



Copyright Board Canada

2002-2003
Estimates

Part III – Report on Plans and Priorities

Canada

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 tabled in the spring 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 of Canada

**2002-2003
Estimates**

Report on Plans and Priorities

Allan Rock
Minister of Industry

Table of Contents

Section I: Messages

The Minister's Portfolio Message	1
Management Representation Statement	3

Section II: The Board's Overview

2.1 Raison d'être	4
2.2 Plans and Priorities by Strategic Outcome	4
2.3 Mandate, Role and Responsibilities	4
2.4 Planning Context	8
2.5 Board's Planned Spending	10

Section III: Plans, Results, Activities and Resources

3.1 Business Line Details	11
3.2 Modern Comptrollership	12
3.3 Service Improvements	12
3.4 Key Results Commitments, Planned Results, Related Activities and Resources	13

Section IV: Annexes

Annex 1: Net Cost of Program for the Estimates Year	14
Annex 2: Regulatory Initiatives	14
Annex 3: Other Information on the Copyright Board of Canada	15

Section I: Messages

Minister's Portfolio Message

Today, our people, our universities and our industries are successfully competing around the globe. At the same time, we have a democratic society and way of life that continues to be judged one of the best in the world. To continue our economic growth and social development, indeed, to continue our success as a nation, we must strive to be among the best in creating and commercializing new knowledge. We are committed to building a world-leading, knowledge-based economy and we need to be more innovative to stay competitive.

To support a nation of innovators, we are investing in the skills and abilities of all Canadians so that they can actively contribute to and participate in today's knowledge-based economy. By harnessing our human potential and talent, we can continue our economic success.

The Government of Canada is investing in research and development to improve the capability of our universities and private sector firms to compete internationally. To foster a culture of innovation, we are creating an environment that is favourable to innovation, an environment of trust and confidence, where the public and private interests are protected and there are marketplace incentives for innovation.

The Industry Portfolio is ...

Atlantic Canada Opportunities Agency
Business Development Bank of Canada*
Canadian Space Agency
Competition Tribunal
Copyright Board of Canada
Canada Economic Development for Quebec
Regions
Canadian Tourism Commission*
Enterprise Cape Breton Corporation *
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*

Whether stimulating the creation and use of knowledge, supporting the creation and development of businesses and industries, promoting inclusive economic growth, or ensuring a fair and equitable marketplace, each of the fifteen member organizations of the Industry Portfolio is contributing to Canada's innovation strategy. Their work with public and private sector partners across the country is key to Canada's success.

I am pleased to present the Report on Plans and Priorities for the Copyright Board of Canada which describes for Canadians the expected achievements 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 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 works of unlocatable copyright owners. Members and staff of the Board participate in numerous professional, government and industry meetings dealing with copyright policy and law and provide advice and guidance on intellectual property directly to Canadians. The Board's website serves as an authoritative source of information on Canadian copyright law by posting the Board's decisions and activities. Of note is an increase to the permanent funding base of the Copyright Board of \$496,000 that will allow the Copyright Board to strengthen its infrastructure, human resources, technology and systems to better serve Canadians.

To secure Canada's continued success in the 21st century, we are committed to nurturing and developing the potential of all our citizens in every community across our nation. By investing in organizations like the Copyright Board of Canada, we will continue building an innovative economy and society for the benefit of all Canadians.

The Honourable Allan Rock

Management Representation Statement

February 12, 2002

Report on Plans and Priorities 2002-2003

I submit, for tabling in Parliament, the 2002-2003 Report on Plans and Priorities (RPP) for the Copyright Board of Canada.

To the best of my knowledge the information in this document:

- C Accurately portrays the Board's plans and priorities.
- C Is consistent with the reporting principles contained in the *Guide to the preparation of the 2002-2003 Report on Plans and Priorities*.
- C Is comprehensive and accurate.
- C 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

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 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 funding base of the Copyright Board of Canada has been increased from \$1,881,000 to \$2,377,000 which will enable it to improve its infrastructure, human resources, technology and systems to better support its activities. The increase occurred as a result of a permanent transfer of \$496,000 to its budget base.

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. 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 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.

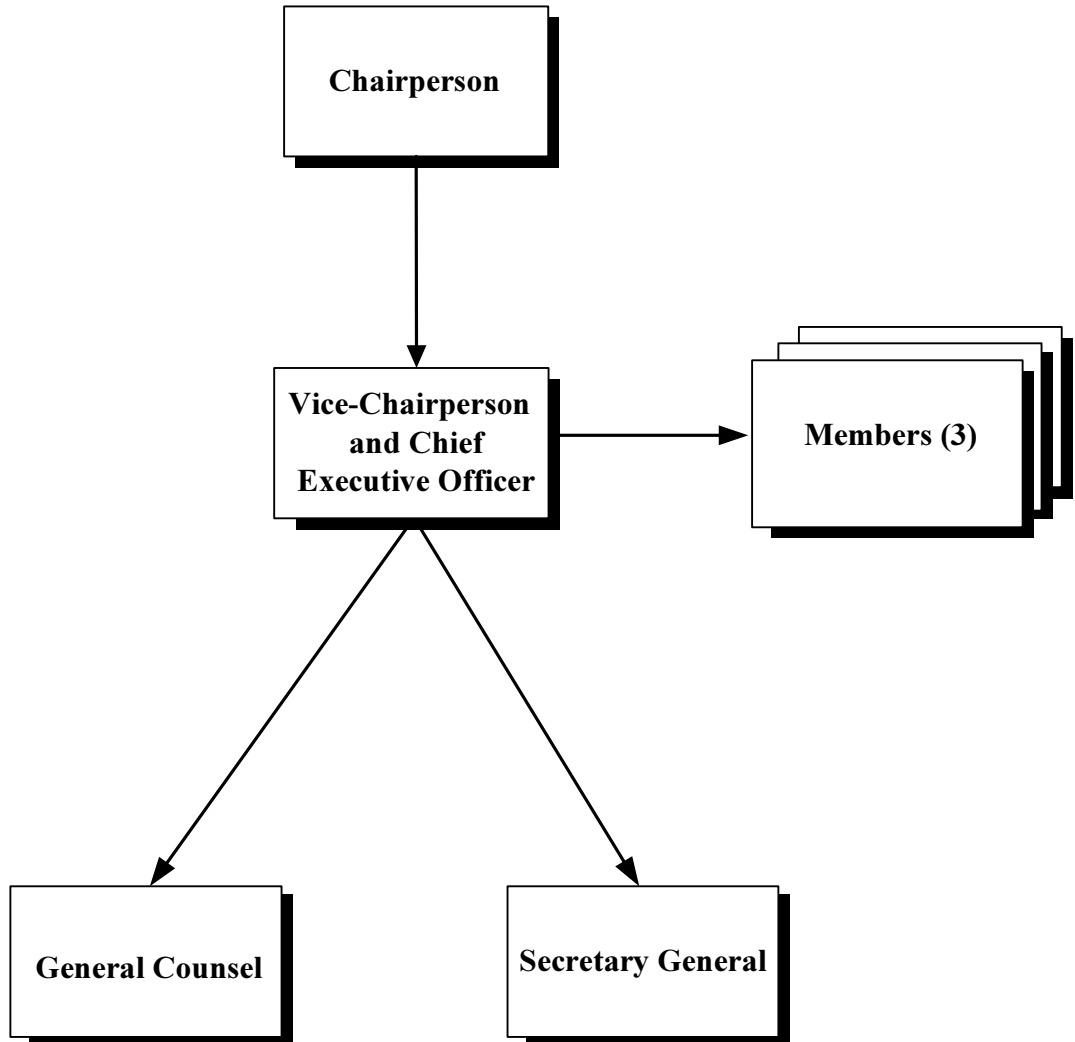
Responsibilities

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, ten FTEs and an authorized base of \$2,377,000.

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 1930's, 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 well over \$200 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.

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 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, 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. 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. In this way the Board's discretion in future tariff applications is not illegally fettered and parties may challenge previous principles and concepts used by the Board.

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.

2.5 Board's Planned Spending

(thousands of dollars)	Forecast Spending 2001-2002*	Planned Spending 2002-2003***	Planned Spending 2003-2004	Planned Spending 2004-2005
Budgetary Main Estimates (gross)	1,881	2,377	2,377	2,377
Less: Respendable revenue	-	-	-	-
Total Main Estimates	1,881	2,377	2,377	2,377
Adjustments**	522	-	-	-
Net Planned Spending	2,403	2,377	2,377	2,377
Plus: Cost of services received without charge	209	247	247	247
Net cost of Program	2,612	2,624	2,624	2,624
Full Time Equivalents	10	10	10	10

* 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 Budget initiatives and Supplementary Estimates.

*** In 2002-2003, in addition to its budget base of \$1,881,000, the Copyright Board of Canada received on a permanent basis \$496,000. The new revised budget base of the Board is now \$2,377,000.

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 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

During this financial year, the Copyright Board is planning to implement Modern Comptrollership which is one of the Government's key priorities focussed on the sound management of public resources and effective decision making. It involves a shift in emphasis from controls and compliance to results and values. The Copyright Board will 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 to conduct an assessment review and prepare an action plan. This will provide a basis for the Copyright Board to implement the "Modern Comptrollership Initiative".

3.3 Service Improvements

The Copyright Board and its clients are increasingly moving to e-filing of tariff applications and related documentation. It is the intention to continue this evolution so that by the end of fiscal year 2002-2003 and after consultation with its clients all tariff application documentation may be filed electronically. The Board will also examine with its clients the use of electronic documents during hearings and the potential to increasingly move to e-hearings. Client input and involvement will be sought regarding these service improvement measures.

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 works when 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 reduced costs of tariffication, reduced objections to tariffs and absence of judicial challenges to 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 to refine the licence process and strengthen the secretariat capability dealing with unlocatables.</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>2002-2003 2003-2004 2004-2005</p> <p>\$2,377,000</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)	2,377
<i>Plus: Services Received without Charge</i>	
Accommodation provided by Public Works and Government Services Canada (PWGSC)	140
Contributions covering employers' share of employees' insurance premiums and expenditures paid by TBS	107
	247
<i>Less: Non-respendable Revenue</i>	-
2002-2003 Net cost of Program	2,624

Annex 2: Regulatory Initiatives

Legislation and Regulations	Planned Results
Regulation governing the issuance by the Board of licences when the copyright owner cannot be located.	To complete the consultation and the drafting of these regulations.
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 2000-2001

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.)