

Copyright Board of Canada

**2003-2004
Estimates**

Report on Plans and Priorities

Allan Rock
Minister of Industry

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Section I: Messages

Minister's Portfolio Message

I am proud to report on the measures being taken by the Industry Portfolio to help realize the government's goal of moving Canada into the ranks of the most innovative countries in the world by the year 2010. In today's global economy, innovation is the key to success. Thanks to innovation, we are finding new ways of thinking and better ways of working.

As the Minister responsible for the Industry Portfolio, I was pleased to be part of creating *Canada's Innovation Strategy*, which was launched in February 2002. Throughout the year, Industry Canada and its partners held 34 regional innovation summits and took part in many expert round tables and sectoral meetings. In all, the views of more than 10,000 Canadians were heard. That exciting and productive process culminated at the National Summit on Innovation and Learning, which brought together more than 500 business, government and academic leaders, as well as representatives from non-governmental organizations.

The Government of Canada is listening to Canadians. During the engagement process many excellent ideas were brought forward and, at the National Summit, were ranked in order of priority. Eighteen items were identified for action over the short term. I want to emphasize, however, that the process being discussed will be fully implemented over a 10-year period and must involve not only the Government of Canada, but all of its partners. Still, we have forged a very good beginning, and I am very encouraged by the positive response of the business and academic communities to the measures taken to date.

The Industry Portfolio's 16 member organizations work in partnership to ensure that Canadians have the support they need to meet the challenges of a rapidly evolving world economy. The cornerstone of all our future activities will be innovation.

Industry Portfolio:

- Atlantic Canada Opportunities Agency
- Business Development Bank of Canada*
- Canada Economic Development for Quebec Regions
- Canadian Space Agency
- Canadian Tourism Commission*
- Competition Tribunal
- Copyright Board of Canada
- Enterprise Cape Breton Corporation*
- Industry Canada
- Infrastructure 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 a Report on Plans and Priorities.

It is my great pleasure to present the *Report on Plans and Priorities* for the Copyright Board of Canada, which describes their expected achievements and results over the next three years.

Knowledge and creativity have been identified as driving forces in Canada's economy. The creative contribution of our authors, composers, musicians, singers and performers, filmmakers, artists and heritage workers strengthens our sense of identity as Canadians. The Board is an economic regulatory tribunal that serves Canadians by setting fair and equitable royalties for copyright owners and users of copyright protected works. The Board also issues non-exclusive licences authorizing the use of published works for which copyright owners who cannot be located. Members and staff of the Board participate in national and international meetings dealing with copyright policy, law and regulation and provide advice and guidance on intellectual property directly to Canadians. The Board's website at www.cb-cda.gc.ca serves as an authoritative source of information on Canadian copyright law, Board decisions, scheduled hearings and other regulatory activities.

We have made great strides forward in working with Canadians through the engagement process for *Canada's Innovation Strategy*. We connected with businesspeople, academics and private citizens in every region of the country. I am confident that this renewed partnership will flourish over the coming year and that the results of our efforts will mean more and better jobs, a stronger and more dynamic economy, and a better quality of life for all Canadians.

The Honourable Allan Rock

Management Representation Statement

March 2003

Report on Plans and Priorities 2003-2004

I submit, for tabling in Parliament, the 2003-2004 Report on Plans and Priorities (RPP) for the Copyright Board of Canada.

This document has been prepared based on the reporting principles and disclosure requirements contained in the *Guide to the preparation of the 2003-2004 Reports on Plans and Priorities*.

- It accurately portrays the Board's plans and priorities.
- The planned spending information in this document is consistent with the directions provided in the Minister of Finance's Budget and by TBS.
- Is comprehensive and accurate.
- Is based on sound underlying departmental information and management systems.

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

2.1 Raison d'être

The Copyright Board Canada's program objective is to serve Canadians by establishing royalties that are fair and equitable to both copyright owners and the users of copyright-protected works, and to issue non-exclusive licences authorizing the use of works when the copyright owner cannot be located.

2.2 Plans and Priorities by Strategic Outcome

What's new?

The Copyright Board has just completed its first year with an increased A-Base and has with its additional research and secretariat resources improved substantially the level of support it provides to Members and clients of the Board. The accumulated backlog of tariff hearings is being eliminated and the Board is now able to address tariff applications more expeditiously.

The Canadian Private Copying Collective has asked the Copyright Board of Canada to approve new tariffs to be collected in 2003 and 2004 on the sale of blank audio recording media in Canada. The proposed tariffs call for important increases on medium that are already subject to a tariff, as well as tariffs on new audio recording medium. Many have opposed to this increase in tariffs including the Canadian Storage Media Alliance representing manufacturers of blank audio recording medium, a group of retailers that include the Retail Council of Canada, Costco, Future Shop, RadioShack, The Business Depot and Wal-Mart Canada, and many individuals. The Copyright Board of Canada held hearings on this matter between January 21, 2003 and February 18, 2003. The decision is now under advisement.

The Copyright Board of Canada hearings on the tariffs for the commercial television stations of the Society of Authors, Composers and Music Publishers of Canada (SOCAN) (tariff 2.A) and for pay and specialty television services (tariff 17.A) will begin on April 22, 2003. SOCAN has proposed that the rate for tariff 2.A be established at 2.1% of a station's advertising revenues and that the modified blanket licence component be removed from the tariff. SOCAN is also proposing that tariff 17.A be increased to reflect the proposed tariff 2.A increases. There are many objectors to this proposed tariff including the Canadian Association of Broadcasters, Canadian Broadcasting Corporation, TV5, TVA, Canadian Cable Television Association, Bell ExpressVu and Star Choice.

2.3 Mandate, Role and Responsibilities

Mandate

The mandate of the Copyright Board of Canada is set out in the *Copyright Act* (the *Act*) 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 society 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 society or a user);
 - Issuance of licences when the rights owner cannot be located (upon request by the potential user).
3. Private copying 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 signals)
 - Reproduction and public performance (compulsory filing of tariffs).

Royalty Proposal and Review Mechanism

The *Act* requires that the Board certify tariffs in the following fields: the public performance or communication of music, the public performance or communication 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. The *Act* also allows any other collective societies to proceed by way of tariffs rather than individually negotiated agreements.

The examination process is always the same. The collective society must file a statement of proposed royalties (on or before the 31st of March prior to its expected date of coming into effect) which the Board publishes in the *Canada Gazette*. 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 opponent will have the opportunity to argue their case. After investigating, the Board certifies the tariff, publishes it in the *Canada Gazette*, and explains the reasons for its decision in writing.

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 and issue subpoenas.

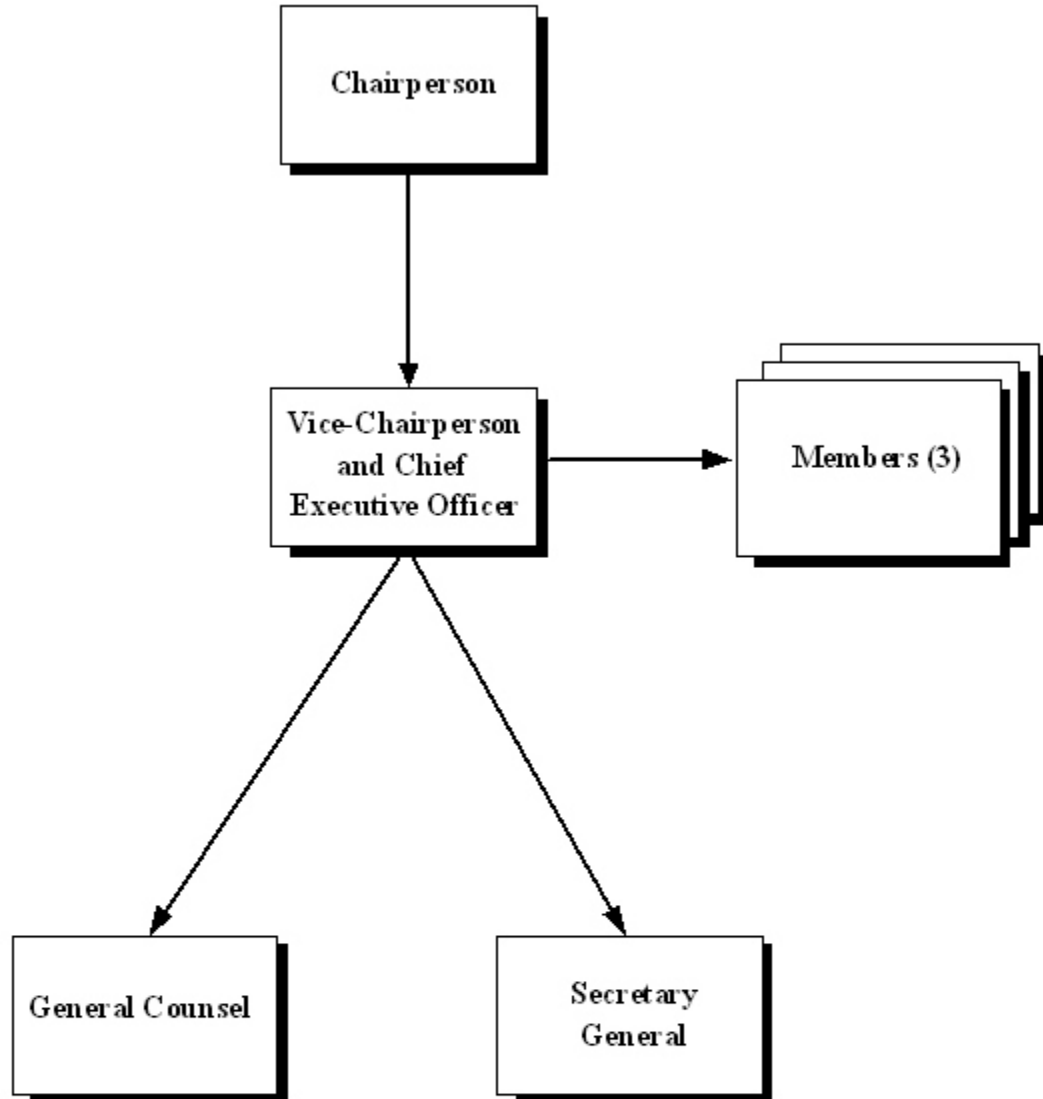
Responsibilities

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 or she exercises direction over the Board and supervises its staff.

Accountability



Program:

Copyright Board of Canada

Business Line:

Copyright Royalty Decisions

The Board has five Governor in Council appointees and 12 Full time equivalents.

2.4 Planning Context

The *Copyright Act* sets out the framework which allows creators of music, theatre plays, films, novels, computer programs and other works of authorship to control the exploitation of these works and to be remunerated for their use while ensuring user access to those works. The *Act* affects many industries including culture and communications. It also has impacts at the international level: Canadian copyright owners are able to collect royalties for the use of their works abroad precisely because Canada allows foreign authors to be paid for the use of their works in Canada.

The Copyright Board of Canada is an economic regulator. It deals with complex social, cultural, demographic, economics, advanced computer communications technology (e.g. the use of music over the Internet) and technological issues (e.g. blank CDs, electronic systems to protect music). The Board's decisions are not appealable, but only subject to 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. The full impact of the most recent changes are still being assessed.

The impact of the decisions of the Board is estimated to be over \$300 million annually. The stakes are considerable both for copyright holders and for users of copyright. Consequently, interventions before the Board are thorough and sophisticated involving expert witnesses, litigation specialists and detailed econometric, business and financial studies, surveys and evidence.

In its decisions the Board must consider the underlying technologies such as the Internet, digital radio, satellite communications, economic issues and the interests of owners and users contribute 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.

Users and owners can ask the Board to set fees where parties cannot agree on them. This affords 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 potential source 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 revenues.

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, and the different industry cultures in the French and English language markets, impact 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. Applications have also required consideration of the impacts of tariffs on grey market practices, of sophisticated social sciences analysis and other types of opinion survey conclusions and the impacts of tariffs on the efficient delivery of public services (e.g., education and recreation such as library services, community theatres 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. These decisions often focus on issues of procedure, or apply the general principles of administrative decision-making to the peculiar circumstances of the Board. 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 has considerable discretion in areas of fact and policy. The principles and concepts on which Board decisions are based provide guidance to the Board and those who appear before it but are not binding on the Board. Parties may challenge previous principles and concepts used by the Board in future tariff applications.

Among the principles and concepts on which Board decisions are based, 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.

Tariff proposals tabled with the Board often reflect similar activities being undertaken in other countries which involve parties working closely with their counterparts abroad. The Board has undertaken an initiative to facilitate the exchange of information on similar work in other countries in order to keep itself better apprised of the tariffs proposed, evidence, pleadings and decisions rendered in other countries.

2.5 Board's Planned Spending

| (thousands of dollars) | Forecast Spending 2002-2003* | Planned Spending 2003-2004*** | Planned Spending 2004-2005 | Planned Spending 2005-2006 |
|---|------------------------------------|--|----------------------------------|----------------------------------|
| Budgetary Main Estimates (gross) | 2,377 | 2,471 | 2,471 | 2,471 |
| Less: Respendable revenue | - | - | - | - |
| Total Main Estimates | 2,377 | 2,471 | 2,471 | 2,471 |
| Adjustments** | 145 | - | - | - |
| Net Planned Spending | 2,522 | 2,471 | 2,471 | 2,471 |
| Plus: Cost of services received without charge | 247 | 368 | 368 | 368 |
| Net cost of Program | 2,769 | 2,839 | 2,839 | 2,839 |
| Full Time Equivalents | 12 | 12 | 12 | 12 |

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

** Adjustments are to accommodate approvals obtained since the Main Estimates and to include Supplementary Estimates and other in-year approved adjustments.

*** In 2003-2004, the Board received an increase of \$94,000 which reflects compensation for salary increases and collective bargaining agreements.

Section III: Plans, Results, Activities and Resources

3.1 Business Line Details

The Copyright Board of Canada has only one single business line.

Business Line Title

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

Business Line Objective

The Copyright Board of Canada's program objective is to serve Canadians by establishing royalties that are fair and equitable to both copyright owners and the users of copyright-protected works, and to issue non-exclusive licences authorizing the use of works when the copyright owner cannot be located.

Business Line Description

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

- certify tariffs for the public performance or the communication to the public by telecommunication of musical works and sound recordings [sections 67 to 69];
- certify 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];
- 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];
- certify 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];
- set levies 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 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];

- 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].

3.2 Modern Comptrollership

The Copyright Board continues to work as part of a cluster group including the Competition Tribunal, the Civil Aviation Tribunal of Canada and the Canadian Artists and Producers Professional Relations Tribunal regarding implementation of Modern Comptrollership in small tribunals. An assessment review has been completed and an action plan is being established that will provide an appropriate basis for the Copyright Board to implement the “Modern Comptrollership Initiative”.

3.3 Service Improvements

Progressive implementation of e-filing of tariff applications and associated documents is continuing with the involvement of the Board’s clients. The Copyright Board is following closely the Federal Court of Canada’s e-filing initiative to develop agreed standards and process for Canadian courts and tribunals. The already substantive Board Web Site at www.cb-cda.gc.ca will be further developed and used for rapidly communicating with the Board’s Canadians and international constituency.

Discussions with foreign counterparts in the context of an International Conference will be held in Ottawa in October 2003. The Board expects the conference will explore current best practices in setting copyright royalty tariffs and will examine the various ways and means by which foreign national authorities exercise supervisory powers over collective rights management organizations. The Board expects to have a better understanding of the global rights fragmentation process as a result of this activity.

3.4 Key Results Commitments, Planned Results, Related Activities and Resources

| Copyright Board of Canada | | | |
|--|---|--|---|
| Key Results Commitments | Planned Results | Related Activities | Resources (\$) |
| <p>To serve Canadians by:</p> <ul style="list-style-type: none"> • Establishing royalties which are fair and equitable to both copyright owners and users of copyright-protected works. • Issuing non-exclusive licences authorizing the use of published works for which the copyright owner cannot be located. • Providing authoritative information about copyright law, Board decisions, regulations and activities. • Improving service to Canadians. | <p>Sound, thorough, expeditious and well reasoned tariff decisions which are fair and equitable and result in no or few applications for judicial review and, in the event of review, having Board's decisions upheld.</p> <p>To process in a timely manner all licence applications for use of works when a copyright owner cannot be located.</p> <p>Effective communication to parties regarding applications and information for Canadians about Board's decisions, activities and copyright regulations.</p> <p>Improved client satisfaction (collective societies and users) evidenced by rapid electronic communication of tariff proposals and Board's decisions through the Board's Web site, electronic filing of objections, relevant evidence and correspondence, the establishment of fair and equitable tariffs, and the absence of applications for judicial reviews of Board's decisions.</p> | <p>Sound conduct of Board's hearings and other processes related to Board's decisions. Full analysis and consideration of evidence. Appointment of qualified Board Members. Continuing education for Members on Administrative and Copyright Law. Enhanced legal, regulatory policy and economic research capability.</p> <p>Continue efforts to streamline the unlocatable copyright owner licence process.</p> <p>Continued development of the Board's Web site. Regular client contact and participation in public meetings and fora to explain mandate and activities of the Board. Publication and wide distribution of detailed Annual Report.</p> <p>Professional, courteous and expeditious service to clients. Tight schedules for filing evidence and holding hearings. Parameters for issues Board is willing to examine and the type of evidence it would like to see presented on these issues. Motivate small users to collectively present views to the Board. Accelerated certification for non-contested tariffs before they come into force. In consultation with Board clients to evolve to full e-filing and the use of electronic documents at Board's tariff application hearings. Aligning the comptrollership function to focus on results and values so as to better serve Canadians.</p> | <p>2003-2004 2004-2005 2005-2006</p> <p>\$2,471,000</p> |

Section IV: Annexes

Annex 1: Net Cost of Program for the Estimates Year

| Copyright Board of Canada | (thousands of dollars) |
|---|------------------------|
| Net Planned Spending (Gross Budgetary and Non-budgetary Main Estimates plus Adjustments) | 2,471 |
| <i>Plus: Services Received without Charge</i> | |
| Accommodation provided by Public Works and Government Services Canada (PWGSC) | 254 |
| Contributions covering employers' share of employees' insurance premiums and expenditures paid by TBS | 114 |
| | 368 |
| <i>Less: Non-respendable Revenue</i> | - |
| 2003-2004 Net cost of Program | 2,839 |

Annex 2: Regulatory Initiatives

| Regulations | Planned Results |
|--|--|
| Regulations Establishing the Period for Royalty Entitlements of Non-members of Collective Societies (Retransmission). | To update regulations so as to reflect recent changes in the enabling legislation. |
| Regulations Establishing the Period of Royalty Entitlements of Non-members of Collective Societies (Educational Rights). | To adopt regulations that will set the delays within which claims by non-members of a society can validly be made. |

Annex 3: Other Information on the Copyright Board of Canada

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

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

References

Copyright Board of Canada Annual Reports

Performance Report 2001-2002

Web Site: <http://www.cb-cda.gc.ca>

(The content includes: the *Copyright Act* and Regulations, decisions of the Board, proposed tariffs, certified tariffs, and information about copyright collective societies.)