

Copyright Board
Canada



Commission du droit d'auteur
Canada

UNLOCATABLE OWNER
FILE 2023-UO/TI-10

[TRANSLATION]

Ottawa, August 17, 2023

Request from Jean-Guy Poulin, Fermont (Quebec) to adapt a work by Polina Sergeyevna Gagarina

[1] The Copyright Board refuses to issue a licence for the following reasons.

[2] The applicant wishes to obtain a licence under section 77 of the *Copyright Act* to adapt the musical work “Kolybelnaya” (2005) by Polina Sergeyevna Gagarina from the Copyright Board.

[3] It seems that Gagarina is the only copyright owner of the work, based on public information and data held by SOCAN.

[4] The author is represented by SOCAN in Canada; however, it may not authorize the performance of an adaptation of the work. Therefore, the applicant must obtain direct permission from the copyright owner of the work for the intended use.

[5] Gagarina is listed in Schedule 1 of the *Special Economic Measures (Russia) Regulations (SOR/2014-58)* since February 2, 2023¹.

[6] Article 3 of the *Regulations* specifies that:

It is prohibited for any person in Canada and any Canadian outside Canada to

(a) deal in any property, wherever situated, that is owned, held or controlled by or on behalf of a designated person whose name is listed in Schedule 1;

(b) enter into or facilitate, directly or indirectly, any transaction related to a dealing referred to in paragraph (a).

[7] Moreover, subsection 77(1) of the *Copyright Act* states the following:

- 77 (1) Where, 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,

¹ Regulations Amending the Special Economic Measures (Russia) Regulations: SOR/2023-14

(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.

[8] The Board has discretionary power to issue a licence following an application filed under section 77 of the *Copyright Act*.

[9] In this case, issuing a licence would go against the spirit of the *Regulations*, as it could appear that the Board authorizes or facilitates the use of a work (a property) held by a person who is being sanctioned by the Canadian government.

[10] For these reasons, and without considering whether the application meets the requirements of article 77(1), the licence application is denied.

Esther Bonin
Senior Clerk (int.) for
Lara Taylor, Secretary General