

Copyright Board
Canada



Commission du droit d'auteur
Canada

[TRANSLATION]

Ottawa, August 23, 2019

File : 2018-UO/TI-26 Pointe-à-Callière, cité d'archéologie et d'histoire de Montréal

Ms. Aubut-Robitaille:

The Copyright Board has reviewed your licence application filed on October 2, 2018 on behalf of Pointe-à-Callière, cité d'archéologie et d'histoire de Montréal and has determined that it cannot issue a licence for the reproduction and exhibition of the photograph Paul et Paul avec casserole et macramé as your 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 defines the publication of a work as “making copies of a work available to the public” but are not included from publication 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 the exhibition in public of an artistic work [our underline]

Furthermore, section 2.4(1.1) of the Act states that

(1.1) For the purposes of this Act, communication of a work or other subject-matter to the public by telecommunication includes making it available to the public by telecommunication in a way that allows a member of the public to have

access to it from a place and at a time individually chosen by that member of the public. [our underline]

In the present case, the Board has determined that there is no sufficient evidence that the photograph that you wish to reproduce and exhibit has been published. The presence of the photograph in the archival collection of Claude Meunier at the BAnQ does not constitute publication in accordance with the meaning of the Act. Furthermore, you have not been able to demonstrate that copies of the photograph had been made with the consent of the rights holders and made available to the public.

Therefore, the Board cannot issue a licence for the use of the photography subject to the application at hand.

Sincerely,

A handwritten signature in black ink, appearing to be 'Lara Taylor', written in a cursive style.

Lara Taylor
Secretary General