

Copyright Board of Canada

For the period ending March 31, 2005

Departmental Performance Report

David L. Emerson
Minister of Industry

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SECTION I – OVERVIEW

Minister's Message

A key priority of the Government of Canada is building an economy that will meet the challenges of the 21st century; an economy that is knowledge-based, technology-driven, and globally oriented. In support of this goal, the Copyright Board of Canada and the 14 members of the Industry Portfolio encourage innovative basic and advanced research, promote the commercialization and the adoption of new technologies and support the diffusion of transformative ideas throughout our economy. We also work to forge new and improved relationships with international partners, including emerging markets, in science and specialized technical areas. Essential to this work is a framework of marketplace regulations and laws that encourages innovation and stable growth. Through our efforts, the Industry Portfolio is helping to build a world-leading economy driven by talent, ideas and initiative.

The organizational members of the Industry Portfolio are:

- Atlantic Canada Opportunities Agency [2]
- Business Development Bank of Canada [1]
- Economic Development Agency of Canada for Quebec Regions [2]
- Canadian Space Agency
- Canadian Tourism Commission [1]
- Competition Tribunal
- Copyright Board of Canada
- Enterprise Cape Breton Corporation [1] [2]
- 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 [1]
- Statistics Canada
- Western Economic Diversification Canada [2]

[1] Not required to submit a Departmental Performance Report.

[2] Not a Portfolio member for the purposes of the Main Estimates.

The Industry Portfolio is composed of the Copyright Board of Canada and 14 other federal departments, agencies, Crown corporations, and quasi-judicial bodies. These organizations collectively play a key role in advancing Canada's industrial and economic development as well as fostering progress in science and technology. Advancing these priorities improves the overall health of the Canadian economy, provides opportunities for all Canadians to participate in our economic development and prosperity, and contributes to the quality of life of all Canadians.

Many Industry Portfolio initiatives build upon our strategic investments in research and development and help to move publicly-funded scientific and technological advances into the marketplace. Other key activities and programs encourage business growth and help industrial sectors be more innovative. Collectively, Industry Portfolio initiatives – and more importantly the results of those initiatives – stimulate the necessary adaptive and transformative changes demanded by the global economy.

The Copyright Board of Canada *Departmental Performance Report* for the period ending March 31, 2005 describes the achievements and results of the department. The Copyright Board of Canada protects the interests of Canadians by setting royalties which are fair and equitable to both copyright owners and users of copyright-protected works and by issuing non-exclusive licences authorizing the use of published works when the copyright owner cannot be located.

The Copyright Board of Canada strategic outcome is to achieve fair decision-making which provides proper incentives for the creation and uses of copyrighted works. The Copyright Board of Canada has met its objective by:

- minimizing costs of participating in the hearings while ensuring a fair process and decision;
- facilitating the hearing process by providing appropriate guidance, information and analysis;
- issuing timely, fair and consistent decisions;
- increasing participant satisfaction in the hearing process;
- demonstrating leadership in the domestic and international arenas to advance the analytical framework for decisions and the regulatory processes for tariff-setting;
- responding to the challenges of new technologies and their impact on the use of copyrighted works.

As a member of the Industry Portfolio, the Copyright Board of Canada has contributed to the industrial and economic development of our nation. The work and contributions of the department are part of the overall government effort to develop and foster opportunities that reflect Canada's economic and social character. Through these efforts, we are investing in our people, our enterprises, and our future – the result will be a stronger and more prosperous economy for all Canadians.

I am pleased to present the Copyright Board of Canada *Departmental Performance Report* for 2004-2005.

David L. Emerson
Minister of Industry

Management Representation Statement

I submit for tabling in Parliament, the 2004-2005 Departmental Performance Report (DPR) for the Copyright Board of Canada.

This document has been prepared based on the reporting principles contained in the Treasury Board of Canada Secretariat's *Guide for the preparation of 2004-2005 Departmental Performance Reports*:

- It adheres to the specific reporting requirements;
- It uses an approved Program Activity Architecture;
- It presents consistent, comprehensive, balanced and accurate information;
- It provides a basis of accountability for the results pursued or achieved with the resources and authorities entrusted to it; and
- It reports finances based on approved numbers from the Estimates and the Public Accounts of Canada.



Stephen J. Callary
Vice-Chairman and Chief Executive Officer

Summary Information

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 administrative society.

The Copyright Board of Canada 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, software management systems to protect music or administer rights). 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 1997. Under the auspices of the Minister of Industry and the Minister of Canadian Heritage, Bill C-60, containing proposed amendments to the *Act*, was tabled on June 20, 2005. If adopted as tabled, the amendments would result in substantial changes to the *Act*, which would then translate into a further expansion of the Board's jurisdiction.

The program objective of the Board underlies the achievement of strategic outcomes related to the treatment in Canada of copyrighted works. As noted in *Canada's Performance 2004* (http://www.tbs-sct.gc.ca/report/govrev/04/cp-rc_e.asp), the government's central goal is to achieve the highest possible standard of living and quality of life for all Canadians. Critical to that is building an economy that produces jobs and growth. Canadians have been increasingly successful in recent years in creating a more productive, competitive and sustainable economy. Several departments and agencies contribute to the pursuit of *An Innovative and Knowledge-based Economy* through their respective departmental strategic outcomes.

In the October 2004 Speech from the Throne, the Government of Canada committed itself to pursue a strategy to build an even more globally competitive and sustainable economy. This strategy includes investment in skilled knowledge workers, cutting-edge research, science and innovation and helps provide an open, transparent, rules-based global trading system that would allow for the movement of goods, services, people and technology.

Our country's handling of intellectual property matters is a critical element in our long-term success in innovation, and by extension, to our long-term economic health. The terms and conditions by which intellectual property owners (such as owners of copyrighted works) are compensated will largely define the incentive structure for innovation in and creation of copyrighted materials. As noted by the Conference Board in its *4th Annual Innovation Report* (<http://www.ocri.ca/events/ConfBoard2002innovationreport.pdf>), the design and implementation

of regulations can have a significant impact on innovation and competitiveness, particularly in the areas of intellectual property rights, competition policy and environmental protection.

Innovation through new knowledge has become a main source of competitive advantage in all areas of economic endeavour. The use and re-use of cultural and entertainment content (such as musical works) have become widespread with the advent of new media and on-line services, new playback and editing technologies and new uses in conventional media.

As noted by the Minister of Industry, “borders have become less relevant for digital content transactions, cyberspace has no border patrols and knowledge-based products such as software, games and music, cross borders with relative ease” ([Speech](#) to the conference on «E-Commerce to e-Economy: strategies for the 21st century», September 27, 2004. The Minister went on to note that Canada needs to “protect intellectual capital and come to grips with the impact instant copying and transmission has on the creators of knowledge assets.”

These matters manifest themselves in some of society’s most complex and contentious issues, including the downloading of musical content over the Internet using file-sharing software, the use of digital decoders to receive scrambled TV signals and the sale of computers which have the capability to duplicate CDs and DVDs.

The Copyright Board of Canada recognizes the need to ensure an effective and efficient copyright regulatory regime in order to attain the maximum productivity in those sectors that create and use copyrighted works. Further, the strategic outcomes of a fair and competitive marketplace and reasonable opportunities for Canadian firms to export copyright protected goods and services in the music, content creation and programming areas, as well as the downstream broadcasting, publishing and entertainment industries will be impacted by the performance of the Copyright Board.

The Mandate of the Board

<p>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.</p>
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Total Financial Resources

(\$ thousands)

Planned	Authorities	Actual
2,539	2,576	2,268

Total Human Resources

(Full-time Equivalents (FTE))

Planned	Actual	Difference
17	15	2

Summary of Performance in Relationship to Departmental Strategic Outcomes, Priorities and Commitments

(\$ thousands)

Strategic Outcomes	2004–2005 Priorities/ Commitments	Type	Planned Spending	Actual Spending	Expected Results and Current Status
Achieve fair decision-making to provide proper incentives for the creation and uses of copyrighted works.	Minimizing costs of participating in the hearings while ensuring a fair process and decision.	Ongoing	2,539	2,268	Lead to a more efficient process. Alternative procedural practices are being evaluated. Some specific hearings were combined.
	Facilitating the hearing process by providing appropriate guidance, information and analysis.	Ongoing			Lead to better-informed parties. Telephone advisories and case management meetings were conducted.
	Issuing timely, fair and consistent decisions.	Ongoing			Lead to decisions that take into account the ever-changing technological environment, global events and new business models.
	Increasing participant satisfaction in the hearing process.	Ongoing			Lead to a more efficient process. Informal information gathering from participants done.
	Demonstrating leadership in the domestic and international arenas to advance the analytical framework for decisions and the regulatory processes for tariff-setting.	Ongoing			To play a lead role in international activities such as sharing of procedures, data, analysis and other information. Organisation of next major international forum ongoing.
	Responding to the challenges of new technologies and their impact on the use of copyrighted works.	Ongoing			Ensures minimal impact of new technologies on relevant industries. The monitoring is ongoing.

Overall Departmental Performance

Summary

The report documents the Board's contribution to the protection of the interests of Canadians by setting royalties which are fair and equitable to both copyright owners and users of copyright-protected works.

During 2004-2005, the Board held two hearings and one pre-hearing conference. The first hearing dealt with the royalties to be collected by the Canadian Broadcasters Rights Agency (CBRA) for the fixation and reproduction of works and communication signals by commercial media monitors for the years 2000-2005 and by non-commercial media monitors for the years 2001-2005. The second hearing pertained to the royalties to be paid by commercial radio stations in 2003-2007 for the communication to the public by telecommunications of musical works in the repertoire of the Society of Composers, Authors and Music Publishers of Canada (SOCAN) and of published sound recordings forming part of the Neighbouring Rights Collective of Canada (NRCC) repertoire. The pre-hearing conference, held on February 15, 2005, dealt with procedural matters relating to SOCAN's tariff for ringtones.

During the year, the Board also issued six decisions. The first one pertained to various SOCAN tariffs the Board had certified in the previous fiscal year and for which the reasons were issued on June 18, 2004. The second one, rendered on December 14, 2004, extended indefinitely, on an interim basis, the application of the certified 2003-2004 Private Copying Tariff until a final decision is rendered. The third, issued on January 14, 2005, certified the royalties to be collected by the Educational Rights Collective of Canada from educational institutions for the reproduction and performance of works or other subject-matters communicated to the public by telecommunications for the period 2003-2006. The fourth, also issued on January 14, 2005, certified NRCC's tariff pertaining to the radio of the Canadian Broadcasting Corporation. The fifth one was rendered on February 25, 2005, certifying SOCAN/NRCC tariffs applicable to pay audio services for the years 2003-2006. And finally, on March 29, 2005, the Board rendered its decision on the royalties to be collected by CBRA for the fixation and reproduction of works and communication signals by commercial media monitors for the years 2000-2005 and by non-commercial media monitors for the years 2001-2005.

All of the foregoing decisions are described in greater detail in the Copyright Board 2004-2005 Annual Report.

In 2004-2005, the Board issued 16 non-exclusive licences for the use of published works for which copyright owners could not be located. The Board also rendered three decisions dismissing licence applications. In two instances, there was complete absence of evidence that the works had been published and in the other, the applicant wanted to reproduce anonymous works published more than fifty years ago which, pursuant to paragraph 6.1(a) of the *Act*, were in the public domain.

Operating Environment

The mandate of the Copyright Board of Canada is set out in the *Act* as amended in 1997. The Board has powers of a substantive and procedural nature. Some powers are granted to the Board expressly in the *Act*, and some are implicitly recognized by the courts.

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 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. No hearing will be held if proceeding in writing accommodates a small user that would otherwise incur large costs. The hearing may be dispensed with on certain preliminary or interim issues. No hearings have been held yet for a request to use a work whose owner cannot be located. The process has been kept simple. Information is obtained either in writing or through telephone calls.

The Board is responsible for tariffs that are estimated to be worth over \$300 million annually. In fact, copyright tariffs underpin several industries which together generated in 2002 an amount representing 5.4% of Canada's GDP. The stakes are considerable both for copyright holders and for users of copyright. Consequently, interventions before the Board are thorough, sophisticated and often involving expert witnesses, litigation specialists and detailed econometric, business and financial studies, surveys and 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.

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 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 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.

Mandate, Roles and Responsibilities

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

Decisions and Licences

During 2004-2005, the Board held two hearings, one pre-hearing conference and issued six decisions. In addition, important decisions were issued by the Federal Court of Appeal and the Supreme Court of Canada. What follows is a brief summary of these activities. For further details, please refer to the Board's 2004-2005 Annual Report which can be found at www.cb-cda.gc.ca.

1. Public Performance of Music

One hearing and one pre-hearing conference were held and two decisions were rendered: one on Tariff 1.C of the Neighbouring Rights Collective of Canada (NRCC) for the radio component of the Canadian Broadcasting Corporation and the other for the Pay Audio Services tariffs of NRCC and the Society of Composers, Authors and Music Publishers of Canada (SOCAN).

The Board also issued the reasons for certifying various SOCAN tariffs for the years 1998 to 2007. The tariffs were certified during the last fiscal year and the reasons followed on June 18, 2004.

2. Private Copying

On December 14, 2004, the Board rendered a decision extending indefinitely, on an interim basis, the application of the certified Private Copying Tariff for 2003-2004, until a final decision is rendered.

3. Educational Rights

On January 14, 2005, the Board certified the royalties to be collected from educational institutions in Canada for the reproduction and performance of works or other subject-matters communicated to the public by telecommunications for the period 2003-2006.

4. Media Monitoring

In 2004-2005, a hearing was held and a decision rendered, certifying the royalties to be collected for the fixation and reproduction of works and communication signals by commercial media

monitors for the years 2000-2005 and by non-commercial media monitors for the years 2001-2005.

5. *Unlocatable Copyright Owners*

The Board issued 16 non-exclusive licences for the use of published works for which copyright owners could not be located. The Board also rendered three decisions dismissing licence applications. In two instances, there was complete absence of evidence that the works had been published and in the other, the applicant wanted to reproduce anonymous works published more than fifty years ago which, pursuant to paragraph 6.1(a) of the *Act*, were in the public domain.

6. *Court Decisions*

On June 30, 2004, the Supreme Court of Canada allowed in part the appeal from the May 1, 2002 decision of the Federal Court of Appeal which granted in part an application for judicial review of the October 27, 1999 decision of the Board dealing with SOCAN's Tariff 22 (Music on Internet).

On December 14, 2004, the Federal Court of Appeal granted in part an application for judicial review of the December 12, 2003 decision of the Board certifying the *Private Copying Tariff, 2003-2004*. On February 10 and 11, 2005, parties filed with the Supreme Court of Canada applications for leave to appeal from the decision.

Modern Comptrollership

Building on the successes achieved from activities implemented under the Modern Comptrollership (MC) Initiative, the Copyright Board is continuing to move forward in the implementation of modern management practices which remains a key priority. The Board continues to work in partnership with three other small agencies namely, the Competition Tribunal, the Canadian Artists and Producers Professional Relations Tribunal and the Transportation Appeal Tribunal of Canada who formed a cluster group when the Modern Comptrollership Initiative was implemented in 2001-2002.

The focus for the cluster group in fiscal year 2004-2005 was on sustaining MC and building on work undertaken in 2003-2004 related to implementing the TBS Internal Audit and Evaluation policies and Values and Ethics.

As it respects Internal Audit, the following activities were undertaken:

- A Cluster Group Internal Audit Policy was developed and approved by each agency executive head;
- An Internal Audit Committee consisting of senior representatives from each agency was formed and a Letter of Understanding was signed;
- An Internal Audit Plan for 2004-2005 was submitted to TBS;

- Individual compliance audits were conducted in the fall of 2004 and the winter of 2005 with respect to TBS key financial and contracting policies and individual reports were tabled in March 2005; and
- A Cluster Group Compliance Audit Common Issues Report was prepared which consolidated the key observations raised during the audits.

In regards to Evaluation, the following activities were undertaken:

- The work on the development of Logic Models for each of the four agencies which began in March 2004 was completed in the fall of 2004;
- The Cluster Group continued to consult with the TBS Centre of Excellence for Evaluation on how best to implement the evaluation policy; and
- One of the cluster group members, namely the Competition Tribunal, in partnership with the TBS Centre of Excellence for Evaluation, embarked on a project in January 2005 to develop an evaluation and performance measurement strategy and performance indicators. The results of this project were shared with the other members of the cluster group and have served to shape each agency's evaluation activities/plans for fiscal year 2005-2006.

In addition to the activities outlined above, the cluster group was represented on the Small Agency Administrator's Network (SAAN) working committee that was formed in April 2004 to develop a strategy to utilize funding made available from TBS to assist small agencies to implement the Management of Government Information Policy (MGI) Policy. Work under this initiative will continue into fiscal year 2005-2006 and the cluster group remains committed to ensuring that it is represented on the steering committee that will be formed to implement the strategy that was developed and actively participating on projects identified under this initiative.

In the latter part of fiscal year 2004-2005, the cluster group commenced planning for the coming into force of the new *Public Service Modernization Act (PSMA)* which will be implemented in 2005. In this regard, the cluster group will continue in fiscal year 2005-2006 to work both individually and collectively.

The Cluster Group Information Bulletin "TRIBUCO" was once again published and distributed to all staff of the four agencies in 2004-2005. In addition, building on the momentum created by the implementation of the Cluster Group Values Statement, each agency continued to reinforce the Values and Ethics Code for the Public Service at regular staff meetings and/or planned staff activities.

Reporting according to the new Program Activity Architecture

The following table provides a crosswalk that indicates the changes in the reporting structure. The changes are relatively straightforward since the unique Program Activity of the Copyright Board corresponds to the unique Business Line that was used in the past.

(\$ thousands)

Crosswalk of changes in the reporting structure 2004-2005	
	Program Activity 1
2004-2005 Priorities/Commitments	Render decisions and issue licences
Related Financial Information:	
Copyright Royalty Decisions	\$
Main Estimates	2,539
Planned Spending	2,539
<i>Total Authorities</i>	2,576
Actual Spending	2,268

SECTION II
ANALYSIS OF PERFORMANCE BY
STRATEGIC OUTCOME

Strategic Outcome

Fair decision-making to provide proper incentives for the creation and uses of copyrighted works.

Program Activities

There are six priorities associated with the Copyright Board's strategic outcome. These are:

1. Minimizing costs of participating in the hearings while ensuring a fair process and decision;
2. Facilitating the hearing process by providing appropriate guidance, information and analysis;
3. Issuing timely, fair and consistent decisions;
4. Increasing participant satisfaction in the hearing process;
5. Demonstrating leadership in the domestic and international arenas to advance the analytical framework for decisions and the regulatory processes for tariff-setting;
6. Responding to the challenges of new technologies and their impact on the use of copyrighted works.

Minimizing participation costs of the regulatory process results encourages the participation of appropriate parties, streamlines the process, provides more timely decisions and leading to the most satisfactory decisions. The monitoring of these planned results is achieved by initially surveying informally hearing participants, with follow-up examination and determination of alternative procedural practices to improve the efficiency of the regulatory process. The rationale for this priority is directly related to the federal government's program to improve regulatory efficiency. To the extent that this priority also leads to fairer decision-making, the overall innovation capability of parties affected by the copyright tariff process improves.

Each regulatory process involves differing degrees of complexity, different numbers of participants and different requirements for new or original research and data. However, the Board does gain greater efficiency in conducting hearings, particularly once a specific tariff has already been established and subsequent hearings can build on the legacy of the original hearing.

In 2004-2005, the Board took steps which resulted in a reduction of the regulatory burden. For instance, when appropriate, the Board combined hearings processes which have probably resulted in some cost savings for the participants.

Facilitation through guidance, information and analysis results in better informed parties and better quality of tariff decisions. The achievement of this result is directly monitored through timely conduct of hearing processes and the lack of interruption in proceedings due to administrative and technical delays. Initiatives designed to achieve this result include pre-hearing meetings with interested parties, telephone advisories, and case management meetings with legal

representatives. In addition, the implementation of a pre-hearing joint statement of (non-contested) facts and handling of legal issues solely through written submissions can improve the efficiency of the process. The rationale underlying this priority is to minimize the administrative costs to Canadians from the setting of tariffs and to streamline the process in the face of increasing complexities in hearing subject matter. In 2004-2005, the Board's staff has held telephone advisories and case management meetings which resulted in better-informed parties and shorter processes.

The Board's priority of timely, fair and consistent decision-making is challenged by an ever-changing technological environment, global events and new business models. These challenges will continue to be met, and risk minimized, by engaging in pre-hearing consultations, information gathering and web site postings. These procedures will assist in conducting well-organized proceedings which address key issues facing copyright-related industries.

The Board relies on evidence submitted by participants as well as on its own internal and contracted research and analysis resources to develop a strong understanding of the issues relevant to its decisions. Performance measures that are considered include the degree of horizontal and vertical consistency in decisions, timeliness of decisions, the granularity or precision of evidence requested or suggested by the Board and ultimately, the economic impact of the Board's decisions on the sectors that create or utilize copyrighted works.

The Board receives tariffs applications from collective societies on or before March 31 of a given year in which a tariff is scheduled to terminate. The Board has some latitude in the scheduling of hearings and tries to initiate the procedure leading to a hearing as efficiently as possible. The Board posts its upcoming hearing schedule on its website (www.cb-cda.gc.ca). There are no statutory deadlines for the release of the Board's decisions. However, the Board endeavors to deal with all applications as expeditiously as possible.

The priority of greater participant satisfaction is closely linked to the timeliness and orderly conduct of formal proceedings. The Board plans to continue to examine (for each proceeding over the next two years) how to structure and sequence witnesses and hearing stages so as to eliminate duplication and maximize time spent on relevant issues.

Because the Board hearings involve adversarial parties, some of whom will likely experience direct economic gain or loss in association with an offsetting gain or loss to another party, the Board's decisions cannot be expected to be satisfactory to all parties at all times. However, the Board attempts to bring unbiased and rigorous reasoning to its decision-making. The Board also recognizes the need to provide clear and sufficiently detailed explanations in its decisions so as to assist parties in preparing for the next round of tariff-setting. The Board is considering various means for tracking or measuring constituent satisfaction with hearing processes.

In addition, 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.

Leadership in copyright matters continued to build on the groundwork performed in 2003-2004, as noted in the Departmental Planning Report of that year. 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 continues its work on the establishment of a formal international body of copyright tribunal administrators.

The international initiative 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 can gain early warning of significant developments and their likely impacts on the Canadian situation.

Among the most significant risks which the Board faces in achieving its strategic outcomes is the potentially disruptive impact of new technologies (i.e., in terms of how copyright material is utilized, distributed and monitored). 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 (such as the international fora noted earlier). The rationale for the Board's "screening" activities is to identify and assess industry trends before they undermine existing copyright regimes.

SECTION III
SUPPLEMENTARY INFORMATION

Organizational Information

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 copyright collective society. Moreover, the Board supervises 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 *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 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*.

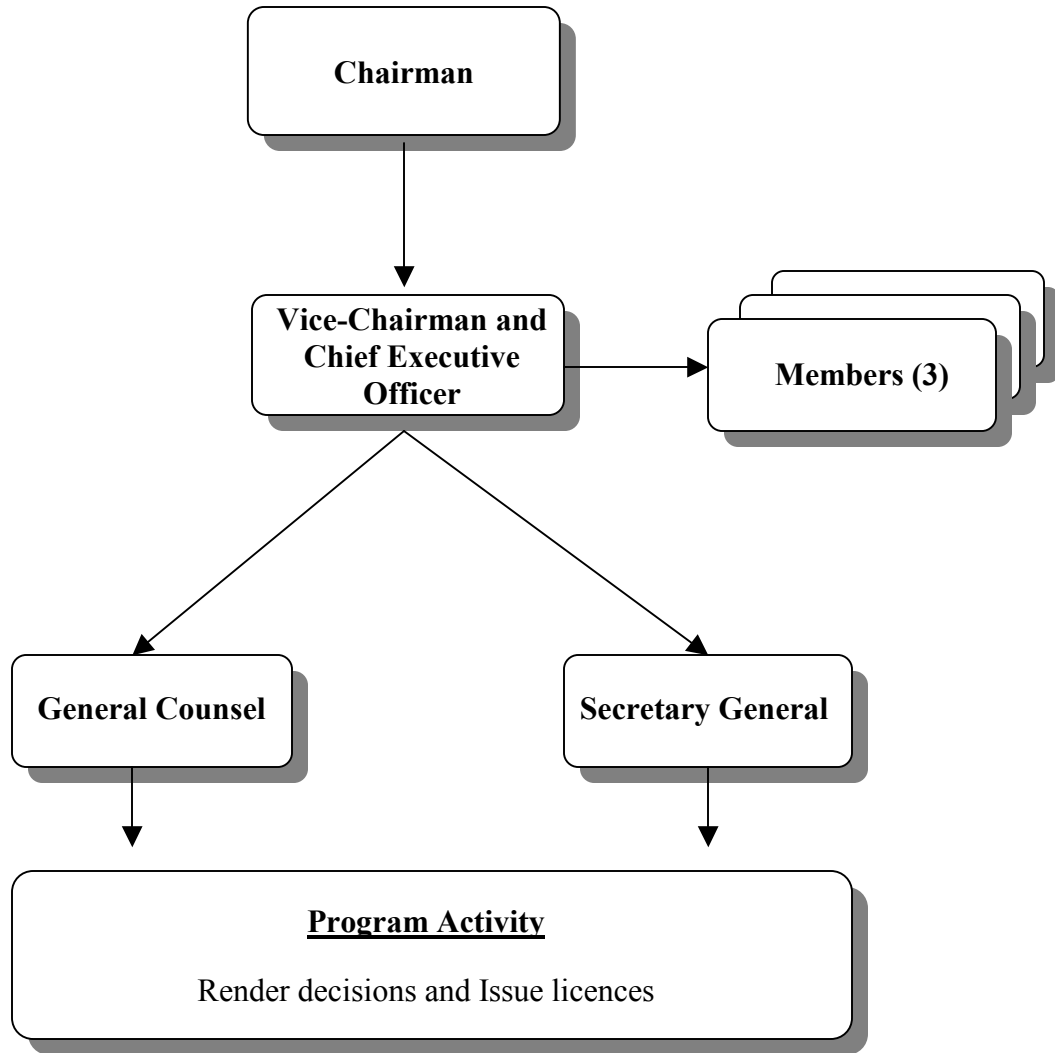
The Board's Staff

The Board has a staff of twelve employees, two of whom report to the Chief Executive Officer: the Secretary General and the General Counsel.

The Secretary General plans the Board's operations, serves as its Registrar, represents the Board in its relations with members of parliament, provincial governments, the media and the public and directs the preparation of the Board's reports to Parliament and to the federal government's central agencies. The Secretary General is also responsible for managing and directing the economic research, analysis and planning functions as well as the registry and administrative and financial support functions.

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

Organizational Structure of the Board



The Board has 17 full time equivalents (5 Governor in Council appointees and 12 employees).

Table 1: Comparison of Planned to Actual Spending (incl. FTEs)

(\$ thousands)

	2002-03 Actual	2003-04 Actual	2004-2005			
			Main Estimates	Planned Spending	Total Authorities	Actual
Render Decisions and Issue Licences	2,357	2,440	2,539	2,539	2,576	2,268
Total	2,357	2,440	2,539	2,539	2,576	2,268

Total	2,357	2,440	2,539	2,539	2,576	2,268
Less: Non-responsible revenue	-	-	-	-	-	-
Plus: Cost of services received without charge	247	275	341	341	341	341
Net cost of Department	2,604	2,715	2,880	2,880	2,917	2,609

Full Time Equivalents *	14	16		15
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* This total includes four Governor in Council appointees

Table 2: Use of Resources by Program Activities

(\$ thousands)

2004-2005								
Program Activity – PA	Budgetary						Plus: Non-Budgetary	Total
	Operating	Capital	Grants and Contributions	Total: Gross Budgetary Expenditures	Less: Responsible Revenue	Total: Net Budgetary Expenditures	Loans, Investments and Advances	
Render decisions and Issue Licences								
Main Estimates	2,539	-	-	2,539	-	2,539	-	2,539
<i>Planned Spending</i>	2,539	-	-	2,539	-	2,539	-	2,539
Total Authorities	2,576	-	-	2,576	-	2,576	-	2,576
<i>Actual Spending</i>	2,268	-	-	2,268	-	2,268	-	2,268

Table 3: Voted and Statutory Items

(\$ thousands)

Vote or Statutory Item	Truncated Vote or Statutory Wording	2004–2005			
		Main Estimates	Planned Spending	Total Authorities	Actual
50	Operating expenditures	2,207	2,207	2,339 *	2,031
(S)	Contributions to employee benefit plans	332	332	237	237
	Total	2,539	2,539	2,576	2,268

* This amount includes the 5% carry forward of \$108,500 from the budget of 2003-2004 and \$23,000 for collective bargaining agreements.

Table 4: Net Cost of Department

(\$ thousands)

	2004–2005
Total Actual Spending	2,268
<i>Plus: Services Received Without Charge</i>	
Accommodation provided by Public Works and Government Services Canada (PWGSC)	216
Contributions covering employers' share of employees' insurance premiums and expenditures paid by TBS (excluding revolving funds)	125
Worker's compensation coverage provided by Social Development Canada	-
Salary and associated expenditures of legal services provided by Justice Canada	-
<i>Less: Non-responsible Revenue</i>	-
2004–2005 Net Cost of Department	2,609