



Copyright Board Canada

**2000-2001
Estimates**

Part III – Report on Plans and Priorities

The Estimates Documents

Each year, the government prepares Estimates in support of its request to Parliament for authority to spend public monies. This request is formalized through the tabling of appropriation bills in Parliament. The Estimates, which are tabled in the House of Commons by the President of the Treasury Board, consist of three parts:

Part I – The Government Expenditure Plan provides an overview of federal spending and summarizes both the relationship of the key elements of the Main Estimates to the Expenditure Plan (as set out in the Budget).

Part II – The Main Estimates directly support the *Appropriation Act*. The Main Estimates identify the spending authorities (votes) and amounts to be included in subsequent appropriation bills. Parliament will be asked to approve these votes to enable the government to proceed with its spending plans. Parts I and II of the Estimates are tabled concurrently on or before 1 March.

Part III – Departmental Expenditure Plans which is divided into two components:

- (1) **Reports on Plans and Priorities (RPPs)** are individual expenditure plans for each department and agency (excluding Crown corporations). These reports provide increased levels of detail on a business line basis and contain information on objectives, initiatives and planned results, including links to related resource requirements over a three-year period. The RPPs also provide details on human resource requirements, major capital projects, grants and contributions, and net program costs. They are tabled in Parliament by the President of the Treasury Board on behalf of the ministers who preside over the departments and agencies identified in Schedules I, I.1 and II of the *Financial Administration Act*. These documents are to be tabled on or before 31 March and referred to committees, which then report back to the House of Commons pursuant to Standing Order 81(4).
- (2) **Departmental Performance Reports (DPRs)** are individual department and agency accounts of accomplishments achieved against planned performance expectations as set out in respective RPPs. These Performance Reports, which cover the most recently completed fiscal year, are tabled in Parliament in the fall by the President of the Treasury Board on behalf of the ministers who preside over the departments and agencies identified in Schedules I, I.1 and II of the *Financial Administration Act*.

The Estimates, along with the Minister of Finance's Budget, reflect the government's annual budget planning and resource allocation priorities. In combination with the subsequent reporting of financial results in the Public Accounts and of accomplishments achieved in Departmental Performance Reports, this material helps Parliament hold the government to account for the allocation and management of public funds.

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**Copyright Board
Canada**

**2000-01
Estimates**

Report on Plans and Priorities

John Manley
Minister of Industry

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Section I: Messages

A. Minister's Portfolio Message

In the global economy, innovation is an essential determinant of long-term economic growth, improved productivity and, ultimately, our quality of life.

Preparing Canadians for the knowledge-based economy remains one of the government's top priorities in the years ahead. My portfolio of government organisations is promoting the growth of a strong, dynamic Canadian economy and helping Canadians take advantage of the opportunities offered by the global knowledge-based economy. We have laid a solid foundation through our continuing investments in knowledge and innovation.

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*

An essential ingredient for our knowledge-based growth, both as an economy and as a society, is Connecting Canadians, an initiative designed to make Canada the most connected country in the world. Leading-edge applications will create jobs and growth, and strengthen productivity performance. Connecting Canadians also allows us to reach out to all citizens, and redefine and enhance how we provide services to, and interact with, Canadians.

I am pleased to present the Report on Plans and Priorities for Copyright Board Canada which sets out for Canadians the planned activities, priorities and resources over the course of the next three years. These plans illustrate how Copyright Board Canada is contributing to building a strong and dynamic Canadian economy.

The Throne Speech of the Second session of the Thirty-Sixth parliament identified knowledge and creativity as driving forces in Canada's new economy. It also highlighted the contribution our writers, singers and performers, filmmakers, artists and heritage workers make to strengthen the bond between Canadians. Within this context Copyright Board Canada, a quasi-judicial tribunal, provides to Canadians fair and reasonable decisions on royalties for copyright owners and users of copyright protected works. The Board also issues non-exclusive licences authorizing the use of works when the copyright owner cannot be located. The Board's

decisions, often rendered after lengthy and exhaustive public hearings, are estimated to account for royalties of \$200 million annually.

As we look ahead we must define excellence by global standards. Innovation, science, research and development, and connectedness will profoundly change the world we face in the next decade. To maintain and improve our quality of life, we must be more skilled, more productive, more entrepreneurial and more innovative than any other country in the world and we can be all of these things.

The Honourable John Manley

B. Management Representation

February 10, 2000

Report on Plans and Priorities 2000-2001

I submit, for tabling in Parliament, the 2000-2001 Report on Plans and Priorities (RPP) for the Copyright Board Canada.

To the best of my knowledge the information:

- Accurately portrays the Board's mandate, priorities, strategies and planned results 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 reporting structure, 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.

Stephen J. Callary
Vice-Chairman and Chief Executive Officer

Section II: The Board's Overview

A. Mandate, Role and Responsibilities

Mandate

The mandate of the Copyright Board Canada is set out in the *Copyright Act* (the *Act*) of Canada as amended in 1997.

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).

Role

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.

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

Responsibilities

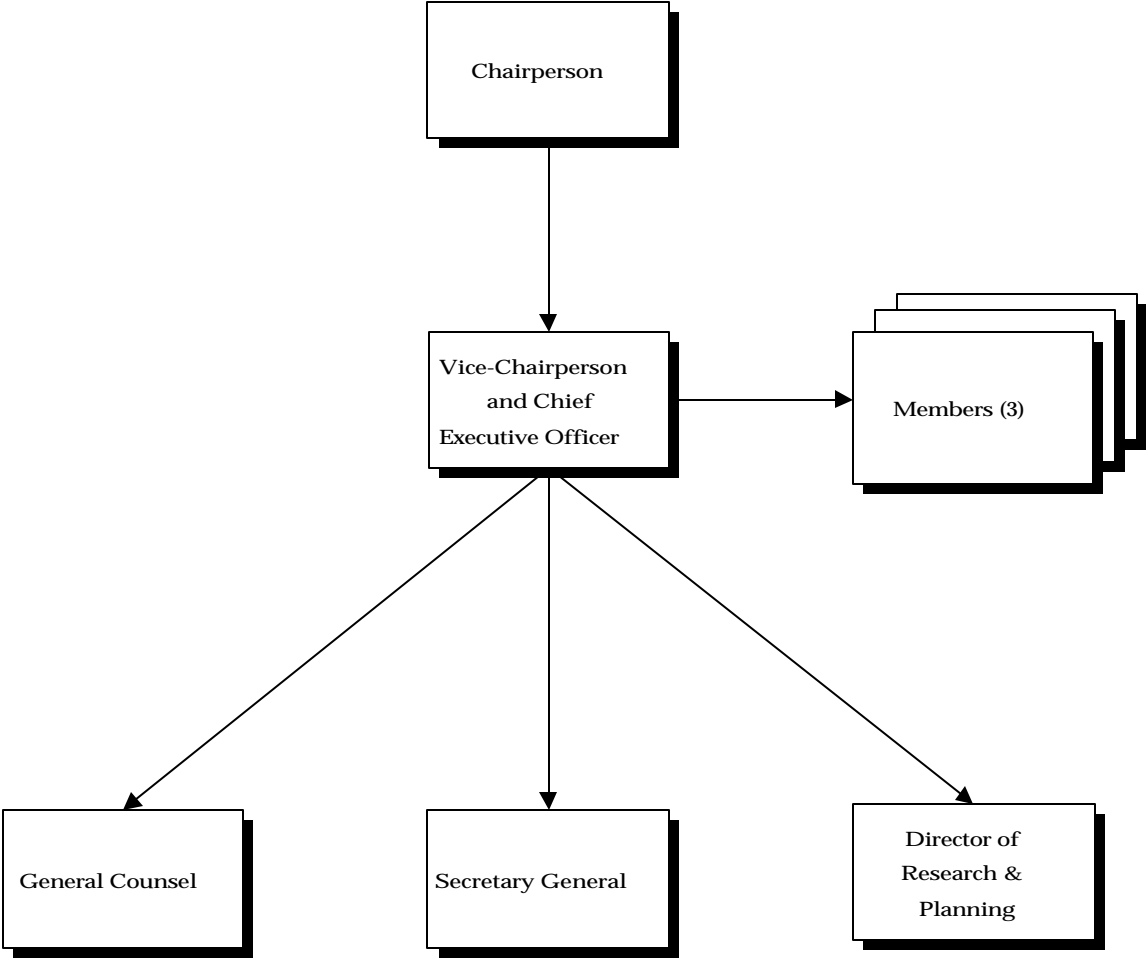
Board members are appointed by the Governor in Council to hold office during good behaviour for a term not exceeding five years. They may be reappointed once.

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

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

The Board has five Governor in Council appointees, seven employees and an authorized base of \$874,000.

Organization Structure



Program: Copyright Board
Business Line: Copyright Royalty Decisions

The Board has five Governor in Council appointees, seven employees and an authorized base of \$874,000.

B. Program Objective

The Copyright Board Canada's program objective is to fix royalties that 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.

C. External Factors Influencing the Board

The *Copyright Act* sets the framework which allows creators of intellectual works (e.g., musical works, theatre plays, films, novels, computer programs) to control their exploitation and obtain remuneration for their use while ensuring user access to those works. The Board has all the powers of a Superior Court of Record. Appeals of the Board's decisions are to the Federal Court of Appeal. The Board is an economic regulator which hears complicated evidence in the area of cultural economics, advanced computer communications technology (e.g., copying music over the Internet) and social, technological (e.g., blank CDs) and demographic statistics. The *Act* affects many industries, including culture and high technology. It also has impacts at the international level and allows Canadian copyright owners to collect royalties in foreign countries in respect of uses for which they were not remunerated until now because Canada had not established the required level of reciprocity.

Recent changes to the legislation in 1997 (Bill C-32) involve new regimes and have contributed to an environment of increased expectations by copyright collectives and fear and concern for those required to pay royalties for the first time ever (e.g., educational institutions). More and more, tariffs filed with the Board are challenged. The impacts of the decisions of the Board are estimated to be at \$200 million annually. The stakes are enormous both for the copyright holders as well as for users of copyright. As a consequence, interventions before the Board are becoming increasingly sophisticated involving expert witnesses, litigation specialists and detailed econometric, business and financial studies, surveys and evidence.

Solid and balanced rulings which consider the underlying technologies such as the Internet, digital radio, satellite communications, economic issues and the interests of owners and users are important to the continued growth of this component of Canada's knowledge industries. The mishandling of royalty issues related to retransmission, neighbouring rights, private copying, Internet uses, digital music or music performance could cause serious disruption in certain sectors of the national economy and would lead to costly and time-consuming court challenges.

Users and owners can ask the Board to set fees where they cannot agree on them. This has a structuring affect by providing for uninterrupted user access to works while the issue is under review. Royalties paid to copyright owners are reinvested in the creative process and constitute

a form of risk capital for the industry. A large number of music industry members rely on their copyright royalty payments as a significant percentage of their annual income.

In its deliberations the Board has to deal with the profitability of industries as diverse as radio, television, cinema, cable, the Internet, publishing, electronic equipment and recording media manufacturing, food and beverage, hospitality, hotels and restaurants, concerts, sports, theme parks and community events. As well the distinct and markedly different French and English markets for copyright materials, the different industry cultures in the French and English language markets, impacts on the operations of not for profit organizations such as community radio, public television, rural and agricultural fairs, symphonic orchestras, municipal recreational facilities, schools, hospitals, the disabled and churches must be considered. Of major importance in its hearings have been the relative value of the same rights in different markets, the structure and operation of the Internet and the impact of Canadian law on the competitiveness of Canadian industries in the global marketplace. Finally recent applications have required consideration of the impacts of tariffs on grey market practices, sophisticated social sciences and other types of opinion survey and the impacts of tariffs on the efficient delivery of public services (e.g., education, health and culture such as library services, community theatre and the performance of musical works).

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.

D. Board’s Planned Spending

(thousands of dollars)	Forecast Spending 1999-2000*	Planned Spending 2000- 2001	Planned Spending 2001-2002	Planned Spending 2002-2003
Budgetary Main Estimates	870	874	874	874
Less: Respendable revenue	-	-	-	-
Total Main Estimates	870	874	874	874
Adjustments**	811	-	-	-
Net Planned Spending	1681			
Plus: Cost of services received without charge	176	176	176	176
Net cost of Program	1857	1050	1050	1050
Full Time Equivalents	7	7	7	7

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

** Adjustments are to accommodate approvals obtained since the Annual Reference Level Update (ARLU) exercise and to include Budget initiatives.

Section III: Plans, Results and Resources

Copyright Board Canada has only one single business line.

Copyright Board Canada's single line of business is Copyright Royalty Decisions

A. Net Planned Spending (\$ 000) and Full time Equivalents (FTE)

Forecast Spending 1999-2000*	Planned Spending 2000-2001	Planned Spending 2001-2002	Planned Spending 2002-2003
\$1681	\$874	\$874	\$874
7 FTEs	7 FTEs	7 FTEs	7 FTEs
5 GICs**	5 GICs**	5 GICs**	5 GICs**

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

** The Chairperson's salary as a sitting judge is paid for by the Office of the Commissioner for Federal Judicial Affairs.

B. Business Line Objective

The Copyright Board Canada's program objective is to fix royalties that 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.

C. Business Line Description

Copyright Board Canada was established on February 1, 1989, as the successor of the Copyright Appeal Board. Its responsibilities under the *Copyright Act* are to:

- S** establish tariffs for the public performance or the communication to the public by telecommunication of musical works and sound recordings [sections 67 to 69];
- S** adopt tariffs, at the option of a collective society referred to in section 70.1, for the doing of any protected act mentioned in sections 3, 15, 18 and 21 of the *Act*. [sections 70.1 to 70.191];
- S** 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];

- S** establish tariffs for the retransmission of distant television and radio signals or 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];
- S** establish tariffs for the private copying of recorded musical works [sections 79 to 88];
- S** 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];
- S** examine, at the request of the Commissioner of Competition appointed under the *Competition Act*, agreements made between a collective society and a user which have been filed with the Board, where the Commissioner considers that the agreement is contrary to the public interest [sections 70.5 and 70.6];
- S** 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 a licence with 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].

D. Key Results Commitments, Planned Results, Related Activities and Resources

Copyright Board Canada			
Key Results Commitments	Planned Results	Related Activities	Resources (\$ 000)
<p>to provide Canadians with:</p> <p>A quasi-judicial tribunal established for processing applications pursuant to the <i>Copyright Act</i> that result in fair and reasonable royalties in the public interest and the issue of non-exclusive licences authorizing the use of works when the copyright owner cannot be located.</p>	<p>Establishing the infrastructure that would allow the Board to properly deliver its mandate as per the <i>Copyright Act</i> as amended by Bill C-32.</p> <p>Sound quasi-judicial decisions on applications, in a fair, expeditious manner.</p> <p>To minimize the number of applications for judicial review of the Board’s decisions. To minimize the number of successful judicial reviews</p> <p>Effective and essential regulations developed through exhaustive consultation.</p> <p>To process in a timely manner all applications received for unlocatable copyright holders.</p>	<ul style="list-style-type: none"> - Review and finalize organization structure. - Prepare work descriptions. - Staff positions in areas of fundamental importance to better serve its clients. - Integrate new staff into the organization. - Appointment of qualified Board Members. - Sound management of hearing process. - Sound and well-motivated decisions. - Continuing education for Members on Administrative Law. - Sound conduct of Board hearing and other processes related to Board’s decisions. - Sound and well-motivated decisions. - Enhance research capability by staffing Director of Research and Planning position. - Sound regulation development process. - Exhaustive consultations with key interested parties. - Receipt and recording of applications. - Issuance of decisions. - Staffing of an Assistant Registrar position. 	<p>\$ 874</p>

Section IV: Horizontal Initiatives

Regulatory Initiatives

Legislation and Regulations	Planned Results
Regulation governing the issuance by the Board of licences when the copyright and the neighbouring right owner cannot be located.	To complete the consultation and the drafting of these regulations.
Regulation prescribing the information to be kept by an educational institution in relation to the making, destruction and performance of broadcast programs.	
Regulation establishing the number of members that constitutes a quorum.	To develop and communicate this regulation to provide clarity about conduct of the hearing process.

Section V: Financial Information

Net Cost of Program for the Estimates Year

Copyright Board Canada	(thousands of dollars)
Net Planned Spending	874
<i>Plus: Services Received without Charge</i>	
Accommodation provided by Public Works and Government Services Canada (PWGSC)	141
Contributions covering employers' share of employees' insurance premiums and expenditures paid by TBS	35
	176
<i>Less: Non-respendable Revenue</i>	-
2000-2001 Net cost of Program	1050

Section VI: Other Information

Other Information on Copyright Board Canada

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

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

References

Copyright Board Canada Annual Reports

Performance Report 1998-1999