

Copyright Board Canada

**1999-00
Estimates**

A Report on Plans and Priorities

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Minister of Industry

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Section I: Messages

Minister's Message

Our vision of Canada at the dawn of the new millennium is that of a strong and dynamic country poised to be a global leader in the knowledge-based economy of the 21st century. Canada continues to face the challenges of responding to the rapid pace of global change, and of harnessing the benefits of the knowledge-based economy for all Canadians. The government's goal is to create economic growth and more jobs for Canadians, in order to improve incomes and our standard of living.

Our standard of living depends directly on productivity, and improving productivity growth will be one of Canada's key challenges in the years ahead. The Industry Portfolio has a pivotal role to play in meeting this challenge. With 42 percent of federal science and technology funding and many of the government's micro-economic levers at its disposal, the Industry Portfolio has a unique capacity for innovation, research excellence, and partnership. The 13 Portfolio members bring together a versatile array of complementary programs to help improve Canadian productivity and competitiveness by focusing on such strategic priorities as promoting innovation through science and technology, helping small- and medium-sized enterprises to grow, encouraging trade and investment, and promoting economic growth in Canadian communities.

I am pleased to present the Report on Plans and Priorities for the Copyright Board. This Report sets out for Canadians the planned activities, priorities and resources over the course of the next three years. The Copyright Board provides Canadians with royalties which are fair and reasonable to both copyright owners and the users of copyright-protected works, and issues non-exclusive licences authorizing the use of works when the copyright owner cannot be located. In addition, the Board makes every effort to ensure that its current and future clientele and the general public are aware of its mandate and activities, through various presentations and meetings, as well as the publication of a very detailed annual report which is widely distributed to the Canadian intellectual property, cultural industries and communications milieus. These plans illustrate how the Copyright Board, as a member of the Industry Portfolio, will contribute to improving Canada's competitiveness.

The Industry Portfolio is ...

Atlantic Canada Opportunities Agency
Business Development Bank of Canada*
Canadian Space Agency
Competition Tribunal
Copyright Board Canada
Canada Economic Development for Quebec
Regions
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*
Statistics Canada
Western Economic Diversification Canada

**Not required to submit Reports on Plans and Priorities*

Canada is well equipped to be a leader in the knowledge-based economy of the 21st century. We have the people, the institutions and the research excellence. We have the vision to not only connect all Canadians, but also to connect them to the global marketplace. We know the challenges that we face and the opportunities afforded to us. By mobilizing our resources, we can be a leader in the new economy. By working together, we can ensure continuing success as we embark on the new millennium.

The Honourable John Manley

B. Management Representation

February 19, 1999

Report on Plans and Priorities 1999-2000

I submit, for tabling in Parliament, the 1999-2000 Report on Plans and Priorities (RPP) for the Copyright Board.

To the best of my knowledge (and subject to the qualifications outlined below), the information:

- Accurately portrays the department's mandate, plans, priorities, strategies and expected key result of the organization.
- Is consistent with the disclosure principles contained in the *Guidelines for Preparing a Report on Plans and Priorities*.
- Is comprehensive and accurate.
- Is based on sound underlying departmental information and management systems.

I am satisfied as to the quality assurance processes and procedures used for the RPP's production.

The Operational Plan Frameworks (OPF) on which this document is based has been approved by Treasury Board Ministers and is the basis for accountability for the results achieved with the resources and authorities provided.

Secretary to the Board

Section II: The Board's Overview

A. Mandate, Role and Responsibilities

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. Moreover, the Board has the right to supervise agreements between users and licensing bodies, issues licences when the copyright owner cannot be located, and may 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. Its responsibilities under the *Copyright Act* (the *Act*) are to:

- ◆ establish tariffs for the public performance or the communication to the public by telecommunication of musical works and sound recordings [sections 67 to 69];
- ◆ establish tariffs, at the option of a collective society referred to in section 70.1, for any act mentioned in sections 3, 15, 18 and 21 of the *Act* [sections 70.1 to 70.191];
- ◆ set royalties payable by a user to a collective society, when there is disagreement on the royalties or on the related terms and conditions [sections 70.2 to 70.4];
- ◆ establish tariffs for the retransmission of distant television and radio signals as well as for the reproduction and public performance by educational institutions, of radio or television news or news commentary programs and all other programs, for educational or training purposes [sections 71 to 76];
- ◆ establish tariffs for the private copying of recorded musical works [sections 79 to 88];
- ◆ rule on applications for non-exclusive licences to use published works, fixed performances, published sound recordings and fixed communication signals, when the copyright owner cannot be located [section 77];
- ◆ examine, at the request of the Director of Research appointed under the *Competition Act*, agreements between a collective society and a user which have been filed with the Board, where the Director considers that the agreement is contrary to the public interest [sections 70.5 and 70.6];
- ◆ set compensation, under certain circumstances, for formerly unprotected acts in countries that later join the Berne Convention, the Universal Convention or the Agreement establishing the World Trade Organization [section 78].

In addition, the Minister of Industry can direct the Board to conduct studies with respect to the exercise of its powers [section 66.8].

Finally, any party to an agreement on copyright royalties payable to a collective society can file the agreement with the Board within 15 days of its conclusion, thereby avoiding certain provisions of the *Competition Act* [section 70.5].

Organization and Program Composition

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* states 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. In matters before the Board, the Chairman casts the deciding vote in the case of a tie.

The *Act* also designates the Vice-Chairman as Chief Executive Officer of the Board, exercising direction over the Board and supervision of its staff.

The Board's Staff

The Board has a staff of seven employees, three of whom report to the Chief Executive Officer: the Secretary, the General Counsel and the Researcher-Analyst.

The Secretary plans the Board's operations, serves as its Registrar, represents the Board in its relations with Members of Parliament, provincial governments, the media and the public and directs the preparation of the Board's reports to Parliament and to the federal government's central agencies.

The General Counsel provides legal advice on proposed tariff and licence applications before the Board. The General Counsel also represents the Board before the Courts in matters involving its jurisdiction or decisions.

The Researcher-Analyst provides economic expertise to the Board on matters raised by proposed tariffs and licence applications and conducts studies on specific aspects of rate regulation.

To avoid the cost of additional administrative staffing, the Board entered into a support services agreement with the Department of Industry. The Department provides support services and expert advice in personnel, administrative and financial matters.

B. Objective

The Copyright Board's objective is to fix royalties that are fair and reasonable for both the owners of copyright and the users of works protected by copyright; and, to permit the use of works for which the owner of the copyright cannot be located.

C. Operating Environment

Historical Overview

In 1925, PRS England set up a subsidiary called the Canadian Performing Rights Society (CPRS). In 1931, the *Copyright Act* was amended in several respects. The need to register copyright assignments was abolished. Instead, CPRS had to deposit a list of all works comprising its repertoire and file tariffs with the Minister. If the Minister thought the society was acting against the public interest, he could trigger an inquiry into the activities of CPRS. Following such an inquiry, Cabinet was authorized to set the fees the society would charge.

Inquiries were held in 1932 and 1935. The second inquiry recommended the establishment of a tribunal to review, on a continuing basis and before they were effective, public performance tariffs. In 1936, the *Act* was amended to set up the Copyright Appeal Board.

On February 1, 1989, the Copyright Board took over from the Copyright Appeal Board. The regime for public performance of music was continued, with a few minor modifications. The new Board also assumed jurisdiction in two new areas: the collective administration of copyright and the licensing of uses of published works whose owners cannot be located. Later the same year, the *Canada-US Free Trade Implementation Act* vested the Board with the power to set and apportion royalties for the newly created compulsory licensing scheme for works retransmitted on distant radio and television signals.

Bill C-32 (Act modifying the *Copyright Act*) which received Royal Assent on April 25, 1997, modifies the mandate of the Board by adding the responsibilities for the adoption of tariffs for the public performance and communication to the public by telecommunication of sound recordings of musical works, for the benefit of the performers of these works and of the makers of the sound recordings ("the neighbouring rights") and for the adoption of tariffs for private copying of recorded musical works, for the benefit of the rights owners in the works, the recorded performances and the sound recordings ("the home-taping regime").

General Powers of the Board

The Board has powers of a substantive and procedural nature. Some powers are granted to the Board expressly in the *Act*, and some are implicitly recognized by the courts.

As a rule, the Board holds a hearing. No hearing will be held if proceeding in writing accommodates a small music user that would otherwise incur large costs. The hearing may be dispensed with on certain 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.

Guidelines and Principles Influencing the Board's Decisions

The decisions the Board makes are constrained in several respects. These constraints come from sources external to the Board: the law, regulations, 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 itself 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 illegally 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 factors, the following seem to be the most prevalent: the coherence between the various elements of the public performance tariff, 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 avoidance of price discrimination, 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.

Outline of the Board's Areas of Jurisdiction

In short, the Board's jurisdiction extends to the following four areas (the manner in which the Board is seized of a matter is indicated between brackets):

1. Copyright in works
 - ! Public performance of music (compulsory filing of tariffs);
 - ! Retransmission of distant signals (compulsory filing of tariffs);
 - ! Other rights administered collectively (optional filing of tariffs);
 - ! Other rights administered collectively (arbitration of conditions of licences, upon request from a collective body or a user);
 - ! Issuance of licences when the rights owner cannot be located (upon request by the potential user).
2. Copyright in performers' performances and sound recordings
 - ! Public performance of recorded music (compulsory filing of tariffs);
 - ! Other rights administered collectively (optional filing of tariffs);
 - ! Other rights administered collectively (arbitration of conditions of licences, upon request from a collective body or a user);
 - ! Issuance of licences when the rights owner cannot be located (upon request by the potential user).
3. Home taping of recorded musical works, recorded performers' performances and sound recordings
 - ! Reproduction for private use (compulsory filing of tariffs).
4. Off-air taping and use of radio and television programs for educational or training purposes (works, performances, sound recordings and communication signal)
 - ! Reproduction and public performance (compulsory filing of tariffs).

Copyright Board

D. Financial Spending Plan

(thousands of dollars)	Forecast Spending 1998-99*	Planned Spending 1999-00	Planned Spending 2000-01	Planned Spending 2001-02
Gross Program Spending	847	870	870	870
Less: Revenues Credited to the Vote	-	-	-	-
Net Program Spending	847	870	870	870
Plus: Cost of Services Provided by other Departments/Agencies	180	168	168	168
Net Cost of the Board	1,027	1,038	1,038	1,038

* Reflects best forecast of total planned spending to the end of the fiscal year.

Section III: Plans, Priorities, Strategies and Expected Results

The Copyright Board has only one single business line.

A. Summary of Plans, Priorities and Strategies and Expected Results

The Copyright Board	
to provide Canadians with:	to be demonstrated by:
<p>Royalties which are fair and reasonable to both copyright owners and the users of copyright-protected works, and issue non-exclusive licences authorizing the use of works when the copyright owner cannot be located.</p>	<p>Fair and reasonable royalties:</p> <ul style="list-style-type: none"> P User satisfaction with tariff structures. P Frequency of objections to tariffs. P Judicial reviews which support the findings of the Board. <p>Timely examination of disputed tariffs.</p> <p>Assessment of the impact that technological developments in the use of copyrighted material will have in non-traditional media.</p> <p>Provision of advice and guidance in the area of intellectual property.</p> <p>Public and client awareness of the activities and mandate of the Board.</p> <p>Licences granted for use of published works for which the copyright owners are unlocatable.</p>

B. Details by Program and Business Line

The Copyright Board has only one single business line.

Business Line Objective

The Board's only program consists of setting royalties that are fair and reasonable both to copyright owners and to users of copyrighted works and issuing non-exclusive licences authorizing the use of published works for which the copyright owners are unlocatable.

In the performance of its duties, the Board works to balance the market forces between users and licensing bodies which, by virtue of their activities, enjoy some market power.

Strategic Objectives

It is important that the Board strategically employs its financial and human resources to meet its current and additional obligations conferred by the *Copyright Act*, as modified by Bill C-32. The new tariffs that have been and will be filed will give rise to hearings involving a great deal of work, not only during the actual hearing, but also for any pre-hearing conferences, any procedural matters, any preliminary motions requiring a decision, creation of the file and its presentation at the hearing, and any related research. The hearings will result in decisions on extremely complex issues that will require more and more specialized research.

Change management issues are also key initiatives to which the Board will give its attention in the coming year. In this age of high technology, the environment in which the Board must work is in a constant state of flux. The issues brought before the Board are increasingly complex and require a very broad understanding of the communications and cultural industries sector. As a result, the Board will have to call on internal resources or contractors to help it analyse such highly complicated matters as the use of music on the Internet.

Operating Context

The Board is in a particularly precarious operating context at present. Its budget, like that of every other government department and agency, has suffered numerous cuts in recent years. The Board is already operating with extremely limited human and financial resources.

The Board has made every effort to minimize its costs. As a quasi-judicial administrative body, it does not have any discretionary programs that it can reduce or eliminate. Its priorities are established by its enabling legislation. The obligations which

the *Act* and the general principles of law impose on the Board impact directly on its budget.

The Board is working with the officials at Industry Canada and Canadian Heritage to find the best solution to the issue of funding brought upon by the adoption of the Phase II of the *Copyright Act*. The Board has hired a consultant to conduct a study to determine its present and long-term needs. The study will identify what additional resources are required by the Board to discharge its new responsibilities. The Board has also hired a consultant to conduct a study to evaluate the feasibility/ advisability/ appropriateness of a cost recovery mechanism for the Copyright Board.

Key Plans and Strategies

Main Objectives

- ! To estimate the financial and human resources needed to meet its current and additional obligations conferred by the *Copyright Act*, as modified.
- ! To make sure it has the operational framework to meet its new responsibilities.
- ! To continue to manage its resources in keeping with the principles of efficiency, effectiveness and accountability.
- ! To be fully operational, so that it continue to properly fulfil its current mandate and face up to its new responsibilities as a result of Bill C-32.

In order to carry out the above mandate, the Copyright Board has set itself the following objectives and priorities for the stated planning period:

Other Objectives

- ! To fix royalties which are fair and reasonable to both copyright owners and the users of copyright-protected works, and issue non-exclusive licences authorizing the use of published works for which the copyright owners are unlocatable.

Expected Results:

- ! Clientele satisfaction (collective societies and users);
 - ! Reduction of objections to tariffs;
 - ! Absence of judicial challenges of its decisions.
-
- ! The Board would also undertake the appropriate procedure leading to the adoption of two new regulations proposed for in Bill C-32 (Act modifying the *Copyright Act*), which received Royal Assent on April 25, 1997 [S.C., 1997, c. 24]: the regulations governing the issuance by the Board of licences when the copyright owner cannot be located; and the regulations prescribing the information to be kept by an educational institution in relation to the making, destruction, performance and marking of the copies made, as well as the information to be sent to the collective societies involved.
 - ! To study and examine contested tariffs and applications for licences for unlocatable copyright owners as expeditiously as possible.
 - ! Certify non-contested tariffs before they come into force.

Expected Result: Provides its clients with a more stable business environment and allows them to better plan and deliver their own activities.

Other Objectives (continued)

- i Take measures to increase the efficiency of the Board's intervention and to diminish the costs of tariffication:

- i) Set tight schedules for filing evidence and holding hearings.

- ii) Without limiting the rights of the parties, set parameters for the issues the Board is willing to examine and indicate what type of evidence it would like to see presented on these issues.

- Expected Result:** Lower costs for the parties and the Board.

- iii) Motivate "small" users to join together in order to present their views to the Board and, on its own initiative, during hearings, raise questions submitted to it by users who are unable to appear.

- Expected Result:** A more effective system and increased user satisfaction.

- iv) To encourage collective societies to file multi-year tariffs.

- Expected Results:** Lower costs for the parties and the Board; way to let clients know in advance their operating costs.

- v) To maintain regular contacts with collective societies and users.

- Expected Result:** Helping them to understand the processes involved in dealing with the Board in each and every sector of its activities.

Other Objectives (continued and end)

- ! To ensure that its current and future clientele and the general public are more aware of its mandate and activities, through various presentations and meetings, as well as the publication of a very detailed annual report which is widely distributed to the intellectual property, cultural industries and communications milieus.
- ! To assess what impact regulatory and market changes that are under way in the broadcasting sector will have on the work of the Board, since a large portion of the royalties generated by Board decisions come from that sector.
- ! To assess the impact technological developments in the use of copyrighted works will have on non-traditional media.
- ! To consider the appropriateness of creating an Internet site to describe its operations and to make its decisions, notices and regulations available to the public.

C. Consolidated Reporting

Chart on Legislative and Regulatory Initiatives

Legislation and Regulations	Expected Results
Regulation governing the issuance by the Board of licences when the copyright and the neighbouring right owner cannot be located.	To increase its efficiency.
Regulation prescribing the information to be kept by an educational institution in relation to the making, destruction and performance of broadcast programs.	To complete the implementation of the Regime as stated in the <i>Act</i> .
Regulation establishing the number of members that constitutes a quorum.	To increase its efficiency.

Section IV: Supplementary Information

Table 1: Spending Authorities - Ministry Summary Part II of the Estimates

Vote	(thousands of dollars)	1999-00 Main Estimates	1998-99 Main Estimates
Copyright Board			
50	Program expenditures	745	720
(S)	Contributions to employee benefit plans	125	127
Total Agency		870	847

Personnel Information

Table 2.1: Organization Structure

Organization and Program Composition

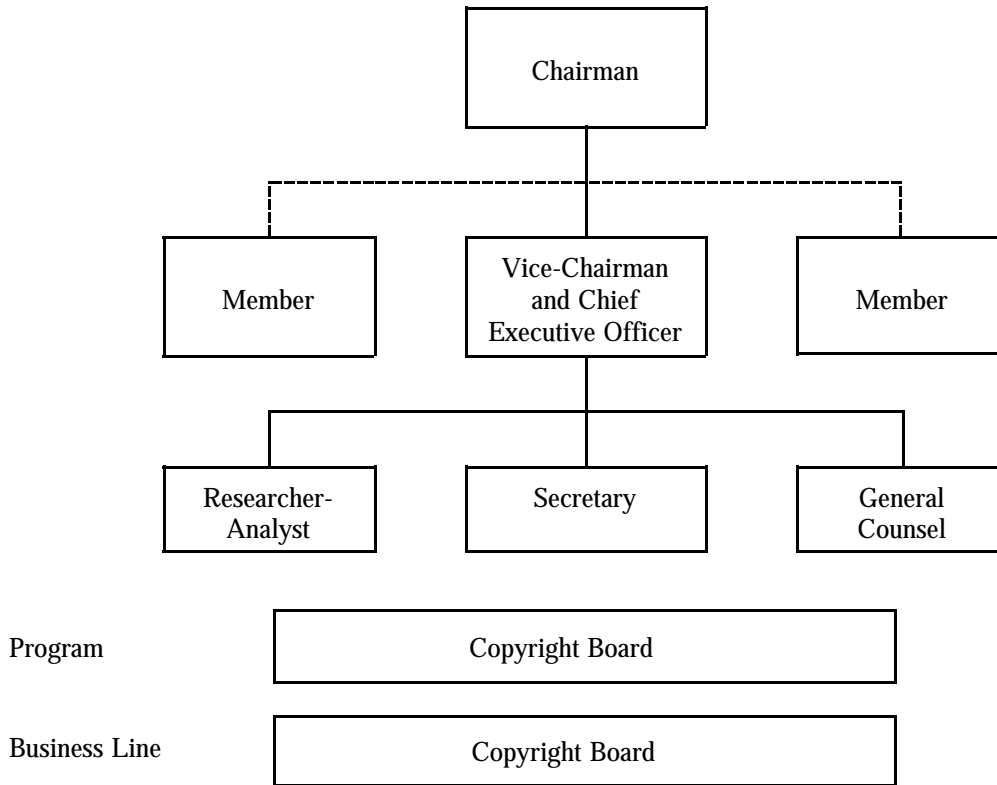


Table 2.2: Planned Full Time Equivalents (FTEs) by Program and Business Line

Business Line	Forecast 1998-99	Planned 1999-00	Planned 2000-01	Planned 2001-02
Copyright Board	6	7	7	7
Total	6	7	7	7

Table 2.3: Summary by Professional Category (FTEs)

	Forecast 1998-99	Planned 1999-00	Planned 2000-01	Planned 2001-02
Order-in-Council Appointments*	3	3	3	3
Executive Group	1	1	1	1
Scientific and Professional	2	2	2	2
Administrative and Foreign Service	2	2	2	2
Administrative Support	1	2	2	2
Total	9	10	10	10

* The Board members appointed by Governor-in-Council are not considered FTEs.

Table 3: Board's Summary of Standard Objects of Expenditure

(thousands of dollars)	Forecast Spending 1998-99	Planned* Spending 1999-00	Planned* Spending 2000-01	Planned* Spending 2001-02
Personnel				
Salaries and wages	603	626	626	626
Contributions to employee benefit plan	127	125	125	125
Total Personnel	730	751	751	751
Goods and Services				
Transportation and communications	25	35	35	35
Information	20	30	30	30
Professional and special services	15	15	15	15
Rentals	8	12	12	12
Purchased repairs and upkeep	3	2	2	2
Utilities, materials and supplies	21	25	25	25
Other subsidies and payments	-	-	-	-
Capital	25	-	-	-
Total Operating	117	119	119	119
Total Program	847	870	870	870

* A study under way will identify what additional resources are required by the Board to discharge its new responsibilities.

Table 4: Program Resources by Program and Business Line for the Estimates Year

(thousands of dollars)

1999-00 Main Estimates

Business Line	FTEs	Operating	Capital	Gross Planned Expenditures	Less: Revenue Credited to the Vote	Net Planned Spending
Copyright Board	10	870	-	870	-	870
Total	10	870	-	870	-	870

Other Information on the Copyright Board

Copyright Act, R.S.C., 1985, c. C-42

Act modifying the *Copyright Act*, S.C., 1997, c. 24

References

Copyright Board Annual Reports

Performance Report 1998