

Copyright Board
Canada



Commission du droit d'auteur
Canada

Ottawa, January 14, 2021

FILE 2020-UO/TI-18

UNLOCATABLE COPYRIGHT OWNER

Application by Sylvie Genest, Montréal, Quebec for the reproduction of a photography of Gaston Rochon in Paris (1967)

The Copyright Board finds that the application does not meet the requirements of section 77 of the *Copyright Act* (the “Act”).

In this regard, subsection 77(1) of the Act states that

[w]here, on application to the Board by a person who wishes to obtain a licence to use

- (a) a published work,
- (b) a fixation of a performer’s performance,
- (c) a published sound recording, or
- (d) a fixation of a communication signal

in which copyright subsists, the Board is satisfied that the applicant has made reasonable efforts to locate the owner of the copyright and that the owner cannot be located, the Board may issue to the applicant a licence to do an act mentioned in section 3, 15, 18 or 21, as the case may be. [our underline]

Subsection 2.2(1) of the Act states that

For the purpose of this Act, “publication” means

- (a) in relation to works,
 - (i) making copies of a work available to the public,
 - (ii) the construction of an architectural work, and
 - (iii) the incorporation of an artistic work into an architectural work, and
- (b) in relation to sound recordings, making copies of a sound recording available to the public,

but does not include

(c) the performance in public, or the communication to the public by telecommunication, of a literary, dramatic, musical or artistic work or a sound recording, or

(d) the exhibition in public of an artistic work
[our underline]

In the absence of evidence that copies of the work subject to the application were made available to the public, the Board has determined that the work has not been published in accordance with the meaning of section 2.2(1) of the Act. As the section 77 requirements are not met, the Copyright Board cannot issue a licence.

A handwritten signature in black ink, appearing to read 'Lara Taylor', with a stylized flourish at the end.

Lara Taylor
Secretary General