

National Film Board of Canada

Copyright Management Process Evaluation Report

September 2012

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1. Introduction and Background

This report presents the analysis and findings of the evaluation of the NFB's current copyright management processes (copyright acquisition and renewal) in support of production activities and accessibility of audiovisual and interactive works. It provides a brief summary of the legal framework covering audiovisual production in Canada and maps the NFB's copyright clearance processes from the research and development stages of a project in production, through negotiations with stakeholders up to and including the renewal of expired rights of completed productions. The report also studies the possibilities of improving existing processes and puts forward recommendations to that effect and, finally, it responds to questions regarding evaluation as stated in the *Policy on Evaluation* of the Treasury Board of Canada.

The National Film Board

The National Film Board of Canada (NFB) is a federal cultural agency within the portfolio of the Canadian Heritage Department. It was created in 1939, with a mandate to reflect Canada, and matters of interest to Canadians, to Canada and the rest of the world by creating and distributing innovative and distinctive audiovisual works based on Canadian values and points of view. Over many years, the NFB has played a significant role in highlighting key changes and events that marked Canadian society. It has become Canada's best-known cinematic brand. The NFB also has a mission to provide Canadians and the Canadian film industry with a wider scope of artistic possibilities by taking commercial and artistic risks that the private sector cannot.

As a public producer and distributor of audiovisual works, the NFB creates documentaries, auteur animations and interactive works that present an authentic Canadian point of view to Canadians and to the rest of the world. The NFB works closely with filmmakers, multimedia creators, and creative coproducers in all regions of Canada, with diverse ethnocultural and First Nations communities, and with partners from all over the world. Since its creation in 1939, the NFB has created more than 13,000 productions and garnered more than 5,000 awards, including six Webbies, 12 Oscars and more than 90 Genies. Its online screening room NFB.ca offers more than 2,100 productions, some of which are in HD and in 3D. The NFB also makes films accessible to Canadians throughout the country, via its famous mobile applications for platforms iPhone, iPad, Android, as well as the preinstalled app for the new PlayBook by Blackberry.

Copyright Management

Copyright management is the cornerstone of the NFB's two main activities as outlined in its Program Activity Architecture (PAA) under the title: *Audiovisual Production and Accessibility and Audience Engagement*. It constitutes an integral and vital part of the production and accessibility of works created under the stewardship of the NFB. Within its performance assessment framework, the NFB aims to produce innovative audiovisual works and offer Canadian and international audiences an opportunity to see and interact with these works on multiple platforms. It follows that the creation of efficient and effective copyright acquisition and renewal processes will enable the NFB to meet its mandate in programming, distribution, accessibility and the preservation of its audiovisual heritage. The rationale and functioning of copyright acquisition and renewal are described in greater detail in Section 1.1 (Copyright Clearance Profile).

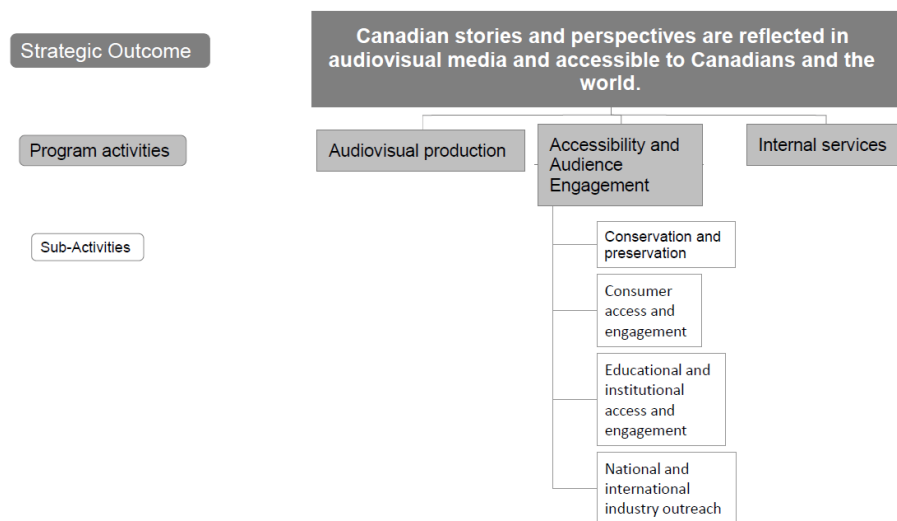
Over the past few years, copyright management has increased in scope and complexity as the NFB's collection has grown, copyright laws have changed in Canada¹ and around the world, and markets and means of accessibility have multiplied. For example, a major component of the NFB's digital strategy is based on efficient copyright acquisition and renewal practices, while digital technologies have increased the complexity of these practices as well as their costs². Thus, in 2008, the NFB adopted a policy of minimal rights acquisition (*Minimal Rights Policy*) with a view to

¹ As well as changes in the legal framework for production following the adoption of the *Status of the Artist Act* by the federal government.

² The NFB is spending hundreds of thousands of dollars each year to clear rights for films in its collection in order to keep them accessible. Even for films that were 100% NFB produced there are major rights issues for narration (performers), licensed archival footage and, most especially, licensed music. The costs on the latter have gone through the roof and it is virtually

improving the copyright management of its productions and ensuring accessibility of its works via new media (Internet and its various applications).

NFB's Program Activity Architecture



1.1 Copyright Clearance Profile

Objective of copyright clearance: enable the creation of and access to audiovisual works

Each work produced by the NFB includes a certain number of copyrights (usually called “copyright base”). **The clearance or freeing up of these rights is a process by which the necessary authorizations are obtained for use and reproduction of a protected work into a new work.** These authorizations are sometimes simple signed consent forms, licence agreements or release forms allowing material to be used in the production or the participation of an individual in a production project. These authorizations or licences are either free or paid. As a rule, the owner of rights to a work is the only one who can authorize its use or reproduction in any form whatsoever.

The majority of the NFB’s documentary and interactive³ productions include a portion that is a product of the imagination of the filmmaker and the director, and a portion that is a reproduction of copyrighted material (e.g. photos, stock shots, sound recordings, film excerpts, works of art, sketches, works of literature, recordings of dramatic works, etc.). Each production calls for a decision about which parts require copyright clearance. The type of material incorporated into the production will determine the type of consent or licence needed and the rightsholders to whom the NFB must turn for permission to incorporate it. It follows then, that NFB employees

impossible to obtain rights from music publishers and record labels, as once were done, in perpetuity. That means that rights are cleared for a period of time (more often than not only five years) after which the rights need to be renewed, again. To clear the rights for a film may cost anywhere between \$5,000 and \$50,000 (it depends of the amount of third party licensed elements in a work). If we multiply that by the hundreds of films whose rights need to be renewed annually and you get a sense of the scale of the problem. This is not a problem for the NFB alone. CBC and other public broadcasters have the same issue. As an example, in a recent publication, the BBC noted that it would take a work force of 800 people working full time for three years to clear rights for works in their collection at a cost of well over \$100 million; a work that would have to be redone periodically.

³ We make no distinction in this text between cinematographic productions and interactive productions produced by the NFB. An interactive work is not necessarily a cinematographic work under the *Copyright Act* (the Act). For the purposes of this report, we refer to them indiscriminately as audiovisual works. Cinematographic productions are essentially linear works, i.e., documentary, animated and fiction films (whether alternative or not) produced by the NFB. These works are cinematographic works under the Act. Interactive productions are designated differently. Some of these productions are multimedia works created in collaboration or collective works under the Act and are designated as artistic, dramatic, literary or musical works. This designation can affect the initial ownership of copyright, but it changes nothing in terms of rights clearance.

designated as responsible for copyright clearance manage the copyright file, research rightsholders and negotiate the necessary authorizations from them.

Copyright management is, therefore, vital to the production and use of a new work (usage, accessibility: duration, markets, territories, etc.) The copyright clearance timetable varies, because clearance steps are in sync with the stages of audiovisual production: development, production, post-production and copyright renewals. These steps are explained in the copyright management process model (see Section 2.2.3 – *Current Process*).

Legal Framework

Copyright clearance is based on a precise legal framework. The legal framework governing the NFB's audiovisual production is substantially the same, with only a few exceptions, as that governing private industry in Canada. Below is a summary of its main components: the [Copyright Act](#) and the [Status of the Artist Act](#) as well as the contractual framework and Common Law.

1. Copyright Act ("the Act")

The *Copyright Act* (R.S.C., 1985, c. C-42) is designed to ensure the recognition and protection of the rights of creators and other copyright holders, and to promote access to works protected under copyright.

Literary, artistic, dramatic and musical works (or compilations thereof) are covered by copyright as long as they are original. Generally speaking, the author of a work is the primary copyright owner. In Canada, copyright remains in effect during the lifetime of the owner until December 31 of the 50th anniversary of the owner's death. The Act does make several exceptions to this rule. In contrast to the general copyright rules, works created by and for the NFB are deemed works of the Crown with a fifty-year protection period from the date of publication, i.e. the date they are made available to the public. Despite the applicable copyright, the NFB must respect the rules governing third party copyright for those parties with which it negotiates copyright clearance. A number of these third parties are not Canadian; consequently copyright is regulated by other laws that sometimes differ widely in the duration of copyright protection. At times, a work will enjoy longer protection in other countries. A pre-existing work can be used without authorization or payment if the duration of its copyright has expired (public domain).⁴ The Act also provides for a number of exceptions, whereby a work can be reproduced without the authorization of its owner.

Copyright law also recognizes copyright collective societies, whereby the owner of the copyright may cede the entire management of his or her rights to a management company. These societies grant authorizations for reuse of the protected works in new works, negotiate the conditions of licencing and redistribute the revenues among their members. Sometimes these societies are contacted for copyright clearance. They include agencies such as: SODRAC, SOCAN, CMRRA, COPIBEC, BMI (U.S.), ASCAP (U.S.), AGICOA (France).

2. Status of the Artist Act

Status of the Artist Act (S.C. 1992, c. 33 or L.R.C. 1985, ch. S-19.6): Canadian artists and producers can associate freely and represent their members in negotiations. They are also permitted to apply framework agreements governing working conditions during productions, notably audio-visual works. Many professional associations and guilds obtained accreditation from the Canadian Artists and Producers Professional Relations Tribunal and negotiated framework agreements (similar to collective agreements), with producers subject to this Act, such as the NFB. Presently eight framework agreements are in place between the NFB and the following associations:

- SARTEC (French-language writers working in French);
- UDA (French-language actors, narrators, commentators and performers-singers working in French);
- AQTIS (film directors, editors and technicians working in French and English in Quebec);
- CFM (Musicians working in French and English);

⁴ For example, the song *Happy Birthday* is in the public domain in Canada, but still enjoys copyright protection in the United States. If an NFB production is accessible in the United States, copyright clearance must be obtained for the territory of the United States or any other territory in which it is still under copyright. Nevertheless, the NFB can use this work in Canada without having to compensate the rightsholders.

- SPACQ (Quebec composers working in French and English);
- WGC (Writers working in English);
- ACTRA (Actors, narrators, commentators and performers-singers working in English); and
- DGC/GRC (Directors working in French and English outside Quebec).

These framework agreements govern working conditions of artists and artisans during production; determine contract conditions, minimum wages and benefits and; in certain cases, determine the rights granted to the producer (NFB) relating to the use and accessibility of the production.

3. Contractual framework and Common Law

The third component of the legal framework governing audiovisual production is partly ruled by the contractual regulations of Common Law that apply in each province. The Act stipulates that the copyright can be used under an exclusive or non-exclusive licence, or transferred. At times the NFB must contact holders of a copyright by virtue of a contract or deal with an estate if the creator of the work is deceased.

Common Law also recognizes an individual's rights to protection of one's private life and respect for one's reputation. It protects persons against the non-authorized use of their image. This is called **the right to one's image** and is a recognized right for actors, public figures and performers-singers whose livelihood depends in part on the use of their image. The law recognizes that they have the right to manage this image and to use it to make a living. In the case of the general public, the law protects individuals by stipulating that any unauthorized reproduction of a person can constitute a violation of one's private life or an attack that could damage one's reputation. However, this rule sometimes includes exceptions established by Common Law and the interpretation by the courts. In Quebec, the source of these laws is the *Code civil du Quebec*. In the rest of Canada, Common Law defines these rights as well as a number of statutory laws.

These rules must be taken into account when clearing the various copyrights for different parts of a production, such as photos and existing visual and sound archives, or when recording public or private events for a production. Participants are required to sign waivers or contracts to regulate the use of personal images. New authorizations or new contracts are sometimes required when these same images are re-used in new productions.

Stakeholders

Roles and responsibilities in copyright management at the NFB

Responsibility for copyright management is divided among several of the NFB's sectors: the English Program, the French Program, the Accessibility and Digital Enterprises division (distribution) and the Business Affairs and Legal Services Department.

- The **English and French Programs** (the Programs) are responsible for producing documentaries, animations, and interactive projects in their studios across the country in Montreal (headquarters), St. John's, Halifax, Moncton, Quebec, Toronto, Winnipeg, Regina, Edmonton and Vancouver. As production units, the Programs currently hold the main responsibility of negotiating copyrights needed for the commercial operation and initial public broadcast of NFB productions.
- In 2010-2011, the NFB completed 108 productions, including 77 100% NFB productions and 31 coproductions with private sector partners from Canada and abroad.

	100% NFB	Coproductions
English Program		
Original Productions *	34	19
Interactive Productions	11	—
French Program		
Original Productions	23	10
Interactive Productions	9	2
Total NFB	77	31

* Original Productions: documentary and animated films

- ▶ The **Accessibility and Digital Enterprises** Division is responsible for the commercial distribution of NFB films, i.e. sales to institutions and educational establishments, audience development (festivals, venues, public screenings as part of outreach events to communities, etc.). It also is responsible for the promotion of sales and market development (sales to TV broadcasters, consumer markets and institutional markets abroad). The ADE division determines whether or not copyrights need to be renewed following the commercial use and initial public broadcast of an NFB production. The ADE is also responsible for the development and launching of the NFB's online Screening Room at NFB.ca.
- ▶ The **Business Affairs and Legal Services**⁵ Department monitors copyright management through its copyright section. It advises producers and studio administrators about copyright acquisition, ensuring that the appropriate rights are secured; it maintains a system of copyright management for completed works, monitors rights expiration for the same productions, renews rights for productions deemed relevant for the business catalogue and NFB collections, and secures rights for works broadcast on the NFB.ca website. Senior management is also in charge of relations with various professional associations and guilds and for negotiating framework agreements between these associations and the NFB.

Copyright Clearance Beneficiaries

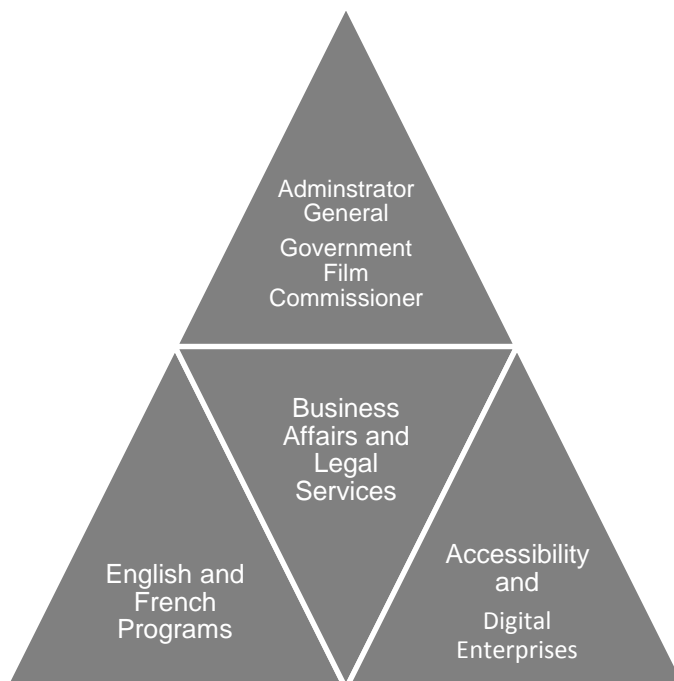
People benefitting from copyright clearance include the following:

- ▶ Producers who create and innovate in producing new works;
- ▶ The ADE division which distributes NFB productions and makes them accessible to the public legally;
- ▶ Copyright holders whose rights are protected because enshrined in the laws and agreements in force;
- ▶ Canadians and the rest of the world who all have access to NFB productions.

⁵ In this report, the terms “Legal Services” and “Rights Section” are used interchangeably. These two sectors are part of the Department of Business Affairs and Legal Services, which consists of legal advisors assigned to production projects and non-legal counsel specialized in rights management.

Governance

- ▶ As shown below, Programs' producers generally decide to secure or renew copyrights for the initial production and use while the ADE decides in cases of renewal. The Business Affairs and Legal Services Department supports these two Departments in copyright securing and renewal. The Government Film Commissioner and Chairperson of the NFB (Administrator General) is ultimately responsible for proper copyright management at the NFB. The diagram below illustrates the responsibilities and the governance structure of copyright clearance:



Resources

The table below summarizes the resources allocated for copyright clearance at the NFB (salaries and licencing fees). Copyright management includes the preparation of legal files, search for rightsholders and negotiations for authorizations. Between 15 and 20 full-time employees (FTEs) are involved in copyright management activities: some full-time, others part-time.

- ▶ Nine FTEs from Business Affairs and Legal Services participate in copyright management. Most of them—five or six FTEs—deal with the delays accumulated in clearing the necessary rights for the implementation of the NFB's digital strategy and the distribution of films on NFB.ca, the online Screening Room. Two FTEs are allocated for copyright management and contractual activities tied to 100% NFB financed productions and one person specializes in the administration of copyright relating to coproductions.

- Production coordinators and administrative staff of the French and English Program production centres devote some of their time to copyright management as part of their production management activities. Taking into account the 44 FTEs (including all production coordinators and administrative staff at the centres) who, on average, use 20% of their time, the activities require approximately 9 FTEs.
- The collection and distribution management staff of the ADE is also involved in copyright management, but they do not handle rights clearance.

Expenses tied to rights clearance (costs of authorizations and licences) vary according to the production projects and corporate projects. Large-scale projects may call for a more substantial rights clearance budget, for production purposes or for acquisition of distribution rights once the production has been completed (duration of operation, markets, territories, etc). The documentary film *The Art of Documentary* was one of the large-scale productions of 2008-2009. At times the NFB also enters into acquisition agreements with private producers, thereby acquiring distribution rights for external productions in order to improve its distribution catalogue. Between 2008 and 2010, the NFB entered into several large acquisition agreements, including those for the documentaries *Antarctic Mission* and *The Last Continent*.

In 2010-2011, the costs of accessibility rose compared with previous years, partly due to the ongoing implementation of NFB.ca , the online Screening Room, which makes NFB productions +available for download on the Internet. The NFB.ca requires both the acquisition of additional rights (Internet rights) and the renewal of expired rights for many productions meant for online viewing.

Copyright Clearance Costs (2008-2011)

	2008-2009 (\$)	2009-2010 (\$)	2010-11 (\$)	Total (\$)
Salaries (estimate)*	(68,801)	(69,834)	(70,881)	
Salaries 12 FTEs	811,857	824,038	836,397	2,472,292
Licence Costs				
Production	670,798	377,617	304,888	1,353,303
Accessibility (renewals)	254,361	253,239	388,381	895,981
Accessibility (acquisition agreements)	310,899	206,297	—	517,196
Sub-total	1,236,058	837,153	693,269	2,766,481
Total	2,047,915	1,661,191	1,529,666	5,238,772

*Salaries = Estimates based on average salary level 7/FTEs

Input	<ul style="list-style-type: none"> ▶ Copyright clearance budget fluctuates annually. In 2010-2011, the total copyright cost budget was \$693K. ▶ Between 15 and 20 employees are involved in copyright management at the NFB, mostly on a part-time basis. In 2010-2011, total salaries related to copyright management were approximately \$836K.
Activities	<ul style="list-style-type: none"> ▶ Rights are acquired at various production stages. Production activities include design, research, development, and production of documentaries, animated films, Web content and other emerging forms. ▶ Rights are renewed at the stage of accessibility (distribution) once the audiovisual work has been completed. ▶ Legal and business risks are managed throughout the entire process. <ol style="list-style-type: none"> 1. Research and development: assessment of rights that need to be cleared for the project (cost, locating rightsholders, etc.). 2. Pre-production: negotiation with rightsholders, acquisition of protected material 3. Production: idem 4. Post-production: idem 5. Accessibility (distribution): evaluate if relevant rights have been cleared, renewal of rights if necessary.
Output	<ul style="list-style-type: none"> ▶ Audiovisual works with cleared rights.
Immediate Result	<ul style="list-style-type: none"> ▶ The NFB can create and innovate in producing new audiovisual productions (NFB's audiovisual works are innovative). ▶ The NFB can distribute its productions and make them available to the public legally.
Intermediate Result	<ul style="list-style-type: none"> ▶ Canadian and international audiences see NFB productions and interact with them.
Final Result	<ul style="list-style-type: none"> ▶ NFB audiovisual production contributes to providing Canadians with a better understanding of the issues faced by their country and to make Canadians' point of view known to other countries.
NFB Strategic Objective	<ul style="list-style-type: none"> ▶ Canadian stories and perspectives are reflected in audio-visual media and are accessible to Canadians and the world.

1.2 Evaluation Background

In March 2011, in compliance with the requirements of the Treasury Board Secretariat's [Policy on Evaluation](#), the NFB published its Five-Year Evaluation Plan 2011-2012 to 2015-2016, in which it committed to assessing its methods and practices of copyright management in 2011-2012.

The Director General, Finance, Operations and Technology (FOT) of the NFB is responsible for this evaluation which was conducted by the consulting firm Ernst & Young on behalf of the Head of Evaluation and Director General, FOT. The evaluation was a two-step process undertaken between late October 2011 and February 2012. Between October 20 and December 12, 2011, Ernst & Young gathered data (documentation, one-on-one interviews and discussion groups). From mid-December until February 2012, the firm conducted analyses and drafted the Evaluation Report. The Lean approach was used to define the copyright management process (see Methodology) and participation was encouraged throughout the project.

Objectives

The objective of this evaluation is to present NFB staff and senior management with conclusions and recommendations regarding the NFB's current copyright management practices and their degree of effectiveness. The evaluation specifically focuses on rights acquisition and renewal for production (including coproduction) and distribution activities, which comprise the NFB's two main program activities⁶. Thus, this evaluation touches all NFB sectors, especially the French and English Programs, the Accessibility and Digital Enterprises (ADE) division and the Department of Business Affairs and Legal Services. As the evaluation focused mainly on internal processes, it will serve as a guideline for future practices in copyright management, leading to improved delivery of the NFB's programs and contributing to fulfilling the NFB's mandate in the most efficient way possible.

To reach this objective, the evaluation consists in:

- 1) Documenting the current acquisition, renewal and rights management processes (analysis of internal environment) – approaches;
- 2) Evaluating the quality and efficiency of current rights management practices so as to identify the strengths and weaknesses (cost effectiveness) – performance outcome, what works and what does not;
- 3) Identifying good practices and learning from them.

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⁶ The program activities of the NFB's PAA: Audiovisual Production, Accessibility and Audience Engagement, and Internal Services.

⁷ Evaluation Questions – see Appendix A.

2. Evaluating the quality and efficiency of current rights management practices so as to identify the strengths and weaknesses (cost effectiveness) – performance outcome, what works and what does not;
3. Identifying good practices and learning from them.

Scope

The evaluation covers the period from 2008 to 2011, from the publication of the *2008-2012 Strategic Plan* and the implementation of the NFB's digital shift, as well as the adoption of the *Minimal Rights Policy*. It takes into account that the NFB uses two copyright management systems: The first covers NFB coproductions with the private sector and the other covers '100%' NFB productions. Acquiring rights in the first case is very different from the process in the second, since private sector producers are not obliged to meet the same requirements, or adhere to the same financing regulations as those in the public sector. Consequently the evaluation covers rights clearance for '100% NFB' productions, coproductions and rights renewal.

Copyright management is generally carried out in parallel to the production process. It begins with an evaluation of the budget set aside for rights clearance at the research and development stage at the start of production and ends with entering the rights clearance data into the SEGDA copyright management tool, once the film is finished.

The following is a bird's eye view of the steps involved in managing copyright processes:



Exclusions

To meet evaluation objectives, we have focused on the copyright management core, eliminating the following from the scope of the evaluation mandate:

- ▶ Script pre-analysis stage for assessing rights clearance budget;
- ▶ Legal Services analysis of potential risks to NFB;
- ▶ Target market analysis of a work created by Accessibility and Digital Enterprises;
- ▶ Licence terms and conditions, waivers and authorizations obtained throughout the process.

The evaluation questions are listed in the detailed evaluation outline in Appendix A. They are based on five basic questions from the [Directive](#) appended to the [Policy on Evaluation](#) of the Treasury Board. These questions constitute the overall framework for evaluating federal program expenses. They were adapted to copyright management, **since this does not constitute a program activity in and of itself**, but rather an activity intrinsic to audiovisual production, which is governed by a precise legal framework.

1.3 Methodology

Each NFB sector administers its own files and data autonomously, which results in a lack of consistent systemization of information among the various sectors responsible for the file. Consequently, the methodology used for this evaluation was mainly qualitative in nature. It comprised an examination of the documentation and included interviews with key stakeholders responsible for copyright acquisition and renewal. The main means of information gathering and analysis are summarized below:

► *Examination of documentation*

Examination of reference documents relevant to governance, practices and resources connected to copyright management and organizational background and history. The documents include:

- NFB organizational chart
- Summary of rights clearance process for English and French Programs
- English Program Rights Clearances
- Notes on meetings with working committee on minimal rights
- Electronic copyright management system (SEGDA)
- Distribution and marketing strategy
- Minimal Rights Policy
- Rights management evaluation report “Rights Acquisition and Renewal,” by Robert Armstrong, March 2005

► *Interviews with key stakeholders*

One-on-one interviews were held with personnel responsible for copyright acquisition and renewal between mid-October and mid-November 2011. These interviews provided a clearer picture of the present situation in that they identified the roles and responsibilities and operational realities of key stakeholders and the major procedural issues. For the list of the interviewees, please consult Appendix B.

► *Discussion workshops*

Between the end of November and mid-December 2011, three group sessions were held with key stakeholders: Programs, ADE and Business Affairs and Legal Services (see Appendix B for the list of participants). **These discussion sessions formed the core of the evaluation approach:** they made it possible to clarify and come to a common understanding of the current rights management process and to identify key issues and potential areas for improvement. The cooperation shown by all participants and the exchange of opinions made this possible. Reaching a common understanding of the current process and issues comprises the foundation we are using as the basis for developing a new process that will encourage buy-in by the various stakeholders. Each session met specific objectives:

- November 25: Analyze present situation (training in Lean approach and techniques to recognize causes of inefficiency); develop a common understanding of process in effect, including irritants and areas for improvement.
- December 2: Establish a vision and guiding principles for future process. These principles were developed with senior management, based on the results of the analysis of current process.
- December 9 and 12: Define ideal situation (develop future process). Mapping of activities of an ideal process, sequence and stakeholder roles and responsibilities.

► *Lean Approach*

An overall analysis of the copyright management process was conducted using the Lean Approach, specifically for interviews and discussion sessions. Ernst & Young acquired previous experience in this approach working with clients in similar situations. The Lean approach enables performance assessment (efficiency and quality) of the copyright management process and the development of solutions leading to efficient process that meets the requirements of NFB senior management and Canadians. Ernst & Young then developed a unique approach that was adapted to the specific situation of the NFB. Over the past few years, structured approaches applied in the automobile and electronics manufacturing sectors were examined. The aim of these approaches was:

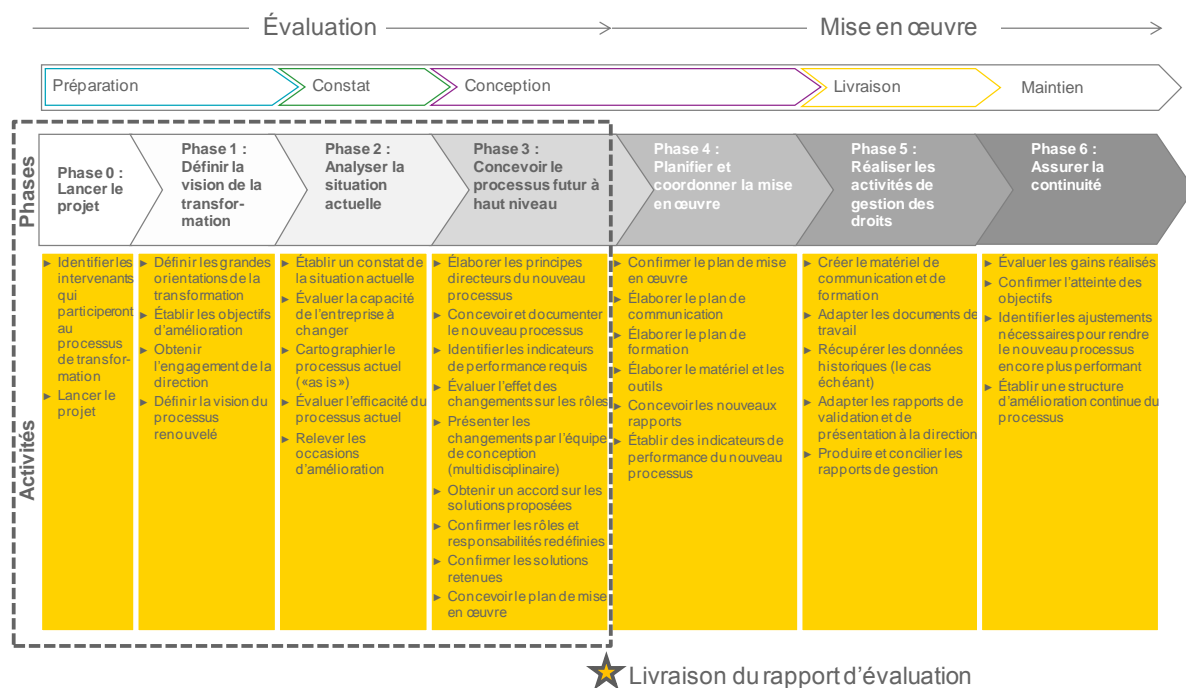
- Improvement and customer satisfaction
- Increased worker satisfaction and reduced stress
- Shortened treatment cycle
- Resource allocation to value-added activities

- Improved use of resources (staff, material and technology)
- Reduction in unit price due to expanded capacity
- Flow increase through elimination of congestion (deadlines) and constraints (limiters)
- Improved process management
- Problem resolution

The Lean Approach principles were adapted by the service sector to improve efficiency. Lean concepts were the inspiration for the approach we propose which aims to:

- Identify opportunities for improvement (irritants);
- With the team in place, draw up a simplified and optimized process including:
 - Elimination of possible overlaps;
 - Clarification of roles and responsibilities;
- Encourage participation, teamwork and appropriation.

Details of project approach:



Limits of Chosen Approach

The three main limits to the approach used in this evaluation are:

Effectiveness Assessment

The assessment of the process focused on the organization of its steps in order to make them a more effective vehicle for the delivery of the NFB's mandate and the expected value to Canadians. This evaluation does not cover the legal aspects of rights search and clearance: we did not analyze the legal framework or practices governing the NFB.

An approach that focuses on guidelines

To obtain consensus from the various stakeholders, the approach focused on developing solution-oriented concepts rather than prescribing precise and detailed solutions. Recommendations will need to be developed to ensure success in implementation and the maximization of potential benefits for the NFB.

Detailed analysis of each stakeholder's workload

The evaluation concentrated on the main procedural steps as well as the significant areas lacking in efficiency. A detailed workload analysis was not conducted for various stakeholders: this can be seen as an important step in the detailed design of recommendations before implementation.

2. Major Findings

2.1 Relevance and Justification

This section examines how rights clearance responds to an ongoing need and complies with the priorities of the government and the NFB. It examines the role and the responsibilities of the federal government in this activity.

Essential Activity

As explained in the description of the copyright clearance activities (Section 1.1) most of the NFB's productions contain an original part that originates in the mind of the writer and screenwriter/director and parts which reproduce material protected by copyright owned by third parties. Use and reproduction of these components in a new production call for authorization from the rightsholder: this is called rights clearance. Consequently, rights clearance is an internal service, which, first and foremost, complies with legal obligations. It is essential to the NFB's program activities (Audiovisual Production and Accessibility and Audience Engagement). These legal obligations are regulated by the legal framework in force in Canada (see Section 1.1) and in the other territories where the NFB's works are available.

Federal Government's Priorities

To stimulate the digital economy, the government of Canada has included the promotion and modernization of copyright legislation in its current priorities.

Canada's Digital Economy Strategy

Key priorities for the present government are the stimulation of innovation and the digital economy. The 2011 [Speech from the Throne](#) and [Budget](#) announced the implementation of *Canada's Digital Economy Strategy*.

The next phase of Canada's Economic Action Plan promotes the digital economy strategy that will make Canada a leader in the creation, adoption and use of technology and digital content.⁸

Moreover, the last budget showed that creation of Canadian digital content remains a priority of the government, in that it provides for funding in the amount of \$100 million per year to the Canada Media Fund for investments in the creation of digital content across multiple platforms. In 2010, the federal government had already announced its expectations in this regard. Its consultation document *Canada's Digital Economy Strategy* emphasized the work of the NFB and the success of its online Screening Room at NFB.ca.

(...) Further, the CBC/Radio-Canada and the NFB have reached beyond their traditional roots in broadcasting and film, to show a strong commitment to the new digital platforms to distribute content and interact with users, as a core component of their service to Canadians. The CBC/Radio-Canada and the NFB offer access to extensive online collections, social media tools, games and smartphone applications. Both organizations have been recognized, both nationally and internationally, for their innovation, including two Canadian New Media Awards in 2009 to the NFB for Best Cross-Platform Project for its "Waterlife Interactive" and Best Online Video Portal for its "Online Screening Room."⁹

⁸ [The Next phase of Canada's Economic Action Plan](#), 2011 Budget

⁹ [Improving Canada's Digital Advantage – Strategies for Sustainable Prosperity](#) Consultation Paper on a Digital Economy Strategy for Canada (p.27), Government of Canada.

In short, effective copyright management in the digital universe promotes optimization of creation and accessibility of digital content at the NFB. In this sense, improving copyright management is in line with the current priorities of the federal government, specifically its digital economy strategy. Copyright reform is another of these priorities.

Copyright Reform

The government has long given priority to adapting the *Canada Copyright Program* to the digital economy; in fact, since 2001, the federal government had begun the process of updating the *Copyright Act*. As of 2005, various bills introduced in this process were successively defeated at bill stage during minority governments and at the time for a call for federal elections (Bills C-28, C-61 and C-32). In the [2011 Speech from the Throne](#), the Government of Canada once again committed to introducing the bill on updating copyright. The government introduced [Bill C-11](#) on September 29, 2011.

If the legislative changes proposed in Bill C-11 become law, they will not bring any drastic changes to rights clearance activities. Nevertheless, the bill under study introduces new exceptions as to the education sector's use of works, such as the right to make public presentations in class of works, without specific compensation. This right will enable schools to obtain a copy of an audiovisual work at the same price charged to consumers for private use of the work. This new exception would affect sales of NFB productions in the institutional sector.

The bill also limits the scope of certain copyright exceptions, such as for the fair use of a work for study or critical review purposes. For example, installing security measures that prevent the reproduction of an audiovisual work in a support medium will disqualify it for an exception for critical review purposes, if one part of the said work is reproduced in a new production. Prior authorization would need to be obtained from this work's rightsholders, even if its use would qualify as fair use according to the law in the context of a new production

Role and responsibilities of the federal government and strategic outcome for the NFB

The *National Film Act* of 1985 mandates the NFB to produce and distribute audiovisual works. Rights acquisition and renewal activities make it possible for the NFB to fulfil its mandate as stipulated in the *National Film Act*, Article 9 (a):

Mission

9. The Board is established to initiate and promote the production and distribution of films in the national interest and, in particular:

a) to produce and distribute and to promote the production and distribution of films designed to interpret Canada to Canadians and to other nations;

Rights clearance also enables NFB works to be produced and distributed so as to achieve the strategic outcome of the NFB as presented in its PAA

Canadian stories and perspectives are reflected in audio-visual media and are accessible to Canadians and the world.

In short, the federal government has a role and a responsibility in the appropriate management of copyright needed for the production and accessibility activities of the NFB, in accordance with the legislative mandate of the NFB (*National Film Act*) and the existing obligations of the federal judicial framework in matters of audiovisual production (*Copyright Act* and *Status of the Artist Act*).

2.2 Performance Evaluation

This section examines the success and effectiveness of the NFB's copyright management activities undertaken to attain the desired outcomes¹⁰, i.e. to create and innovate in the production of new audiovisual works and to distribute and make accessible to the public its productions in a legal manner. More specifically, the evaluation examined:

- ▶ The effectiveness of the resources allocated to carrying out the process;
- ▶ The effectiveness of the process in supporting the appropriate business decisions on which the NFB's mission is based;
- ▶ The existence and quality of the performance evaluation framework (performance indicators).

In addition, this examination was carried out by taking into account the capacity to respect the quality criteria requested by the process's clients.

2.2.1 Definition of the clients of the copyright management process

Since clients alone can measure the value delivered by a process, one must begin by defining who the clients are and then follow by understanding their estimate of the value added.

The evaluation uses the Lean Approach, which aims to increase value for the client through improvements to process by eliminating those tasks without added value, simplifying the process and making it more flexible.

Client of the process

Two groups of clients are involved in rights clearance: the end-client and the internal client.

End-Client:

- ▶ Canadians

Internal Clients:

- ▶ Accessibility and Digital Enterprises (ADE)
- ▶ Producers and coproducers (French and English Programs)
- ▶ Legal Services (Business Affairs and Legal Services)

Each of these NFB divisions has expectations about the process in terms of quality, timing of execution and related costs. Efficient rights clearance and a completed and/or quickly assessed copyright file facilitate the work of these divisions, by enabling internal clients to fulfil their roles and responsibilities more easily in production and distribution of the Board's works (see Stakeholders – *Roles and responsibilities in copyright management at the NFB* in Section 1.1).

End-Client

NFB Audiences (all platforms)

As end-client of the copyright management process, the Canadian public's main expectations are being able to have access to new NFB works and to its collection. Without achieving complete rights clearance needed for a work, the NFB cannot present it to its audience, which however is not aware of the detailed rights clearance and renewal process. These remain internal deliverables, making up part of the NFB's operations management. The Canadian public is primarily interested in having the easiest access to the works of the NFB on all platforms.

¹⁰ See Logic Model, Section 1.1

2.2.2 Description of the copyright file of a project in production

The production studio administrator is currently the person responsible for completing the copyright file, which when complete, must comprise the following elements:

- ▶ All copyright contracts (usual contracts for actors, waivers for venues and participants, release licences for a visual or sound archive);
- ▶ Signature (by the production) of the visual content list;
- ▶ Technical approval (VMA);
- ▶ Summary of rights acquired for the work;

N.B. The copyright file is currently available in paper format only. With the exception of the summary of rights acquired for the work, each original document is submitted to the studio administrator by the production team. Once the documents have been obtained, the summary of acquired rights is drawn up by the studio administrator to facilitate verification and approval by the Program Directors General.

- ▶ If necessary, a Claim for Exemption form of the Minimum Rights Policy.

Identified Issues:

Obtaining an overview of the copyright file during production presents difficulties for the following reasons:

- ▶ The studio administrator is solely responsible for supplying the progress report (rights obtained, missing and to come);
- ▶ Copyright file is only available in hard copy (on paper);
- ▶ No IT tool is available to facilitate copyright file status reports.

As a result, it can happen that decisions made by the Producer and the ADE team do not take into account the status of the copyright file, e.g. the target market revisions made during the production process.

2.2.3 Current Process

Evaluation summary of current copyright management situation

Our analysis of copyright management process effectiveness for ‘100%’ NFB productions, coproductions, and interactive works is based mainly on the information obtained in discussion groups and interviews with individuals involved in the various stages of copyright management. During the mapping session of the current process, we emphasized identifying the steps involved and key issues of the process (analysis of procedural methods and areas calling for improvement). Our analysis focuses on identifying issues raised by the participants and on developing solutions. This choice, which was approved by management, explains the absence of an overall portrait in this report, which would have identified both strong and weak points of current practices. Moreover, this report does not present contextual information, such as historic or organizational reasons that could have led to issue identification. Principally, our mandate targeted searching for constructive solutions.

Consequently, workshops and interviews first revealed that programs, studios and employees each currently use their own approach when executing the process. In addition, it became evident that employee understanding of the process requirements (quality, responsibility and steps) varied greatly. This is not a sign of incompetence, rather it demonstrates a mismatch between the organization’s expectations and work methods.

The *Minimal Rights Policy* is one of the tools adopted by the NFB that allowed it to clarify expectations regarding the copyright management process over the last few years. While the Policy makes it possible to guide decision-making about rights acquisition (duration, territory, distribution channels), its basic fundamentals seem to have been ineffectively communicated to those individuals who carry out the process. This leads to constant exemptions that call into question the quality of the rights and it may, at times, limit the NFB’s ability to fulfil its mission to provide accessibility (distribution).

Analysis of the issues related to copyright management have brought the four following findings to light:

1. There is an opportunity to improve **standardization and uniformization** in carrying out the copyright management process.
2. Employees responsible for carrying out the copyright management process have unequal **training and competence levels**. Knowledge of rights clearance does not seem to be uniform.
3. There is currently **no performance-monitoring framework**, nor any real governance structure specifically developed for the copyright management process. The NFB's performance assessment framework is applied overall to the expected outcome of program activities and the existing governance structure covers the NFB as a whole.
4. The NFB **must** frequently **take risks** with respect to copyright (e.g. in allowing distribution of a work whose rights have not been cleared in time).

These findings relate specifically to those areas for improvement in the rights clearance process and do not reflect the quality of the NFB's activities or production and accessibility outcomes. Identifying the issues reveals that current NFB copyright management is not systematic and is not the most efficient means to support production and distribution activities. Some of these identified 'holes'¹¹ seem to affect the quality of the copyright file and at times put the NFB at risk, requiring significant efforts after the fact to correct errors which could have been foreseen during the process.

Finally, while the SEGDA tool is cumbersome, it is complete and makes it possible to:

1. Compile information for each contract of a work and to know the duration, territories, languages, markets and supports (platforms) that would enable the NFB to employ it for each work, including coproductions;
2. Monitor the rights that the NFB grants to its partners or to third parties.

Map of the current status of the copyright management process

The following pages present the mapping of the NFB's current copyright management process, which was established and approved during a workshop with representatives of the Programs, the ADE and Business Affairs and Legal Services. The mapped process represents the rights clearance steps for the following cases:

► "100% NFB Productions"

Traditional production process of an audiovisual work (specifically, documentary or animated film) entirely managed by the NFB. These productions are financed entirely by the NFB, which retains distribution rights.

► Interactive Works

Production process of digital works (Web or multimedia) designed for interactive or participative use and generally destined for Internet and mobile platforms.

► Coproductions

Production process (documentaries, animated films or interactive works) in partnership with private sector producers in Canada and abroad. The NFB is always a minority partner in coproductions, financing up to 49% of a production. In the best interests of the production, the NFB can negotiate certain distribution rights.¹²

¹¹ A detailed list of the issues identified can be found in the process mapping.

¹² Coproductions are often more ambitious and require more substantial budgets because they involve external financing sources, including pre-sales to distributors. The distribution contract is negotiated at the same time as the coproduction contract before production begins; thus, it can be used as a barometer or as an indicator of the rights for archives or music that must normally be cleared.

► **Renewal**

Process adopted when the production rights are out of date and must be renewed for new use. The acquisition of new rights (new use of work, new market, etc.) may be necessary at the time of renewal.

In the first three cases, the steps are carried out in conjunction with the production process. The following segments comprise the production process:

1. Research and development;
2. Shooting (production);
3. Postproduction.

The mapping diagrams show how each copyright management step is consistently in line with a very specific production segment.

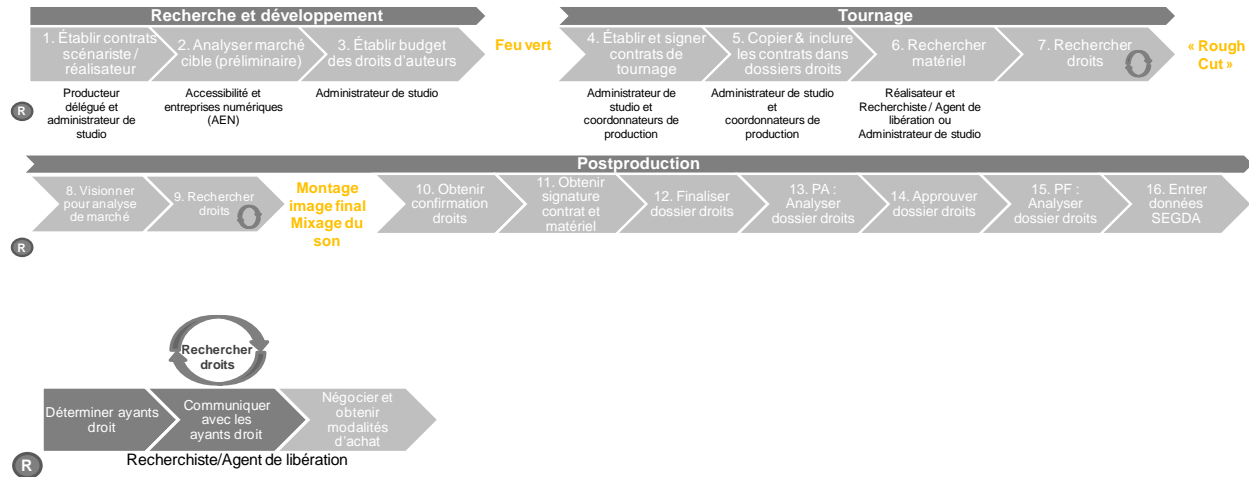
Identified Issues

The following table summarizes the types of issues which have brought to light the four main findings regarding the current situation as outlined on the preceding page. We have categorized the issues as follows:

1. Training and skill development
2. Lack of standardization
3. Lack of performance-monitoring framework
4. Lack of efficiency in carrying out the process
5. Exposure to risk by NFB

Areas for improvement	Type of Issue				
	Training	Standardization	Performance Monitoring Framework	Efficiency in process Execution	Risks taken by NFB
1. Production teams lack knowledge about copyright	X			X	X
2. Studio administrators lack expertise in rights clearance	X			X	X
3. A number of researchers/clearance agents lack knowledge about the <i>Minimal Rights Policy</i>	X			X	X
4. Interactive works producers lack knowledge about copyright	X			X	X
5. Significance of potential risks related to rights clearance are not communicated to stakeholders (i.e. production teams) at project outset		X	X		X
6. Coproducers do not systematically comply with the <i>Minimal Rights Policy</i> .		X	X		X
7. Lack of framework or standardization of essential components that must be treated in the copyright management process		X	X		X
8. Studio administrators do not systematically document the copyright file throughout project		X	X	X	X
9. A number of collective agreements not automated in the Synchrone IT tool		X		X	
10. Copyright data entering and reading (i.e. in SEGDA and FileMaker tools) is duplicated by studio administrators and SEGDA specialists.		X		X	
11. Requests to coproducers regarding copyright are not made formally or systematically		X	X		
12. International coproducers are not always aware of the clauses relating to copyright included in production and distribution contracts	X	X			X
13. Risk tolerance is not adapted to the various production types (Web, television, etc.).		X	X		X
14. Incomplete copyright files force the NFB to take greater risks					X
15. The <i>Minimal Rights Policy</i> is too restrictive for coproducers					X
16. The distribution strategy created by the ADE team never influences the decisions made relating to cleared rights		X		X	X
17. There is no strategy of re-release for marketing at the time of rights renewal		X	X		

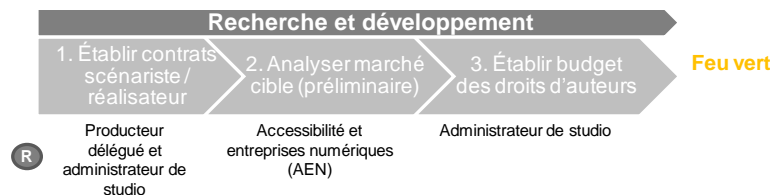
100% NFB Productions (documentaries and animation)



Current process

STAGE: Research and Development

The three first steps of the copyright management process are part of the Research and Development Production stage.



1. Draw up the writer's and director's contracts:

After the producer selects a writer and director, the line producer and studio administrator are responsible for having them sign contracts with the NFB.

2. Analyze the project's target market (preliminary):

This first analysis, conducted in collaboration with the production team aims to obtain a preliminary definition of the project's potential market.

3. Draw up the copyright budget:

The studio administrator is responsible for drawing up the project's copyright budget, by using the data supplied by the producer as basis for drawing up a preliminary detailed budget.

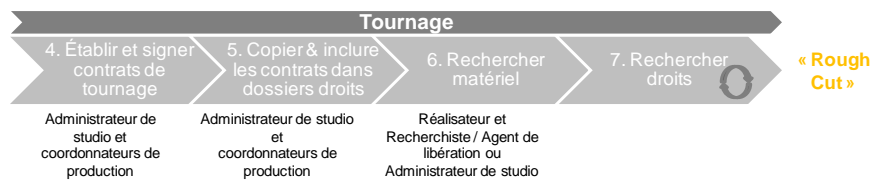
Issues identified at this stage of the process

Because studio administrators are not always fully aware of rights clearance requirements, they may underestimate their copyright budget allocation.

Moreover, several decisions regarding the choice of a work's archives are made during production, without taking costs into account. For example, costs for original music are generally lower than that for a sound archive, thus the former would be preferred, but only if it does not cause any negative impacts on the work's creation.

STAGE: The Shoot

Once approval to begin shooting has been obtained, four main steps follow:



4. Draw up and sign film contracts:

Studio administrators and coordinators are responsible for film contracts. Nevertheless, since they are not generally on hand during shooting, director's assistants or directors ensure contracts and releases are signed (e.g. locations, participants, etc.)

Issues identified at this stage of the process

The significance and potential risks related to rights clearance are not systematically communicated to the shooting and production team at a project's beginning. Since film teams do not often benefit from ongoing monitoring, some essential steps such as the signature of releases and contracts, are not carried out during the shoot. In these cases, it is difficult to obtain the necessary releases after the fact, because several months, even several years, can go by between the time of the shoot and the completion of the work (e.g. obtaining consent from participants who were interviewed during the shoot is difficult after a film wraps).

5. Copy and include contracts in the copyright file:

Studio administrators must ensure that all contracts and releases are included in the copyright file. Moreover, administrators must enter the information pertaining to each right in the File Maker IT tool.

Issues identified at this stage of the process

Synchrone is the IT tool for management of umbrella contracts. However, some contracts are not always automated in Synchrone, which leads to a lack of uniformity and use of incorrect versions.

Studio administrators do not systematically document copyright files during a project; these are generally completed at the end of the postproduction period, with the result that an overall view of the file is not available during production, and decisions based on the status of the file cannot be made in a satisfactory manner.

6. Researching the material:

The production team carries out the first stage in researching project material (visual or sound). This is simply a preliminary list since the process is at the early stages. On the other hand, sometimes at this stage it's possible to identify the key elements regarding the work's rights. For example, a film may be based on a song or on some specific archives. Once this preliminary list of materials is drawn up, it is submitted to the studio administrator so that he or she can begin the copyright search.

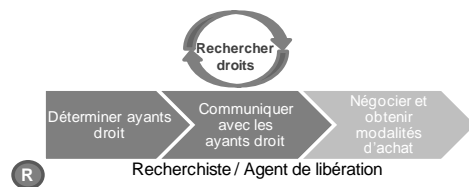
Copyright search at the start of shooting and editing enables the producer to know the availability of the rights and purchasing process rapidly. This information will influence the choice of visual and sound archives used in the work.

Issues identified at this stage of the process

Some of the copyright research and clearance specialists hired by the NFB do not have adequate knowledge of the *Minimal Rights Policy*, with the result that rights purchased for a production do not satisfy all the Policy criteria.

7. Copyright Search:

The copyright search cycle below is handled by the studio administrator or a rights clearance specialist for more complex cases. This circular process comprises the following three stages:



A. Identify rightsholder:

The rightsholder is identified by searching either a visual or sound archive.

B. Communicating with the rightsholder:

Once the rightsholder has been identified, he or she must be contacted to obtain the details for clearance of the visual or sound archive..

C. Acquiring the conditions of purchase:

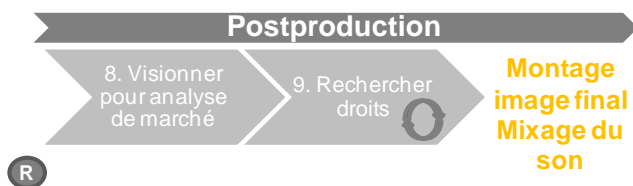
It should be noted that at this stage, only the cost details of the rights are acquired; no copyright is purchased before the “Picture Lock and sound mixing” to avoid purchasing rights which would not subsequently be used. Nevertheless, the details of the purchase will allow the producer to make better business decisions throughout the production process.

Issues identified at this stage of the process

Great variance exists in employee knowledge of the research process.

STAGE: Postproduction

Once the rough cut is ready for viewing, the two following steps of the copyright management process are carried out:



8. Screening for market analysis purposes:

The ADE team screens the work to conduct a more precise analysis of the project’s target market.

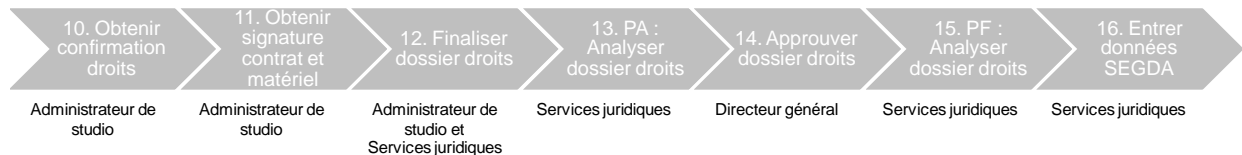
Issues identified at this stage of the process

When the ADE team screens the rough cut, several decisions are made about target markets for the work. However, when these decisions are made, the status of the copyright file and the opinion of the ADE are not taken into account.

9. Copyright search:

After the rough cut, a more detailed list of the needed archives is made available. As a result, the copyright search cycle is repeated (see Step 7 for description).

After the image final cut and the sound mix, the following copyright management steps are launched:



10. Obtaining rights confirmation:

The studio administrator obtains all the confirmations from the rightsholders for the archives needed for the project. Due to pressing deadlines, an email confirmation is often sufficient at this stage. For the email to be valid, it must set out all the details of the obtained rights and purchase process.

Issues identified at this stage of the process

Some information required by legal services is sometimes missing.

In addition, the information related to the copyright file is located on the computer of some of the studio administrators. It is often faster for these individuals to work from a copy on their computer rather than using the central File Maker database. This working method makes data searches more difficult and increases the risk of information loss.

11. Obtaining the contract signature and material:

The rightsholder's signature is required. Payment must be made to the rightsholder and the original material will be received at this stage, if applicable.

12. Finalizing the copyright file:

To finalize the copyright file, the studio administrator includes all documents in paper format (e.g. releases, licences, rightsholders' contracts, etc.) in the file. In addition, he or she sees to it that all rights have been properly cleared. Finally, the studio administrator draws up a sheet summarizing the purchased rights based on the data included in File Maker and inserts it into the file. The copyright team will use this summary to analyze the file at the next stage.

13. Copyright file analysis (# 1):

In the **English Program**, the Legal Services team receives the copyright file for analysis. In cases where not all rights have been cleared, the file, accompanied by a list of missing rights, is returned to the studio administrator who is responsible for completing the file. Once rights clearance is completed, the file is returned to Legal Services for analysis completion.

Issues identified at this stage of the process

Since not all studio administrators possess the expertise needed regarding rights clearance, they sometimes do not understand the nuances of certain required rights. This leads to the current practice of back-and-forth file transfers between Legal Services and studio administrators.

Moreover, it may become difficult to complete a copyright file when production has ended because rights clearance of some archives is either impossible or very expensive. These archives could have been replaced earlier in the process. At this stage, some cases require the NFB to take greater risks in distributing a work with an incomplete copyright file.

14. Copyright file approval:

Program Directors (senior management) must approve the copyright file for distribution. Both programs carry out this step, but at a different time in the process. The English Program approves after the file has been analyzed by Legal Services, while the French Program approves at the time of the file analysis.

15. Copyright file analysis (# 2):

In the **French Program**, Legal Services analyzes the copyright file after its approval by Program senior management. Should some rights not be cleared, the same process is applied that is used in the English Program, that is, the file is returned to the studio administrator with the list of missing rights. The studio administrator is responsible for completing the file. Once complete, the file is returned to Legal Services and the analysis is finished.

Issues identified at this stage of the process

The copyright file analysis steps are different in the French and English Programs.

In the English Program, the copyright file is approved by Program senior management **after** the Legal Services team has revised it. In this way, management is certain that the file is complete.

In the French Program, approval is given **before** Legal Services has revised the file. Senior management does not take into account the verification by Legal Services to clear the work.

16. Entering data in SEGDA:

Once the copyright file analysis is finished, all contract and waiver details are entered in the IT copyright management tool SEGDA.

Issues identified at this stage of the process

A source of inefficiency is the doubling up of data entry: some data are entered into File maker by Studio administrators, while the copyright team enters other data into SEGDA at the end of the project. SEGDA's complexity prevents studio administrators from entering data from the copyright file into this tool.

Moreover, the significant volume of copyright files and SEGDA's complexity prevents the copyright team from entering data before the work is distributed. To remedy this situation, the team conducts a file analysis at this stage. This analysis enables the team to ensure that the file is in fact complete. Currently, it takes one year for the data to be entered into SEGDA.

Interactive Works

The production steps for interactive works are similar to those for 100% NFB productions. The difference lies in the fact that interactive works can be quickly put online and removed from the Web, if necessary.

In addition, the cost of copyright related to interactive works is often very low because they are shown on only one platform, the Web.

In contrast, an interactive work is made up of a number of video clips and each of these includes a copyright file, which represents a significant increase in the work volume for the copyright team.

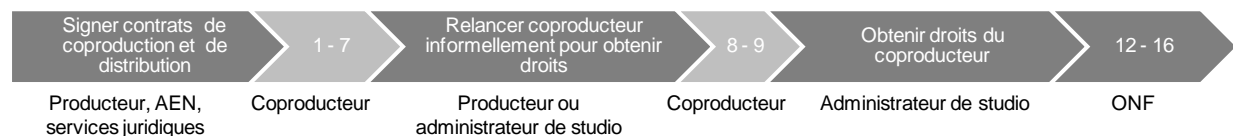
Interactive works on the Web are relatively new in the production world, and this means that there is a lack of training and awareness among members of interactive production work teams regarding copyright.

Issues identified at this stage of the process

The majority of producers of interactive works do not have the necessary knowledge about copyright. For this reason, some works are launched on the Web with an incomplete copyright file.

There is a lack of consistency in the acceptable levels of risk on different platforms: Web, T.V., etc.).

Coproductions



A) Signing coproduction and distribution contracts:

The first step in setting up the copyright file of a coproduction is obtaining coproduction and distribution contract signatures.

Issues identified at this stage of the process

The Minimal Rights Policy is currently part of the coproduction contract. Often, despite receiving reminders, coproducers do not respect the Policy, mainly because of costs.

The coproducer's budget is regularly spent before all the rights are purchased. This is often caused by:

- ▶ Inaccurate knowledge of copyright;
- ▶ Using the copyright budget for other purposes during production.

In addition, the NFB sometimes creates international coproductions. These types of coproductions often call for three producers:

1. The NFB producer;
2. The Canadian coproducer;
3. The international coproducer.

Only the Canadian coproducer signs coproduction and distribution contracts. Nevertheless, the responsibility for rights clearance for the work falls to the international coproducer, who is not always familiar with some contract clauses, resulting in incomplete copyright files.

Steps 1 to 17 associated with a 100% NFB production



During a coproduction, steps 1 to 7 associated with 100% NFB productions are carried out by the coproducers. Between steps 7 and 8, studio administrators often recontact coproducers so that the necessary contracts and licences are obtained as quickly as possible to complete the copyright file.

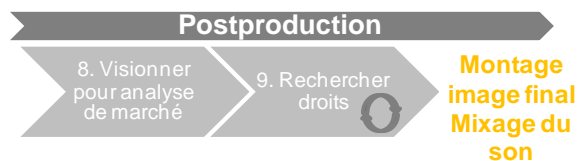
B) Informal reminder to coproducers to obtain licences and contracts related to cleared rights

Since coproductions can often take several years to complete, and coproducers do not always act in accordance with the clauses of the initial contract, some studio administrators remind them informally about the NFB's copyright needs during the course of production. On the other hand not all studios carry out this practice.

Issues identified at this stage of the process

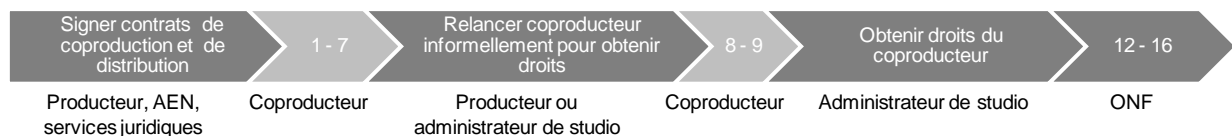
There is no formal or systematic process to forward requests to coproducers. When the copyright file is received at the end of the project, some licences are missing or do not correspond to the NFB's distribution needs (i.e. since the rights for certain markets have not been acquired, the NFB cannot use them).

Steps 8 and 9 associated with a 100% NFB production



In a coproduction, steps 8 and 9 associated with 100% NFB productions are carried out by the coproducers.

C) Obtaining all contracts and licences of cleared rights from the coproducer



When the Final Cut and Sound Mix are done, the studio administrator ought to receive all licences of cleared rights to complete the copyright file for the NFB.

Issues identified at this stage of the process

The *Minimal Rights Policy* contains very stringent criteria for rights clearance (e.g. rights must be cleared for a minimum of 15 years). Consequently, coproducers find it difficult to assume the cost for all the rights that meet the requirements of these criteria.

Steps 12 to 16 associated with a 100% NFB production



Steps 12 to 16 of the process are the same for 100% NFB productions and coproductions.

Issues identified at this stage of the process

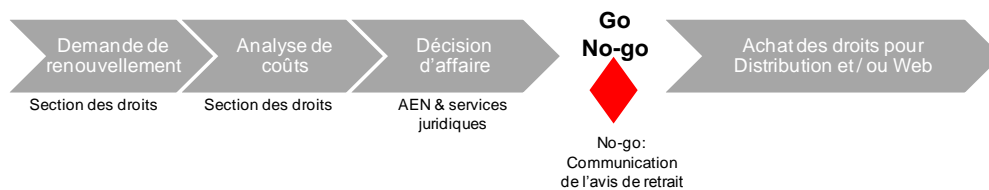
The issues related to these steps arise when the coproducer's copyright file is not completed. These situations can give rise to two possibilities:

1. Studio administrators identify errors made by coproducers and immediately get back to them to advise them about missing items.

2. In more complex cases in which studio administrators did not identify errors, the file is forwarded for analysis to Legal Services, which then identifies the errors. The studio administrators then act as communications conduit between Legal Services and coproducers.

Since studio administrators do not always have the required expertise concerning copyright, the details of the errors can turn out to be too complex to be clearly explained to coproducers. Moreover, coproducers often lack the knowledge regarding copyright and have difficulties in understanding the reasons for which they obtained licence does not meet NFB requirements. This results in a counterproductive effect inasmuch as information is passed back-and-forth among copyright team, studio administrators and coproducers.

Renewals



Description of current process

Renewal requests involve the following stages:

1. Renewal Request

The request is made to the copyright section, which then checks the status of the rights in the SEGDA IT system. If all rights are cleared, the work is redistributed. On the other hand, if some rights need to be re-leased, the process goes on to the next stage: cost analysis

2. Cost analysis

Copyright section conducts cost analysis, which is used when business decisions are made.

3. Business decisions

The ADE team and copyright section make business decisions based on the following components:

- ▶ Cost analysis of rights renewal costs;
- ▶ Potential of the work;
- ▶ Sales figures;
- ▶ Significance of the work for the NFB collection.

In the case of a No-Go, a notice of withdrawal is sent to the NFB stakeholders. In the case of a Go, the next step is taken.

4. Rights purchase for traditional or Web distribution

The missing rights are purchased and the work is redistributed.

Description of inputs into renewal process

Three main inputs to renewal requests are:

1. Expiring rights which are signalled by the SEGDA copyright management tool;
2. The addition of a work to a Web platform;
3. External requests such as those from distributors.

1. Expiring Rights:

SEGDA signals expiring rights. As soon as a need for rights renewal appears, the renewal process begins.

2. The addition of a work to one of the NFB's Web platforms:

Currently there are three NFB Web platforms:

1. The free Website NFB.ca
2. The educational Website CAMPUS;
3. The pay-per-use Website Download-to-Own.

Request volume for platforms varies according to their developmental stage. For example, in the first year of the CAMPUS Website, there were 400 renewal requests. Currently, there are approximately 100 renewal requests for this platform alone.

Consequently, business decisions for works launched online must be made efficiently to meet deadlines for the launch of a new platform.

3. External requests (e.g. from distributors):

Business decisions for external requests must be made as soon as possible.

Issues identified at this stage of the process

External requests for works often follow current news events. Some external request sources could once again be interested in these works. For this reason, it would be in the NFB's interest to prepare a relaunch strategy to take advantage of these events.

2.2.4 Guiding principles

Together with NFB senior management, we developed a vision of the future process based on the guiding principles which are listed below:

1. The copyright management process must be the same for the English and French Programs.
2. Copyright management skills need to be improved:
 - ▶ Negotiating rights for archives and music and for more complex cases must be the responsibility of a specialized NFB team;
 - ▶ The skills for rights searches and purchases must be increased. For example, rights searches can be conducted by a visual or sound archive expert.
3. Touch points connecting the different teams involved in the process must be systematic right from the process beginning.
4. The *Minimal Rights Policy* must be respected. When an exemption is necessary, a clear and systematic validation process must be applied.
5. Information management must be made more efficient:
 - ▶ There should not be a double data-entry system using parallel IT systems;
 - ▶ Information must be centralized and accessible to all: (i.e. Programs, ADE, Legal Services and senior management) so as to present a complete picture of the status of the file when major decisions must be made.

6. Improved collaboration with coproducers is needed to gain better control of the copyright file submitted to the NFB. The following two points must be considered in order to improve this collaboration:
 - ▶ Coproducers must submit proof of compliance with the *Minimal Rights Policy*.
 - ▶ A study must be undertaken of the coproducer's copyright budget.
7. A series of checkpoints must be included at the critical points of the process to ensure that all steps have been systematically carried out in a timely fashion.
8. The concept of outcome accountability of the copyright management process must be present.

2.2.5 Improving the process

Summary of the target copyright management process

Changes presented in this section arise out of workshops and are not presented as a direct response to the issues identified during the analysis of the current copyright management process. They are inspired by the 'Ideal Vision' of the process (see 2.2.4) and represent potential good practices for improving procedural methods. The suggested changes are:

100% NFB Productions:

- ▶ Systematic involvement of rights search and clearance specialists throughout the process. This will lead to a high level of expertise among members of the production teams;
- ▶ Copyright management process will be the same for the English and French Programs due to standardization of the process steps, communication and employee training;
- ▶ Creation of **four checkpoints** to ensure rigorous execution of the process and to limit risks to the NFB:
 1. Validation of the budget by the Director General before project approval (green light production);
 2. Legal opinions issued by Legal Services. First at script reading at the beginning of shooting, secondly before the 'picture & sound lock' and finally, before the copyright file is approved by the Program Head;
 3. Presentation of copyright file to ADE committee before the 'picture & sound lock' so that distribution strategy can be taken into account;
 4. Decision by Legal services regarding risks assumed by the NFB before the work is distributed.
- ▶ A new IT tool will be set up in the studios. This could provide:
 - ▶ Centralization of copyright file Information;
 - ▶ Accessibility to this information for all stakeholders;
 - ▶ A comprehensive overview of the file's progress;
 - ▶ Direct importation of files into SEGDA so as to reduce inefficiency caused by double data entry.

Interactive Works:

- ▶ Training in copyright management and procedural steps so as to improve knowledge among coproducers and directors of interactive works.

Coproductions:

- ▶ The following points will enable producers to comply with the *Minimal Rights Policy*:
 - ▶ Modification of the clauses included in coproduction and distribution contracts. These modifications will specify:
 - ▶ Requirements of the *Minimal Rights Policy*;

- ▶ Details of all rights (basis of rights) needed for distribution by NFB;
 - ▶ Need to hire specialists in rights search and clearance.
- ▶ Additional meeting with coproducers before shooting begins to review contract clauses.
- ▶ Creation of **four checkpoints** to ensure rigorous execution of the process and limitation of risks to the NFB;
1. NFB pays instalment to coproducers upon receipt of their strategic plan concerning copyright;
 2. Coproducers provide list of visual and sound archives;
 3. NFB accepts Legal Services' decision about accepted risks before distribution of a work.
 4. Synchronization of payments by NFB to coproducers and receipt of deliverables required for copyright file.
This will enable producers to emphasize the importance of the proper handling of the file.

Renewal

- ▶ In the case of an external renewal request (e.g. distributor) the last step of the process will be the implementation of a re-launch strategy.

A copyright management agent will ensure that:

- ▶ The steps are clearly laid out;
- ▶ The necessary tools for the proper handling of the process are implemented;
- ▶ Persons assigned to this activity are given the necessary training.

Next, the agent will conduct an ongoing evaluation of the quality and effectiveness of the process by using performance indicators.

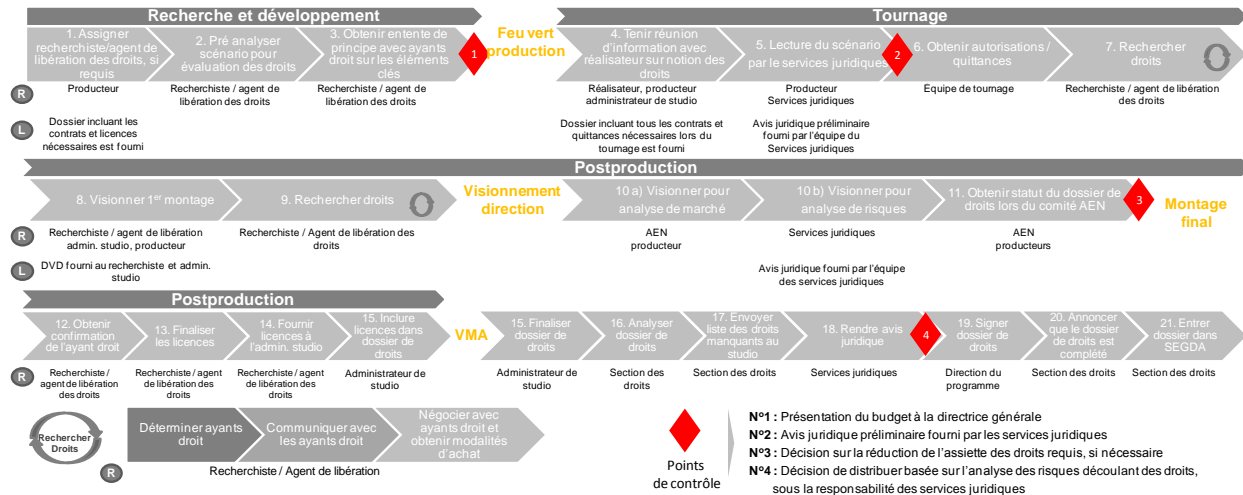
Finally, an owner of the process must be designated (for the entire process). He or she will be responsible for the supervision of the employees assigned to carry out the process, to meet its objectives and to implement improvements.

Mapping the target process

This section presents the proposed ideal mode of functioning to improve procedural efficiency and mitigate associated risks. The mapping of the target process was set up in workshops with the participation of representatives of the Programs, ADE and Business Affairs and Legal Services. The suggested process presents the activities, step-by-step, that are needed for effective implementation of the guiding principles identified by NFB senior management.

Checkpoints were added to the process to ensure completion of each key step.

Mapping: 100 % NFB Productions



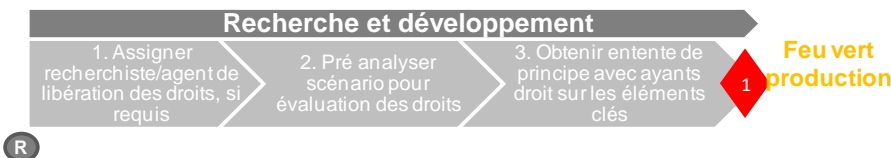
Légende:

R : Responsable

Description of the process steps

SEGMENT: Research and Development

During the Research and Development phase, the three following steps must be carried out before the green light is given to proceed with production.



1. Assign rights search and clearance specialist, if needed

The producer will choose a rights search and clearance specialist at project beginning and will monitor the developments in the copyright file up to its end, thereby ensuring the presence of an expert on the production team.

To ensure professional competence in cases that call for the hiring of an external rights search and clearance specialist, he or she must be selected from a list of specialists approved by the NFB.

Required Action: Draw up a list of rights search and clearance specialists approved by the NFB

- Create a list of rights search and clearance specialists approved by the NFB. The specialists chosen must be familiar with the *Minimal Rights Policy* as well as the specific requirements of the NFB.

Required Action: Implementation of service agreements with main rights search and clearance specialists:

Implementation of service agreements with main rights search and clearance specialists who will be able to establish a fixed price in exchange for a certain hourly volume from the NFB.

2. Script pre-analysis for rights assessment

The producer will supply a list of key script components to the rights search and clearance specialist. Based on this list, the agent will be able to conduct a preliminary analysis of the cost of rights for these key components.

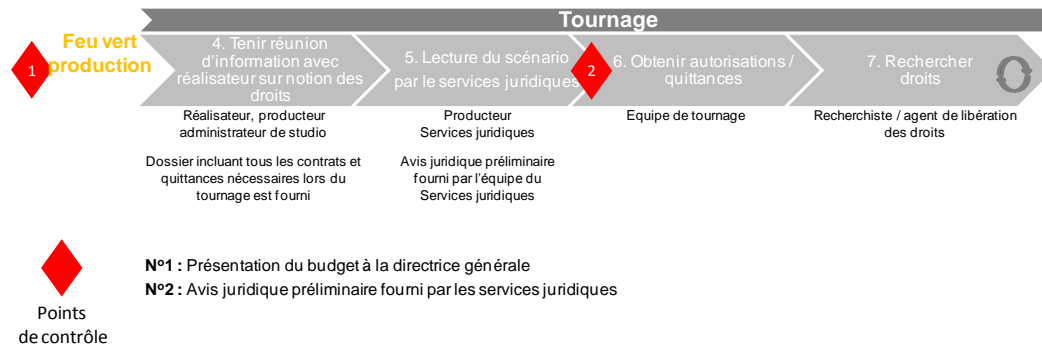
To remedy their lack of expertise in copyright matters, studio administrators must, from now on, use the preliminary analysis as the basis for the project budget.

3. Obtain an agreement in principle with rightsholders on the key components

Once the producer has decided to retain certain key components of the script, the clearance agent must obtain an agreement in principle with rightsholders for use of this right.

SEGMENT: Shooting

To obtain the green light to begin production, the director general must approve the copyright budget (**Checkpoint 1**). Once the green light has been obtained, the shooting phase begins and the following steps are taken:



4. Hold an information session with the director about the concepts of copyright

Before directors can begin the shoot, an information session must be held, to inform them about all the contacts required for the shoot, give them copies of standard contracts and waivers and inform them about basic copyright concepts needed during the shoot.

Examples of basic copyright concepts: 1) pay close attention to images behind a participant, such as a photo or song of a well-known artist; 2) obtain the consent of a participant to show his or her excerpt in the work. Consent may be written or filmed.

This step will ensure that directors and their teams are sufficiently familiar with copyright.

5. Legal services team reads script

To enable Legal Services to intervene as quickly as possible in projects representing a greater risk, producers must forward a copy of the script at the beginning of the process. Their involvement throughout the process will make it possible to foresee any relevant issues. Legal Services will issue a preliminary legal opinion at this stage.

6. Obtaining authorizations, waivers and umbrella contracts

At the time of shooting, the film crew will be responsible for obtaining all mandatory authorizations and waivers, which must be numbered and forwarded to the studio administrator. The numbering of authorizations and waivers will enable studio administrators to enter them into the copyright file using the IT application.

Umbrella contracts for actors will also need to be entered into the IT application. At project beginning, the studio administrators must create the copyright file in this application. This gives all stakeholders the chance to have an overview of the file at all times, since the application shows missing rights, future rights and rights obtained.

Action required: Establishing copyright management files for studios

- ▶ Develop a new IT tool for studios which will make it possible to:
 - ▶ Centralize copyright file information;
 - ▶ Provide access to this information to all stakeholders;
 - ▶ Provide a progress overview of the file;
 - ▶ Import file information directly into SEGDA to reduce inefficiency due to double entries.

7. Rights search cycle

The rights search cycle will repeat itself several times throughout the process. The cycle comprises three stages:



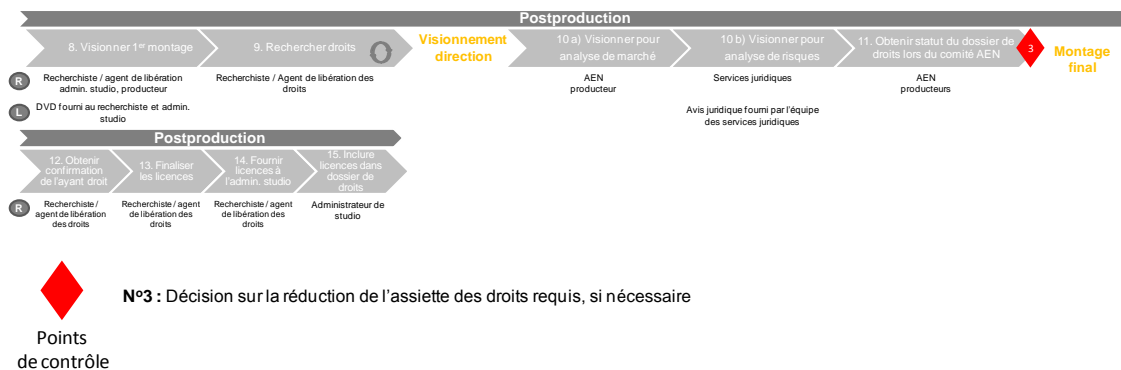
- ▶ Identify rightsholders: a search of sound or visual archives must be conducted to identify all rightsholders.
- ▶ Communicate with rightsholders.

Once rightsholders have been identified, they must be contacted to obtain rights details.

- ▶ Negotiate with rightsholders

It is important to note that at this stage of the process, only the purchasing details will be obtained. No rights are purchased before the final editing to avoid unnecessary costs. On the other hand, details of purchase will enable producers to make better business decisions throughout the production process.

SEGMENT: Postproduction



8. Screen first cut

Producers must supply a DVD or a viewing link to studio administrators and to the rights search and clearance specialist to enable them to screen the first cut, which will provide an overview of the entire work and the rights which need to be cleared.

9. Rights search cycle

A second cycle begins when seeking information to obtain new required rights.

10. a) Screening for market analysis

The ADE team and the producer will screen for market analysis.

b) Screening for risk analysis

Legal Services will screen in order to analyze risks. This first screening will give an indication if there are risks that need to be taken into account. The deliverable of this stage will be a preliminary legal opinion (**Checkpoint 2**).

11. Obtaining an update of the copyright file from the ADE committee

When the ADE committee meets, projects will be reviewed in order to create a distribution strategy. At this time, an update of the copyright file will be presented. Since the distributing strategy will influence the copyright file, decisions regarding exceptions to the *Minimal Rights Policy* will be made at this time (**Checkpoint 3**).

12. Obtaining confirmation from rightsholders

Once the final cut is ready, the rights clearance specialist can request the necessary confirmations from each rightsholder for use of their rights. Whenever possible, licences are signed and finalized immediately; otherwise, an email confirmation from the rightsholder will suffice. The email must give an accurate description of the conditions of the right's purchase.

13. Finalizing the licences

The necessary signatures and licences will then be finalized by the rights clearance specialist.

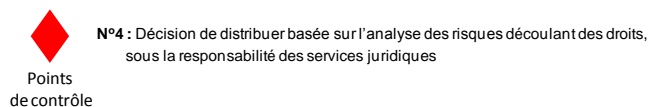
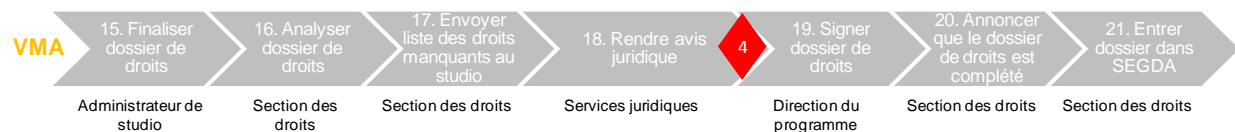
14. Supplying licences to studio administrator

Once the licences are finalized, they will be sent electronically to studio administrators.

15. Including licences in copyright file

Each licence in electronic form will thus be easily included in the IT copyright file application.

SEGMENT: Following postproduction



16. Finalizing the copyright file

The VMA is the technical approval of the work and constitutes an essential component of the copyright file. Once the VMA is obtained, the file can be finalized by studio administrators and sent to the Legal Section.

17. Analyzing the copyright file

The Legal Section will conduct analysis of the copyright file and will be able to identify any missing rights.

18. Forwarding list of missing rights to studio

Once missing rights are identified, a list will be compiled by the Legal Section and the entire file will be sent back to the studio. This step is not needed when no rights are missing.

19. Issuing a legal opinion

Legal Services is responsible for issuing a legal opinion, which will only be necessary for cases in which components present a risk to the work. Final decisions regarding distribution (Checkpoint 4) will be the ultimate responsibility of Legal Services.

20. Signing the copyright file

Once the copyright file is complete, the Program Director (Director General) approves and signs it.

21. Announcing completion of the copyright file

Announcing the completion of the copyright file falls to the copyright section, which will make it known to all stakeholders in the work.

Action required: Draw up the list of stakeholders to be notified upon completion of copyright file

Addition of key persons to be informed upon completion of copyright file, including producer of work in question.

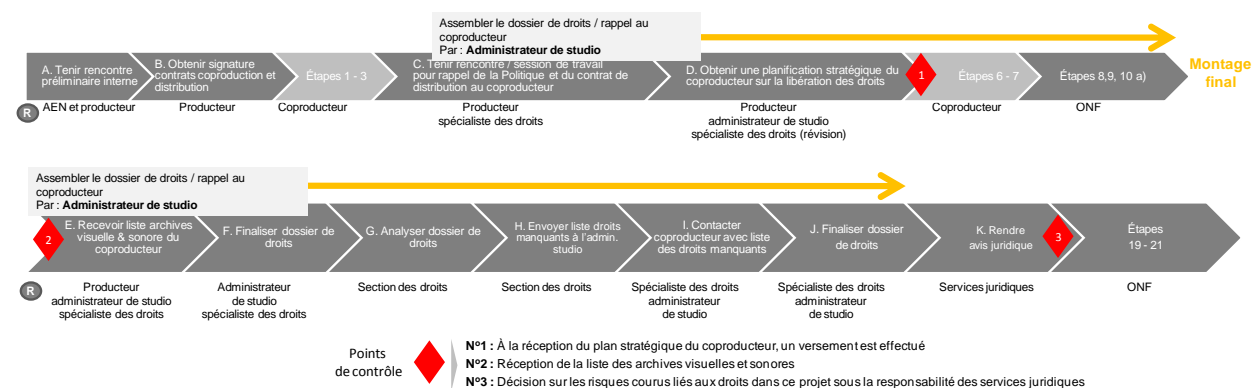
22. Entering copyright file data into SEGDA

The last step of the copyright file process is entering the data into the IT system SEGDA.

Interactive Works

The stages for interactive works are similar to those for 100% NFB productions. Producers and directors of these types of works need to undergo additional training so they can acquire the necessary copyright and copyright management knowledge to ensure effective copyright management.

Coproductions



Légende:

R : Responsable

Description of steps of target process

Checkpoints have been added to the process, ensuring precise execution and limitation of risks taken by the NFB. They are described below:

A. Hold a preliminary internal meeting

The aim of the preliminary meeting between the ADE and the producer is to identify the kinds of rights (basis of rights) needed by the NFB for this coproduction, i.e., the ADE identifies the markets and territories in which the NFB wishes to distribute.

B. Obtain signature of coproduction and distribution contracts

Coproduction and distribution agreement contracts signed by coproducers will include:

- ▶ Requirements of the *Minimal Rights Policy*;
- ▶ Details of all rights (basis of rights) needed for distribution by NFB;
- ▶ Need to hire rights search and clearance specialist.

These clauses in the coproduction and distribution contracts will improve the coproducer's compliance as well as the quality of the copyright file submitted to the NFB.

At this stage, the producer will conduct an analysis of the budget set up by the coproducer.

Action required: Review of contractual commitments for coproduction projects;

Make the following adjustments to coproduction and distribution contracts:

- ▶ Descriptions of exemptions to the rights policy, as needed;
- ▶ Obligation to hire a rights search and clearance specialist for the project.

Steps 1 to 3



- ▶ Coproducer undertakes the following steps:

C. Hold meeting / work session to remind coproducer of policy and distribution contract

The producer, coproducer, director and rights clearance specialist will attend the meeting, which will consist of a work session.

This meeting will address the following items:

- ▶ Remind coproducers and directors of the terms of the Policy and the distribution details, i.e. markets and territories for which rights must be obtained;
- ▶ Provide coproducers with more details about strategic planning which must be submitted to NFB;
- ▶ Remind producers that signed contracts must be submitted systematically throughout the duration of the production process.

In animation coproductions, this step must be undertaken immediately at the time that coproduction and distributing contracts are signed.

The deliverable from this meeting is strategic planning on rights clearance for this work. This deliverable could be provided to the producer by email and would have to contain the list of key components of the work (visual and sound archives).

Action required: standardize coproduction and distribution contracts

English and French Program coproduction and distribution sample contracts are to be reviewed and then standardized. A priori, the coproduction sample contract for both Programs will be based on the English Program contract.

D. Obtain a strategic plan from the coproducer for rights clearance

At the beginning of shooting, the coproducer must provide the strategic plan for the copyright file, which will be reviewed by the rights specialist and the coproducer. This will enable the NFB to obtain an overview of the entire copyright file as completed by the coproducer.

Checkpoint 1:

Once the producer and rights specialist have approved the strategic plan, a payment will be made to the coproducer.

Steps 6 and 7



- Steps undertaken by the coproducer.

Steps 8, 9 and 10a)



- Steps undertaken by the coproducer

E. Receive the list of visual and sound archives from the coproducer

After the final edit, the producer will be able to request the list of visual and sound archives presented in the work. This list will enable the studio administrator and rights search and clearance specialist to check the copyright file submitted by the coproducer.

Checkpoint 2:

Reception of the list of visual and sound archives serves as a checkpoint because it enables the producer to check the current status of the copyright file.

Action required: Synchronize payments to coproducer in relation to the obligations regarding rights clearance.

Synchronize payments to coproducer throughout the production along with the deliverables needed to finalize the copyright file.

F. Finalize copyright file

The coproducer forwards the copyright file to the studio administrator. The rights specialist checks the entire file and forwards it to the Legal Section.

G. Analyze copyright file

Legal Section's analysis of the copyright file makes it possible to identify any missing rights.

H. Forward the list of missing rights to studio administrator

Once missing rights are identified, a list will be drawn up by the copyright section and the completed file will be sent back to the studio. When no rights are missing, this step is unnecessary. The next step will be K) Issue a legal opinion.

I. Contact the coproducer with the list of missing rights

The producer and rights specialist will contact the coproducer to explain the missing rights. The coproducer will forward the missing rights to the copyright file specialist who will analyze them to ensure that the obtained right is acceptable.

J. Finalize copyright file

Once all the missing rights have been obtained from the coproducer, the studio administrator will finalize the file and return it to the copyright section.

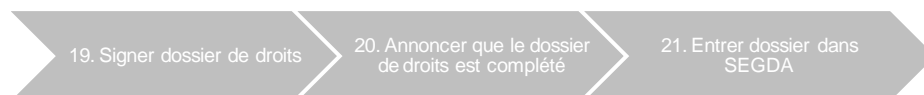
K. Issue a legal opinion

Legal Services is responsible for issuing the legal opinion, which is only necessary for cases in which key components could put the work at risk.

Checkpoint 3:

In situations in which key components might put a work at risk, the final decision regarding distribution will ultimately rest with Legal Services.

Steps 19 to 21



► Steps undertaken by NFB personnel

Renewals

1. Droits venant à échéance (signalés par SEGDA)
2. Ajout d'une œuvre sur une plateforme Web
3. Demandes externes (télédiffuseurs)



Description of steps of target process

The following steps will be taken for any renewal request:

1. Renewal request

The request will be made to the copyright section to ascertain those rights with an expiry date. The check will be made using the SEGDA system. If certain rights need to be cleared, the next step—cost analysis—will be undertaken.

2. Cost analysis

The copyright section will do a cost analysis, which will be used to make business decisions.

3. Business decisions

The ADE team and the copyright section will make business decisions based on the following elements:

- ▶ Rights renewal cost analysis;
- ▶ Work's potential;
- ▶ Sales history;
- ▶ The importance of the work for the NFB's collection.

Once the Go is given, the last step will be undertaken.

4. Purchase rights for traditional or Web distribution

Missing rights will be purchased and the work will be redistributed.

5. Traditional distribution remarketing strategy and communicating this strategy

Current events sometimes occasion a surge of interest in works, which leads to a number of external requests. In this case, the ADE team will prepare a strategy for redistribution to take advantage of these events. The ADE team will then forward this strategy to NFB stakeholders. N.B. this step already exists.

3. Conclusion

The workshops with key stakeholders have made it possible to arrive at a common understanding of the current situation regarding the NFB's copyright management. The evaluation demonstrated that staff members responsible for rights clearance do not have a complete picture of the institutional objectives and needs, nor do they have a common understanding of all the steps involved in the process of rights acquisition and clearance. The representation of the current situation (mapping in Section 2.2.3) is the result of these group discussions.

Four major issues have been identified in the analysis of the current situation and they are the basis of the development of the target process. The issues (also presented on page 15) are the following:

1. There is room for improvement in **standardization and uniformization** in applying the copyright management process.
2. Employees allocated to applying the process have an unequal amount of **knowledge and skill development** regarding copyright management and rights clearance.
3. There is no **performance assessment framework** in place at the present time, neither a real governance structure dedicated to the copyright management process. The performance assessment framework in place at the NFB is applied overall to the expected outcome of the program activities and the existing governance structure covers the NFB as a whole.
4. The NFB must frequently take risks regarding copyright (e.g. in allowing distribution of a work whose rights have not been cleared in time).

By using a collaborative approach that included the participants, the group was able to establish these findings, identify areas for improvement in the current process, understand the importance of teamwork in delivering a copyright file which meets the expectations of the NFB and develop the future process proposed in the preceding section. The ultimate goal of this future process is to improve the rights clearance practices so that they optimize the NFB's production investments. The workshop approach made it possible to begin managing change and stakeholder buy-in. Following the workshops, a number of employees confirmed that they were about to begin working on certain tactical components that would bring about benefits.

The action plan and recommendations presented in the following section were developed by taking into account management's vision as expressed in the guiding principles and the discussions and brainstorming with representatives of all sectors. Essentially, the recommendations will lead to changes in the current copyright management process that will, in turn, result in the creation of the improved target process.

4. Recommendations, management's response and action plan

The recommendations listed in this section correspond to the changes at each step of the future process presented in the preceding section. We believe that they will enable the NFB to:

- ▶ Improve process efficiency so as to meet requirements of the applicable laws and optimal use of NFB resources;
- ▶ Implement a performance management framework (performance indicators)

The proposed changes will enable the NFB to establish a copyright management process that meets efficiency and quality requirements, delivers the value expected by Canadians, and still meet client's quality criteria expectations.

Tools of governance and performance indicators

For process monitoring and improvement purposes, the implementation of performance indicators and appointing a process 'owner' are recommended.

The process owner would be responsible for monitoring the process performance, ensuring that the stakeholders are familiar with the process and following its procedures faithfully. Finally, this person will be responsible for targeting issues and areas for improvement, taking necessary steps to move the process forward in terms of efficiency, and adapting to changes in the marketplace.

We recommend two types of performance indicators: those monitoring overall performance and those monitoring the quality of process implementation.

Proposed performance indicators (overall performance):

- ▶ Quality of copyright file once submitted to Legal Services;
 - ▶ Number of works put into distribution with elements that do not comply
 - ▶ Number of incomplete files returned to studio
- ▶ Number of productions containing deviations from the Minimum Rights Policy
- ▶ Time required to complete an incomplete rights file that was returned to the studio

Recommendations	Major Issues of Current Process							
	Short term	Medium term	Long term	Training	Standardization	Performance Monitoring Framework	Efficiency in Process Implementation	Risks taken by NFB
Adjustment of roles and responsibilities: 1- Assign a rights search and clearance specialist at project beginning to monitor the copyright file until project's end. Accepted. A rights negotiation/release consultant position will be created for this purpose to systematize the rights release stages. Production studios will be able to rely on this resource person, in addition to external researchers. Responsible: Assistant Commissioner, Office of the Assistant Commissioner and Corporate Services (ACCS), in collaboration with Director General (DG), English and French Programs (Programs)	X			X	X		X	X
Adjustment of roles and responsibilities: 2- Draw up a list of search and clearance agents approved by the NFB. They must be made familiar with NFB copyright requirements. Accepted. Responsible: ACCS, in consultation with DG, Programs	X			X				
Implementation of: 3- The rights search and clearance specialist will conduct a pre-analysis of the script to support the copyright budget. Accepted. Responsible: DG, Programs	X			X				X
Implementation of step: 4- Information meeting with directors about basic copyright will be held at the start of shooting. Accepted. Responsible: DG, Programs	X			X				
Training: 5- Specific training will be provided for producers of interactive projects. Accepted. Responsible: ACCS		X		X				
Implementation of step: 6- Rights search and clearance specialists will be provided with a file including model NFB templates for contracts and licences to ensure uniformity. Accepted. Responsible: ACCS		X			X		X	
Improving work tools: 7- Put in place an IT application enabling constant		X			X		X	

Recommendations	Major Issues of Current Process							
	Short term	Medium term	Long term	Training	Standardization	Performance Monitoring Framework	Efficiency in Process Implementation	Risks taken by NFB
<p>updating of the copyright file throughout the project's duration. This will eliminate double data inputting which is presently the case, and will also enable real-time visibility of the file's progress.</p> <p>Accepted.</p> <p>Responsible: DG, Programs and DG, Finance, Operations and Technology (FOT)</p>								
<p>Improving work tools:</p> <p>8- All signed contracts and licences will be digitized in the copyright file management IT application.</p> <p>Accepted.</p> <p>Responsible: DG, Programs and DG, FOT</p>		X			X		X	
<p>Improving work tools:</p> <p>9- All umbrella contracts will be transferred to the Synchrone tool so as to ensure uniformity.</p> <p>Accepted.</p> <p>Responsible: DG, FOT</p>	X				X		X	
<p>Implementation of step:</p> <p>10- Allow Legal Services to be involved throughout the process. Its participation will be required at certain specific steps of the process (ref: mapping of the target process).</p> <p>Accepted.</p> <p>Responsible: DG, Programs, in collaboration with ACCS</p>	X				X		X	
<p>Adjustment of roles and responsibilities:</p> <p>11- Legal Services will decide on when to begin distribution of a work. This decision will be based in part on the legal opinion issued by Legal Services.</p> <p>Accepted. Already implemented.</p> <p>Responsible: ACCS and DG, Accessibility and Digital Enterprises (ADE)</p>	X						X	X
<p>Performance Monitoring:</p> <p>12- Establish checkpoints at critical steps of the process (ref: mapping of target process).</p> <p>Accepted. The mapping of the target process will be communicated to all employees concerned at information sessions. These information sessions will be designed to ensure a common understanding of the ideal process, employee buy-in and the establishment of validation points.</p> <p>Responsible: ACCS, in collaboration with DG, Programs and DG, ADE</p>	X							X
<p>Improving work tools:</p>	X				X	X		

Recommendations				Major Issues of Current Process				
	Short term	Medium term	Long term	Training	Standardization	Performance Monitoring Framework	Efficiency in Process Implementation	Risks taken by NFB
<p>13- Make changes to coproduction and distribution contracts to include a proof of coproducer's compliance with Minimal Rights Policy.</p> <p>Accepted. Already implemented. Changes to contracts will be communicated to all producers to ensure a common understanding.</p> <p>Responsible: ACCS, in collaboration with DG, Programs</p>								
<p>Implementation of step:</p> <p>14- Hold a meeting / work session at the beginning of the shoot with the coproducer to remind him or her about the importance of the clauses included in the contracts.</p> <p>Accepted.</p> <p>Responsible: DG, Programs, in collaboration with ADE</p>	X					X		
<p>Implementation of step:</p> <p>15- Obtain a copyright management strategic plan from coproducers.</p> <p>Accepted.</p> <p>Responsible: DG, Programs</p>	X					X		
<p>Implementation of step:</p> <p>16- Within two weeks after the final visual cut by the coproducer, obtain the list of visual and sound archives.</p> <p>Accepted.</p> <p>Responsible: DG, Programs</p>	X					X		
<p>Implementation of step:</p> <p>17- Set up a step to enable an NFB copyright specialist to analyze coproducers' copyright file.</p> <p>Accepted. Studios must first analyze the rights file before the rights specialist examines it.</p> <p>Responsible: DG, Programs</p>		X				X		
<p>Implementation of step:</p> <p>18- Set up a step for recontacting and following up with the coproducer when some rights are missing. The rights specialist and the producer will be responsible for this step.</p> <p>Accepted.</p> <p>Responsible: DG, Programs</p>	X			X			X	
<p>Implementation of step:</p> <p>19- Develop a strategy for relaunch in traditional market (done by ADE).</p> <p>Accepted.</p>	X				X	X		

Recommendations				Major Issues of Current Process				
	Short term	Medium term	Long term	Training	Standardization	Performance Monitoring Framework	Efficiency in Process Implementation	Risks taken by NFB
Responsible: DG, ADE								
Performance Assessment (Monitoring): 20- Systematic communication of the relaunch strategy for traditional markets (by ADE to different stakeholders). Accepted. Responsible: DG, ADE	X				X	X		
Performance monitoring 21- Establishment of performance indicators to monitor and track outcomes and the quality of the implementation of the process. Accepted. Responsible: ACCS, in collaboration with Programs and ADE		X			X	X		
Project Management: 22- Put a person in charge of implementing the target process. This person will also manage the changes to ensure that all employees support the proposed changes. Accepted. Responsible: ACCS	X			X	X	X	X	X

4.1 Action Plan



Appendix A: Evaluation Questions

Relevance

1: Ongoing need to acquire and renew rights

To what extent does this measure meet the needs of Canadians?

2: Compliance with government priorities

Do the copyright management activities comply with i) current priorities of the Canadian government ii) the NFB's strategic objectives?

3: Harmonization with government roles and responsibilities

To what degree ought the federal government to play a role and bear responsibilities regarding appropriate copyright management?

Performance

4: Realization of expected outcomes

Does implementation of activity correspond to a requirement of the NFB's mandate? What are the strong and weak points of the activity's design and governance?

5: Demonstration of efficiency and savings

Is the structure of acquisition and renewal governance efficient? Is resource allocation appropriate to this activity?

Appendix B: List of participants

One-on-one Interviews

Monique Simard,	Director General, French Program
Colette Loumède,	Executive Producer, Quebec Studio, French Program
Maryse Chapdelaine,	Line Producer, French Program
Manon Provencher,	Studio Administrator, French Program
Johanne Bergeron,	Producer, ACEC Programs and Quebec Studio, French Program
Michelle van Beusekom,	Assistant Director General, Programming and special projects, English Program
Ravida Din, Executive	Producer, Quebec Centre, English Program
Janine Steele,	Administrator, Pacific Centre and Yukon, English Program
James Roberts,	Assistant Director General and Director, Accessibility and Digital Enterprises (ADE)
Dominique Aubry,	Director, Business Affairs and Legal Services (BALS)
Hélène Dubé,	Copyright Clearance, BALS
Saskia Latendresse,	Officer, Copyright and Contracts, BALS
Sylvia Mezei, Officer,	Copyright Search and Clearance, BALS
Claude Joli-Cœur,	Assistant Commissioner, Office of the Assistant Commissioner and Corporate Services
Luisa Frate,	Director General, Finance, Operations and Technology

Group Workshop Participants

Marie-Dominique Bonmariage,	Assistant Director General, French Program
Nathalie Cloutier,	Producer, Quebec Studio, French Program
Colette Loumède,	Executive Producer, Quebec Studio, French Program
René Chénier,	Executive Producer, Animation and Youth Studio, French Program
Manon Provencher,	Studio Administrator, Quebec Studio, French Program
Michelle van Beusekom,	Assistant Director General, Programming and Special Projects, English Program
Dan Emery,	Division Administrator, Operations and Budgets, English Program
James Roberts,	Assistant Director General and Director, Collection Management, (ADE)
Mary Graziano,	Head, Collection and Distribution Rights Management, (ADE)
Dominique Aubry,	Director, Business Affairs and Legal Services, BALS
Hélène Dubé,	Copyright Clearance, BALS

Appendix C: Minimum rights required in the industry

We have examined the copyright guidelines, policies and principles that apply to certain major stakeholders in the Canadian audiovisual industry. These requirements are summarized below.

Errors and Omissions Liability Insurance

Errors and omissions liability insurance companies require producers to acquire the necessary rights for the production's exploitation. This requirement usually takes the form of representations and warranties on the insurance questionnaire. The applicant simply needs to respond affirmatively. There is no other requirement, except to confirm to the insurer at the end of the production phase that rights have been cleared. This statement is usually followed by a legal opinion from the insurer's advisor. No specific requirement concerning territories, markets or duration is mentioned.

Canadian Audiovisual Certification Office (CAVCO)

Section 3.04 of the guidelines of CAVCO's Canadian Film or Video Production Tax Credit program (CPTC) stipulates that the producer must retain copyright ownership for a twenty-five year period¹. CPTC Program guidelines do not specify the required scope of the rights.

Canada Media Fund (CMF)

Article 1.9 of Section 6 of the Standard Recoupment Policy – Section 6 of the Business Policy (Appendix B) of the CMF Guidelines states that the producer must acquire rights for the exploitation of the production within Canada and for at least 5 years in the rest of the world.² It further stipulates that rights must be acquired for all territories in which pre-sales have been made or for which a distributor has acquired exploitation rights. The rights duration must be at least five years. The cost of acquiring extended exploitation rights is excluded from the calculation of the cap on distribution expenses. This policy does not specify the markets for which rights must be acquired. In can nonetheless be deduced from the policy that markets targeted by pre-sales and the agreement with a distributor must be acquired.

Telefilm Canada

Téléfilm requires that the producer acquire rights needed for pre-sales of the production and rights needed for its distribution in accordance with distribution contract requirements if applicable. Contrary to past years, there is no minimum rights requirement. Téléfilm performs an initial verification of the production budget to ensure that the rights will be released. Téléfilm then verifies the chain-of-title submitted by the producer upon completion of the production to ensure that the required rights have been acquired. We were unable to ascertain whether this verification includes an analysis of all licences pertaining to a production's external elements (visual and sound archives, etc.).

¹ http://www.pch.gc.ca/DAMAssetPub/DAM-filmVid-filmVid/STAGING/texte-text/cptc_guide_1272631234182_eng.pdf?WT.contentAuthority=12.3

² http://www.cmf-fmc.ca/documents/files/about/ind-outreach/2011-12/groups/recoup_policy_cnv.pdf

1.9 The producer should also include within the production budget sufficient resources to acquire exploitation rights within Canada and for at least 5 years in the rest of the world for all elements of the production including music, stock footage, stars, writers, etc. unless otherwise approved by the CMF. Exploitation rights must be purchased for a period of at least 5 years for all territories in which pre-sales have been made or for which a distributor has acquired exploitation rights. The cost of acquiring extended exploitation rights are excluded from the calculation of the cap on distribution expenses.

SODEC

The documentation concerning the various funding programs does not cover the rights issue in detail. Nonetheless we can assume that SODEC expects the producer to acquire the rights required by the broadcast licences and distribution agreements for productions that it finances.

Ontario Media Development Corporation (OMDC)

The OMDC does not specifically cover rights required for productions. However, the OMDC Film Fund Production Guidelines stipulate that a production must be eligible for certification with respect to Canadian content according to CAVCO rules. This indirectly implies that required rights must be acquired for 25 years.³ This is only a supposition because in the *Canadian Production Finance: A Producers Handbook* jointly drafted by Téléfilm Canada and the OMDC and which is available on the OMDC website⁴, the rights acquisition approach seems to be the same as that of Téléfilm, i.e. the producer acquires the rights required for the production's pre-sales and the rights required for its distribution in accordance with the requirements of the distribution contract(s).
<http://www.omdc.on.ca/Asset4389.aspx> (see section entitled "Distribution Agreement")

Pre-sales

It should be noted that most pre-sales contracts for television broadcasting or distribution licences contain representations and warranties from the producer to the effect that the producer has cleared the adequate rights for the production's exploitation as described in the contract. Therefore, it must be concluded that the rights will at minimum be cleared according to the duration, territories and markets stipulated in the contracts.

³ <http://www.omdc.on.ca/AssetFactory.aspx?did=7268> (see the section dealing with "Eligible Productions" p. 2 of the document)

⁴ <http://www.omdc.on.ca/Asset4389.aspx> (see the section dealing with distribution)

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