

Copyright Board
Canada



Commission du droit d'auteur
Canada

Ottawa, September 28, 2021

FILE 2021-UO/TI-19

UNLOCATABLE COPYRIGHT OWNER

Application by Production 1871 Inc, Vancouver, British Columbia, for the reproduction of footage from the 1985 Lyell Island (BC) protests

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. [emphasis ours]

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
[emphasis ours]

Subsection 2.2(3) of the Act states that:

For the purposes of this Act, other than in respect of infringement of copyright, a work or other subject-matter is not deemed to be published or performed in public or communicated to the public by telecommunication if that act is done without the consent of the owner of the copyright.

In the absence of evidence that copies of the work subject to the application were made available to the public with the authorization of the owner of copyright, the Board has determined that the work has not been published in accordance with the meaning of s. 2.2(1) of the Act.

Furthermore, the Board cannot conclude that posting the work on YouTube constitutes publication, as there is no evidence that this was authorized by the owner of copyright or exclusive licensee.

As the application does not meet the requirements of section 77 of the Act, the Copyright Board cannot issue a licence.



Lara Taylor
Secretary General