

Before the  
COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
Washington, D.C.

REPLY COMMENTS OF RECORDING ARTIST GROUPS ON ORPHAN WORKS

Comments

On behalf of the Recording Artist Group, we would like to expand upon some of the statements made in our March 25, 2005 Comments (hereinafter the “Comments”) regarding the Copyright Board of Canada (hereinafter the “Board”) and its policies regarding orphan works.<sup>1</sup> This is meant only as a clarification of Canadian law and does not alter the substance of our Comments or our proposal for changes to current United States law.

The Copyright Board of Canada does not collect royalties for orphan works. Generally speaking, in the event that a royalty has been determined and agreed to by a potential licensee, the Board directs any such orphan work licensee to pay such monies directly to a copyright collective society. Such collective would be one that would normally collect royalties for the particular type of contemplated use. Under this scenario, the license would only become operative when the licensee pays the collective. The underlying rights holder could then collect her or his royalties through the collective society.

Sometimes, however, a license is issued in Canada without requiring the licensee to pay royalties in advance. This occurs, for example, where the Board is of the view that the work may be in the public domain or that the use contemplated is *de minimis*. Under such a scenario, the license becomes operative upon being issued and the underlying rights holder can collect her or his royalties from the licensee.

In order to determine what the proper royalty should be for an orphan work, the Copyright Board of Canada will communicate with the relevant copyright collective society to obtain a license fee proposal. The potential licensee is then told of the proposed royalty and can either choose to accept or decline. Although the licensee may offer evidence of other royalties paid for similar uses of similar works, the Board ultimately determines the royalty.

Thank you for giving us this opportunity to clarify our earlier comments.

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<sup>1</sup> The Recording Artist Group would like to acknowledge the graciousness of Mr. Claude Majeau, Secretary General of the Copyright Board of Canada, in the preparation of these comments.

Respectfully submitted,

FUTURE OF MUSIC COALITION

AMERICAN FEDERATION OF  
TELEVISION AND RADIO  
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