the Board can be asked by a collective society to set a tariff; if not, the Board can act as an arbitrator if the collective society and a user cannot agree on the terms and conditions of a licence.

The examination process is always the same. The collective society must file a statement of proposed royalties which the Board publishes in the *Canada Gazette*. Tariffs always come into effect on January 1. On or before the preceding 31st of March, the collective society must file a proposed statement of royalties. The users targeted by the proposal (or in the case of private copying, any interested person) or their representatives may object to the statement within sixty days of its publication. The collective society in question and the opponents will then have the opportunity to argue their case in a hearing before the Board. After deliberations, the Board certifies the tariff, publishes it in the *Canada Gazette*, and explains the reasons for its decision in writing.

As a rule, the Board holds hearings for each contested tariff. In order to reduce costs for the parties involved, the Board itself can also decide to merge several tariff hearings together. In addition, no hearing will be held if proceeding in writing accommodates a small user that would otherwise incur large costs. Hearings are also generally dispensed with on preliminary or interim issues. No hearings have been held yet for a request to use a work whose owner cannot be located. The process has been kept simple. Information is obtained either in writing or through telephone calls.

The Board is an economic regulator. It deals with complex social, cultural, demographic, economic and technological issues (e.g., communications technology, use of music over the Internet, blank CDs, software management systems to protect music or administer rights). The Board's decisions are not appealable, but can be the subject of judicial review by the Federal Court of Appeal. The Board has existed in one form or another since the 1930s, but its jurisdiction was significantly expanded in 1989 and 1997. Under the auspices of the Minister of Industry and the Minister of Canadian Heritage, Bill C-60, containing proposed amendments to the *Act*, was tabled on June 20, 2005. If adopted as tabled, the amendments would result in substantial changes to the *Act*, which would then translate into a further expansion of the Board's jurisdiction.

The Board sets tariffs that are estimated to be worth over \$300 million annually. In fact, copyright tariffs underpin several industries which together generated in 2002 an amount representing 5.4% of Canada's GDP. The stakes are considerable both for copyright holders and for users of copyright. Consequently, interventions before the Board are thorough, sophisticated and often involve expert witnesses, litigation specialists and detailed econometric, business and financial submissions/evidence.

The Board must consider the underlying technologies (such as the Internet, digital radio, satellite communications), the economic issues and the interests of owners and users in order to contribute, with fair and equitable decisions, to the continued growth of this component of Canada's knowledge industries. Sound tariff decisions avoid serious disruption in affected sectors of the national economy and costly and time-consuming court challenges.

The decisions the Board makes are constrained in several respects. These constraints come from sources external to the Board: the law, regulations and judicial pronouncements. Others are self-imposed, in the form of guiding principles that can be found in the Board's decisions.

Court decisions also provide a large part of the framework within which the Board operates. Most decisions focus on issues of procedure, or apply the general principles of administrative decision-making to the peculiar circumstances of the Board. However, the courts have also set out several substantive principles for the Board to follow or that determine the ambit of the Board's mandate or discretion.

The Board also enjoys a fair amount of discretion, especially in areas of fact or policy. In making decisions, the Board itself has used various principles or concepts. Strictly speaking, these principles are not binding on the Board. They can be challenged by anyone at anytime. Indeed, the Board would fetter its discretion if it considered itself bound by its previous decisions. However, these principles do offer guidance to both the Board and those who appear before it. In fact, they are essential to ensuring a desirable amount of consistency in decision-making.

Among those principles, the following seem to be the most prevalent: the coherence between the various elements of the public performance of music tariffs; the practicality aspects; the ease of administration to avoid, as much as possible, tariff structures that make it difficult to administer the tariff in a given market; the search for non-discriminatory practices; the relative use of protected works; the taking into account of Canadian circumstances; the stability in the setting of tariffs that minimizes disruption to users; as well as the comparisons with "proxy" markets and comparisons with similar prices in foreign markets.

Summary Information

The Mandate of the Copyright Board of Canada

The Board is an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyrighted works, when the administration of such copyright is entrusted to a collective-administration society. The Board also has the right to supervise agreements between users and licensing bodies and issues licences when the copyright owner cannot be located. The Board may also determine the compensation to be paid by a copyright owner to a user when there is a risk that the coming into force of a new copyright might adversely affect the latter.

Financial Resources

(\$ thousands)

2006-2007	2007-2008	2008-2009
2,580	2,580	2,580

Human Resources

(Full-time Equivalents (FTE))

2006-2007	2007-2008	2008-2009
17 FTE	17 FTE	17 FTE

Departmental Priorities

(\$ thousands)

	Type	Planned Spending		
		2006-2007	2007-2008	2008-2009
1. Ensure timely and fair processes and decisions	Ongoing	2,580	2,580	2,580
2. Advance the analytical framework for decisions and the regulatory processes for tariff-setting	Ongoing			
3. Improve management practices	Ongoing			

Departmental Plans and Priorities

There are three priorities associated with the Copyright Board's strategic outcome of achieving fair decision-making to provide proper incentives for the creation and uses of copyrighted works. These are:

1. Ensure timely and fair processes and decisions

To achieve this priority, the Board will need to ensure that participation costs in the hearing process are being kept as low as possible, thus encouraging participation of the appropriate parties and streamlining the process. The Board will also need to provide appropriate guidance, information and analysis to the participants in order to facilitate the examination process and to foster greater participants' satisfaction. This will be done in particular through telephone advisories and case management meetings with representatives. Finally, by engaging in pre-hearing consultations and information gathering, and by conducting well organized proceedings which address key issues facing copyright-related industries, the Board will be able to issue timely, fair and consistent decisions.

The monitoring of this priority will be achieved by conducting informal surveys of hearing participants, with follow-up examination and determination of alternative procedural practices to improve the efficiency of the regulatory process. The achievement of this result is also directly monitored through the timely conduct of hearing processes and lack of interruption in proceedings due to administrative and technical delays. In addition, the implementation of a pre-hearing joint statement of (non-contested) facts and handling of legal issues solely through written submissions will improve the efficiency of the process. Finally, the Board plans to continue to examine, for each process, how to structure and sequence witnesses and hearing stages so as to eliminate duplication and maximize time spent on relevant issues.

In addition, in 2006-2007 the Board will continue to examine alternatives to current procedures based upon input from hearing participants as part of a plan to develop and implement a more active involvement in pre-hearing information gathering aimed at reducing time and cost to participants while safeguarding the fairness of procedures.

The rationale underlying this priority is to minimize administrative costs to Canadians from the setting of tariffs and to streamline the process in the face of increasing complexities in hearing subject matter, thus increasing regulatory efficiency. To the extent that this also leads to fairer decision-making, the overall innovation capability of parties affected by the copyright tariff process will be improved.

2. Advance the analytical framework for decisions and the regulatory processes for tariff-setting

Among the most significant risks which the Board faces in achieving its strategic outcomes are the potentially disruptive impact of new technologies, in particular on how copyright material is utilized, distributed and monitored. Fair and equitable decisions critically depend on the Board's ability to identify, understand and assess the industry issues before they undermine or adversely impact existing copyright regimes. The Board's approach to managing the technology risk is to

systematically monitor relevant journals, other publications and web-sites, and to attend industry seminars and conferences (such as the international fora noted earlier).

Knowledge of the international experience is also a key tool in addressing the challenges of changing technology and the impact of global events. By comparing experiences across different countries, the Board expects to gain early warning of significant developments and their likely impacts on the Canadian situation.

Leadership in copyright matters will continue to build on the groundwork performed in the last two years. The Board plans to continue its leadership role in the establishment and expansion of international activities such as sharing of procedures, data, analysis and other information. In this regard, the Board will continue its work on the establishment of a formal international body of copyright tribunal administrators.

The Board expects to play a key organizational role in arranging fora to bring the international community together. The next major forum is targeted for 2006. The Board views its leadership within the international community as a primary horizontal initiative over the next three years. With a view to further this leadership, the Board also acted as a host organization for the 2005 annual conference of the international Society for Economic Research on Copyright Issues, and will continue to be involved with this organization in 2006-2007.

By its involvement in international activities as they relate to copyright tariff setting in other parts of the world, the Board ensures that its own tariff-setting processes and decisions are cognizant of developments outside of Canada.

3. Improve Management Practices

Building on the momentum and successes achieved under the Modern Comptrollership Initiative and continuing with the implementation of the Management Accountability Framework, the Copyright Board is committed to continuous improvement of its management practices.

The Copyright Board will continue to work in partnership with three other small quasi-judicial agencies: the Canadian Artists and Producers Professional Relations Tribunal, the Registry of the Competition Tribunal and the Transportation Appeal Tribunal. The focus of this cluster group for 2006-2007 will be on implementing the new Internal Audit Policy; the new Policy on Learning, Training and Development; completing the implementation of the Public Service Modernization Act; improving on the management of government information by implementing information management tools being developed for small agencies; and implementing the Travel AcXess Voyage Project, which is part of the Shared Travel Services Initiative.

In addition, the Copyright Board will proceed to an evaluation of its records, document and information management systems and will give priority to the development of an evaluation strategy and performance measurement tools.

**SECTION II – ANALYSIS OF PROGRAM ACTIVITIES BY
STRATEGIC OUTCOME**

Analysis by Program Activity

Strategic Outcome:

Fair decision-making to provide proper incentives for the creation and uses of copyrighted works.

The following activity contributes to this strategic outcome:

Program Activity Name: Render decisions and issue licences

Financial Resources:

(\$ thousands)

2005-2006	2006-2007	2007-2008
2,514	2,580	2,580

Human Resources:

(Full-time Equivalent (FTE))

2005-2006	2006-2007	2007-2008
17 FTE	17 FTE	17 FTE

The statutory mandate of the Board is to establish tariffs to be paid for the use of copyrighted works, when the administration of such copyright is entrusted to a collective-administration society. It is by rendering decisions and issuing licences that the Board fulfill its mandate.

The stakes are important for both the copyright holders and for users of copyright. Consequently, interventions before the Board are thorough and sophisticated, involving experts witnesses, litigation specialists and detailed econometric, business and financial studies, surveys and evidence. In rendering decisions, the Board must consider the underlying technologies (such as the Internet, digital radio, satellite communications), the economic issues and the interests of owners and users in order to contribute, with fair and equitable decisions, to the continued growth of this component of Canada's knowledge industries. Sound tariff decisions avoid serious disruption in affected sectors of the national economy and costly time-consuming court challenges. The Board will be able to evaluate its achievement in this regard by performing evaluations and studies of the economic impact of the Board's decisions on particular sectors of the Canadian economy.

The Board is continuously looking at ways to improve efficiency of the hearing process by minimizing the overall participants' expenses while ensuring that the process and the tariffs remain fair and equitable. The key partners in this endeavour are the private interest parties who appear before the Board. They are the various collective societies that represent rights owners and associations and organizations representing users of works.

Improving the efficiency of the regulatory process involves continual refinements in scheduling of witnesses, establishing and communicating the parameters of the hearing to participants, consulting with key stakeholders and developing codes of hearing practice and related guidelines for the conduct of hearings. By improving the efficiency of the tariff hearing process, this activity is expected to contribute to the important objective of reducing the regulatory burden. It is by performing evaluations of the time duration of the process and of participants' satisfaction that the Board will be able to assess the performance achieved through the activity.

Pursuant to section 77 of the *Act*, the Board may grant licences that authorize the use of published works, fixed performances, published sound recordings and fixed communication signals if the copyright owner cannot be located. Since 1989, the Board has issued 171 such licences. The Board's objective with respect to this activity is to issue licences in a timely manner. The duration of the process will help the Board assess its performance with respect to this activity.

SECTION III – SUPPLEMENTARY INFORMATION

Organizational Information

Responsibilities and Organization

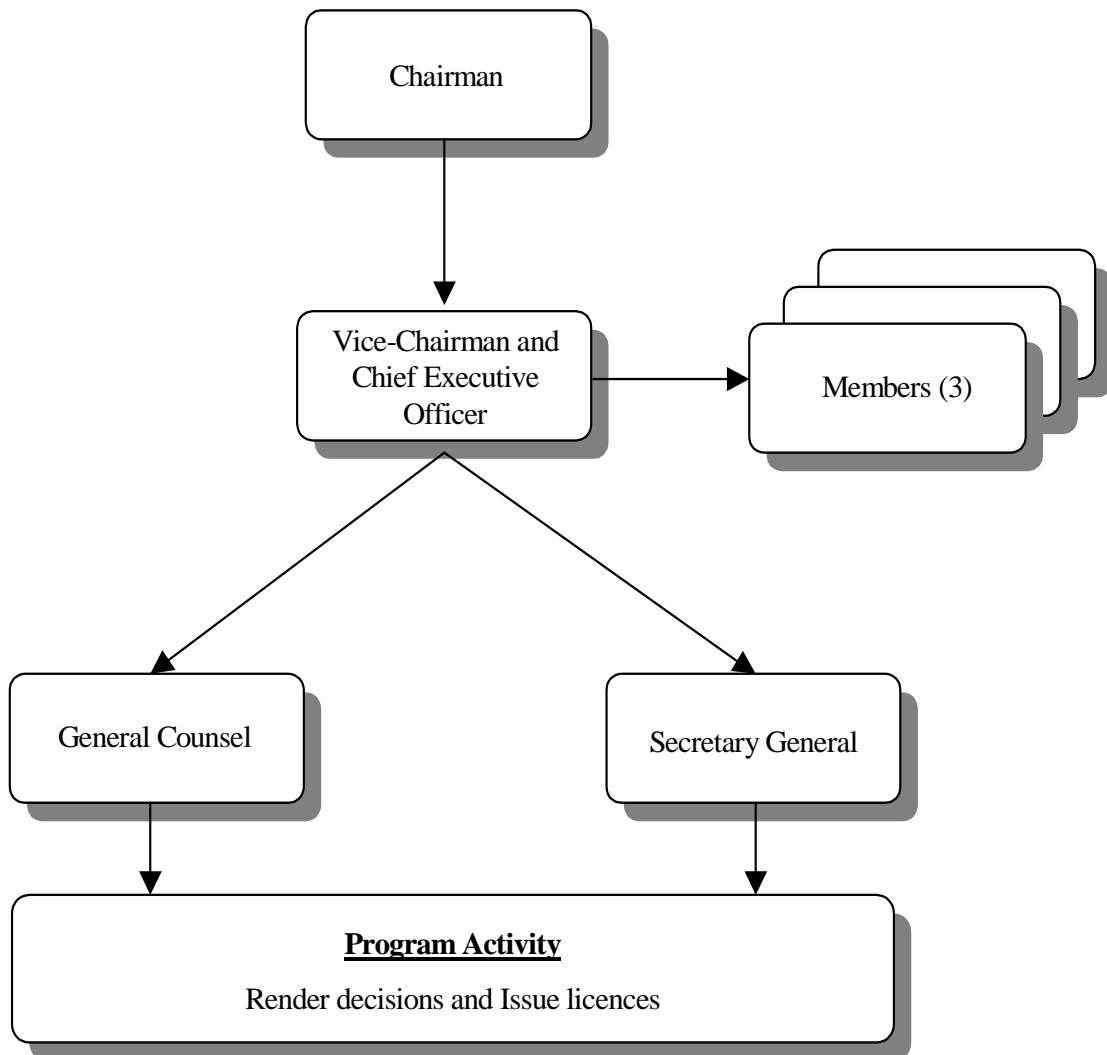
Board members are appointed by the Governor in Council to hold office during good behaviour for a term not exceeding five years. They may be reappointed once.

The *Act* requires that the Chairman must be a judge, either sitting or retired, of a superior, county or district court. The Chairman directs the work of the Board and apportions its caseload among the members.

The *Act* also designates the Vice-Chairman as Chief Executive Officer of the Board. He or she exercises direction over the Board and supervises its staff.

The organizational structure of the Board follows the requirements set out in section 66 and following sections of the *Act* (See Figure III.1).

Figure III.1 - Organizational Structure of the Board



The Board has 17 Full-Time Equivalents (5 Governor in Council appointees and 12 employees).

NOTE: To be consistent with the Government efforts to develop its priorities and leading to a new budget, departments have been directed to repeat 2006-2007 Main Estimate amounts in the 2007-2008 and 2008-2009 periods — this table reflects that direction.

Table 1: Departmental Planned Spending and Full-Time Equivalents

(\$ thousands)	Forecast Spending 2005-2006	Planned Spending 2006-2007	Planned Spending 2007-2008	Planned Spending 2008-2009
Render decisions and issue licences	2,514	2,580	2,580	2,580
Budgetary Main Estimates (gross)	2,514	2,580	2,580	2,580
Less: Respendable revenue				
Total Main Estimates	2,514	2,580	2,580	2,580
<i>Adjustments:</i>				
Supplementary Estimates:				
Collective Bargaining	61			
Total Adjustments	61			
Total Planned Spending	2,575	2,580	2,580	2,580
Total Planned Spending				
Total Planned Spending	2,575	2,580	2,580	2,580
Less: Non-Respendable revenue				
Plus: Cost of services received without charge	339	351	351	351
Net cost of Program	2,914	2,931	2,931	2,931
Full-Time Equivalents				
Full-Time Equivalents	17	17	17	17

Table 2: Resources by Program Activity

2006-2007			(\$ thousands)
Program Activity	Budgetary		Total Planned Spending
	Operating	Net	
Render decisions and issue licences	2,580	2,580	2,580
Total	2,580	2,580	2,580

Table 3: Voted and Statutory Items

2006-2007		(\$ thousands)	
Vote or Statutory Item	Truncated Vote or Statutory Wording	2006-2007 Main Estimates	2005-2006 Main Estimates
50	Program expenditures	2,274	2,206
(S)	Contributions to employee benefit plans	306	308
	Total Department	2,580	2,514

Table 4: Services Received without Charge

2006-2007	(\$ thousands)
Accommodation provided by Public Works and Government Services Canada (PWGSC)	230
Contributions covering employers' share of employees' insurance premiums and expenditures paid by TBS (excluding revolving funds)	121
Total 2006-2007 Services received without charge	351