

Copyright Board  
Canada



Commission du droit d'auteur  
Canada

Ottawa, October 4, 2017

**File: 2017-UO/TI-14**

Mr. Landau:

The Copyright Board has reviewed your licence application received on June 14, 2017, for the reproduction of the diary of Walter O'Hara and has determined that although a copy of the diary is available to the public through Library and Archives Canada, this does not constitute publication of the work. As such, the Board does not have jurisdiction to issue a licence in this case.

Furthermore, the Board has determined that a licence is not required for the reproduction of the diary of Walter O'Hara since, for the following reasons, it is now part of the public domain:

1. The diary of Walter O'Hara was written prior to his death in 1874. To this day, it remains unpublished;
2. Prior to January 1, 1999, section 7 of the *Copyright Act* provided that unpublished works remained protected until their publication and for a period of fifty years following the end of the calendar year in which publication occurred. As such, up to that date, the diary of Walter O'Hara remained protected by copyright;
3. However, on January 1, 1999, certain amendments to the *Copyright Act* came into force. These include the introduction of section 7(4) which provides that a work which was not published as of the coming into force of the provision and whose author died before January 1, 1949, is protected for a period of 5 years following the end of the calendar year in which the provision came into force. Thus, the diary of Walter O'Hara remained protected up to December 31, 2004.

For the reasons mentioned above the Board cannot issue a licence for the reproduction of the diary of Walter O'Hara.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gilles McDougall". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Gilles McDougall  
Secretary General