

Copyright Board
Canada



Commission du droit d'auteur
Canada

Ottawa, November 1, 2018

File: 2018-UO/TI-08

Ms. Crawford:

The Copyright Board has reviewed your licence application, received March 5, 2018, for the reproduction of sixteen images depicting the Great War and has determined that a licence cannot be issued for the use of these works as not all requirements of section 77 of the Copyright Act have been met.

Section 77 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]

In this instance, the Board has determined that copyright in the fifteen photographs from the World War I memoirs *Canada at War, 1914-1918: A Record of Heroism and Achievement, including a Story of Five Cities, Pictorial History of the Great War, and Canadian Expeditionary Force, 1914-1919* no longer subsists for the following reasons:

1. The photographs were taken between 1914 and 1916;
2. The term of protection afforded to photographs between 1914 and 1916, was 50 years from the making of the original negative from which the photograph was directly or indirectly derived (*An Act to amend and consolidate the Law relating to Copyright, 1911 (UK) 1 & 2 Geo V, c. 46, s 21*);
3. The term of protection afforded to photographs in 1964 to 1966 was still 50 years from the making of the original negative. The term of protection applicable to the photographs was not extended (*Copyright Act, RS 1952, c C-32, s 9*);
4. The photographs became part of the public domain between 1964 and 1966.

Furthermore, in reviewing your file, the Board noticed that one image in your application titled "Type of Germany's Long-Distance Bombing Machine", published on page 36 of *Pictorial History of the Great War*, was a painting and not a photograph. The Board has determined that copyright in this painting no longer subsist for the following reasons:

1. The painting was first published in 1919 in a co-authored book;
2. At that time the term of protection afforded to works of joint authors, subsisted during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, whichever period is longer (*An Act to amend and consolidate the Law relating to Copyright, 1911 (UK) 1 & 2 Geo V, c. 46, s 16(1)*);
3. In 1931 the term of protection afforded to joint authors was extended to subsist during the life of the author who dies last and for a term of fifty years after his death (*An Act to amend the Copyright Act, SC 1931, c 8, 21-22 Geo V s 4*);
4. The last living author, W.R. Plewman, died on September 24, 1963. Plewman's works entered the public domain on January 1, 2014.

Given that the photographs and the painting are part of the public domain, the Board cannot issue a licence.

Sincerely yours,



Secretary General
Gilles McDougall