



Ottawa, September 23, 2020

**FILE 2020-UO/TI-06**

**UNLOCATABLE COPYRIGHT OWNER**

**Application by Eyesteel (CHW8) Productions Inc., Montréal, Quebec for the reproduction of an excerpt of a television program**

The works for which a licence is sought is an excerpt of a television program broadcasted in the Netherlands in 1971. 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 emphasis]

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

A communication of a television program to the public by telecommunication does not constitute publication of the works contained therein under Canadian law.

Considering that there is no evidence that material copies of the work have been made available to the public, we are of the opinion that the television program has not been published in the sense of subsection 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 be 'Lara Taylor', written in a cursive style.

Lara Taylor  
Secretary General