

Copyright Board of Canada

2007-2008

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



Canada's New Government is committed to fostering a strong, competitive economy that benefits Canada and all Canadians. To achieve this goal, I firmly believe that our government must create an environment that encourages and rewards people who work hard, that stimulates innovation, and that avoids unnecessary regulatory burden. By modernizing and improving Canada's marketplace frameworks, we will ensure stability and fairness while creating new opportunities and choices for businesses, consumers and all Canadians.

Over the past year, our government has taken significant steps to improve Canada's economy. Early in our mandate we presented Budget 2006, which contained measures aimed at improving our quality of life by building a strong economy that is equipped to lead in the 21st century. These measures focused on making Canada's

tax system more competitive internationally, and outlined our commitments to reduce paper burden on businesses and to continue to support science and technology in Canada.

Last fall, we presented a long-term economic plan in the Economic and Fiscal Update. *Advantage Canada: Building a Strong Economy for Canadians* focused on creating five Canadian advantages that will give incentives for people and businesses to excel and to make Canada a world leader.

One of these proposed advantages, called the "Tax Advantage," will create conditions more favourable to business in Canada by effectively establishing the lowest tax rate on new business investment in the G7. As well, the "Entrepreneurial Advantage" will ease the regulatory and paperwork burden imposed on business by ensuring that regulations meet their intended goals at the least possible cost.

Through *Advantage Canada*, our government committed to supporting science and technology in Canada, and underscored some of the elements of a science and technology strategy that will sustain research excellence in Canada and increase the competitiveness of the Canadian economy.

Canada's New Government has repeatedly demonstrated that we are committed to getting things done for all Canadians. As we move forward, we will work more closely than ever with our stakeholders and the provincial and territorial governments, and we will continue to foster an

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
- Registry of the Competition Tribunal
- 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.

environment where the marketplace functions as efficiently as possible, and keep encouraging investment in Canadian innovation and in research and development.

It gives me great pleasure to present the annual *Report on Plans and Priorities* for the Copyright Board of Canada, outlining their main initiatives, priorities, and expected outcomes for the upcoming year.

Maxime Bernier
Minister of Industry

Management Representation Statement

March 2007

Report on Plans and Priorities 2007-2008

I submit, for tabling in Parliament, the 2007-2008 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 strategic outcome and Program Activity Architecture that were approved by the Treasury Board;
- 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

Raison d'être

The Copyright Board of Canada's program objective is to set royalties which are fair and equitable to both copyright owners and users of copyright-protected works. This includes setting fair and equitable terms and conditions so as to permit the use of works when the owner of the copyright cannot be located.

The Board 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 society. The Board also sets 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 of a tariff 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, technological protection measures (TPMs) and digital rights management (DRMs)). 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 again in 1997.

The Board sets tariffs that are estimated to be worth over \$300 million annually. In fact, copyright tariffs underpin several industries (such as broadcasting, the arts, film, the Internet publishing, software, engineering and architecture) which together generated in 2004 an amount representing 4.5% of Canada's GDP, employed 875,000 Canadians and grew between 1997 and 2004 at a rate exceeding that of the Canadian economy¹. 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, for instance in the area of the enforcement of its tariffs and the interpretation of its own regulations.

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.

¹ Source: CONNECTUS Consulting Inc., *The Economic Impact of Canadian Copyright Industries - Sectoral Analysis*, Report submitted to the Copyright Policy Branch, Department of Canadian Heritage, March 31, 2006.

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)

| 2007-2008 | 2008-2009 | 2009-2010 |
|-----------|-----------|-----------|
| 2,597 | 2,597 | 2,597 |

Human Resources

(Full-time Equivalents (FTE))

| 2007-2008 | 2008-2009 | 2009-2010 |
|-----------|-----------|-----------|
| 17 FTE | 17 FTE | 17 FTE |

Departmental Priorities

(\$ thousands)

| | Type | Planned Spending | | |
|---|---------|------------------|-----------|-----------|
| | | 2007-2008 | 2008-2009 | 2009-2010 |
| 1. Ensure timely and fair processes and decisions | Ongoing | 2,597 | 2,597 | 2,597 |
| 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 2007-2008 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.

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 2007. 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 2007-2008.

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 2007-2008 will continue to be on implementing the Internal Audit Policy; the Policy on Learning, Training and Development; completing the implementation of the *Public Service Modernization Act*; the 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.

The Board will finalize its Human Resources Plan which is intended to complement and support the Board's Business Plan. It is not a stand-alone plan; it integrates in a systematic and more formalized manner the ways the Board can continue to mobilize and sustain the efforts of its members and its employees to the achievement of its business goals. It defines human resources initiatives to enable the achievement of the Board's strategic objectives to ensure the continuing capacity of the organization to deliver against its mandate.

The Board will be an active participant in an umbrella style Labour Management Consultation Committee in order to foster good labour-management relations that are essential to good human resources management.

In addition, it 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)

| 2007-2008 | 2008-2009 | 2009-2010 |
|-----------|-----------|-----------|
| 2,597 | 2,597 | 2,597 |

Human Resources:

(Full-time Equivalent (FTE))

| 2007-2008 | 2008-2009 | 2009-2010 |
|-----------|-----------|-----------|
| 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.

Both the copyright holders and users are stakeholders in this outcome. 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 for ways to improve the 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, and include 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 191 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

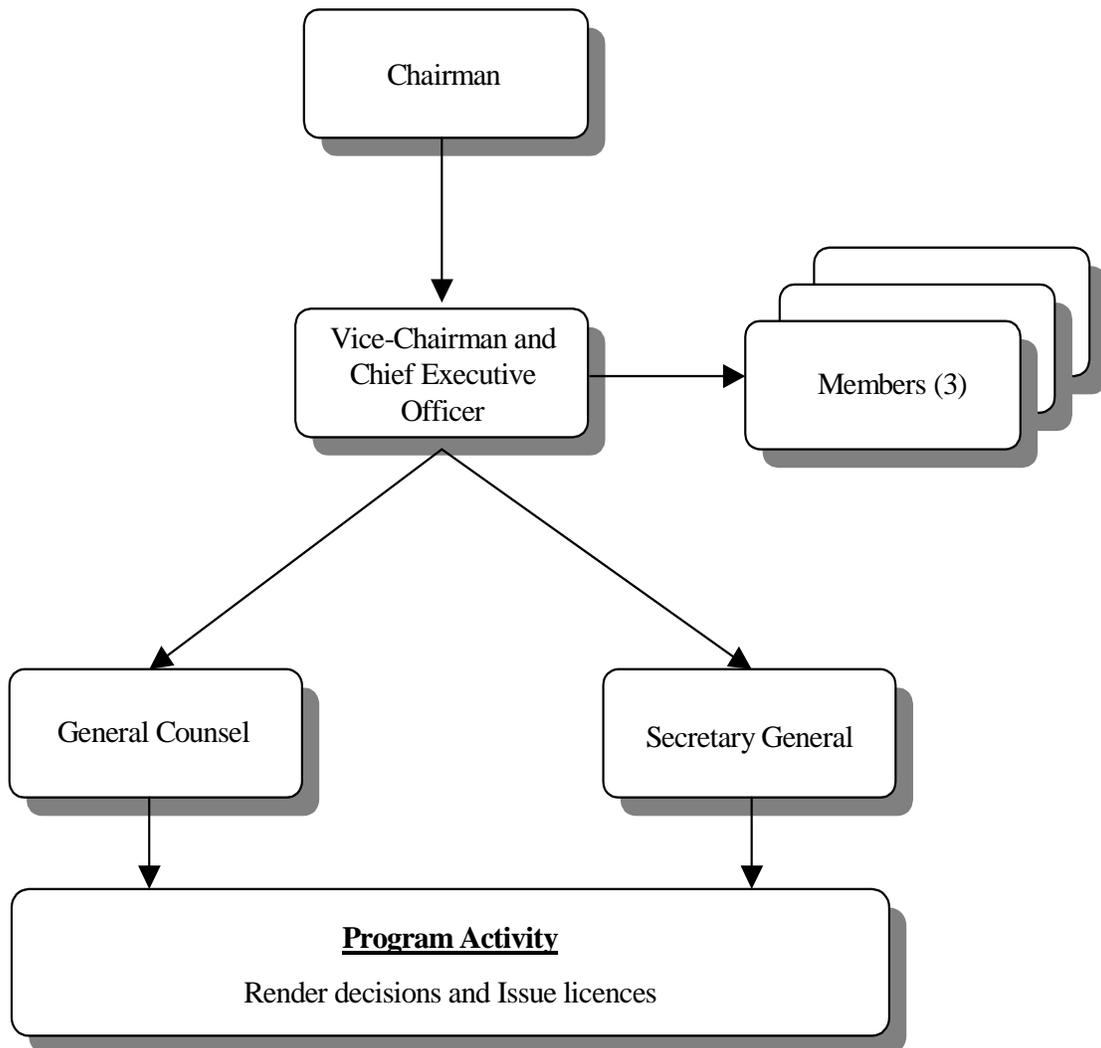
Board members are appointed by the Governor in Council to hold office during good behaviour for a term not exceeding five years. They may be reappointed once.

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 2007-2008 Main Estimate amounts in the 2008-2009 and 2009-2010 periods — this table reflects that direction.

Table 1: Departmental Planned Spending and Full-Time Equivalents

| (\$ thousands) | Forecast Spending 2006-2007 | Planned Spending 2007-2008 | Planned Spending 2008-2009 | Planned Spending 2009-2010 |
|--|-----------------------------------|---|----------------------------------|----------------------------------|
| Render decisions and issue licences | 2,580 | 2,597 | 2,597 | 2,597 |
| Budgetary Main Estimates (gross) | 2,580 | 2,597 | 2,597 | 2,597 |
| Less: Respendable revenue | | | | |
| Total Main Estimates | 2,580 | 2,597 | 2,597 | 2,597 |
| <i>Adjustments:</i> | | | | |
| Supplementary Estimates: | 110 | | | |
| Collective Bargaining | 27 | | | |
| Total Adjustments | 137 | | | |
| Total Planned Spending | 2,717 | 2,597 | 2,597 | 2,597 |
| <hr/> | | | | |
| Total Planned Spending | 2,717 | 2,597 | 2,597 | 2,597 |
| Less: Non-Respendable revenue | | | | |
| Plus: Cost of services received without charge | 351 | 364 | 364 | 364 |
| Net cost of Program | 3,068 | 2,961 | 2,961 | 2,961 |
| <hr/> | | | | |
| Full-Time Equivalents | 17 | 17 | 17 | 17 |

Table 2: Resources by Program Activity

| 2007-2008 | | | (\$ thousands) |
|-------------------------------------|--------------|--------------|------------------------|
| Program Activity | Budgetary | | Total Planned Spending |
| | Operating | Net | |
| Render decisions and issue licences | 2,597 | 2,597 | 2,597 |
| Total | 2,597 | 2,597 | 2,597 |

Table 3: Voted and Statutory Items

| 2007-2008 | | (\$ thousands) | |
|------------------------|---|--------------------------|--------------------------|
| Vote or Statutory Item | Truncated Vote or Statutory Wording | 2007-2008 Main Estimates | 2006-2007 Main Estimates |
| 50 | Program expenditures | 2,295 | 2,274 |
| (S) | Contributions to employee benefit plans | 302 | 306 |
| | Total Department | 2,597 | 2,580 |

Table 4: Services Received without Charge

| 2007-2008 | (\$ thousands) |
|---|----------------|
| Accommodation provided by Public Works and Government Services Canada (PWGSC) | 250 |
| Contributions covering employers' share of employees' insurance premiums and expenditures paid by TBS (excluding revolving funds) | 114 |
| Total 2007-2008 Services received without charge | 364 |