

Enter. Minority sustained. Register's memo refers to cases where the symbol © is on the back of the work. Here it is the complete notice. The distinction between the solid figures and the plaques, and their respective feet, backs or bottoms is too slight to justify different positions for the notices. (Can't make fish of one and flesh of the other!) R.C. D. 12-10-42

MINORITY MEMORANDUM

MP-1506

NOTICE

December 7, 1942

Remitter: Wm. N. Plymat, Esq. (68730)

Title: "Male Sunfish" "Female Sunfish" "Baby Sunfish"

Question: Is the position of the copyright notice on the reverse of a wall plaque acceptable?

The majority take the negative view.

The minority recognizes the present practice of the Office which permits the acceptance of a copyright notice on the bottom of a statuette or figurine; which notice can only be observed if the statuette or figurine is picked up and turned upside down.* It is impossible for the minority to see any reason why a different practice should be entertained in connection with wall plaques which bear their notice on that portion which faces the wall, nor has the majority been able to explain why any difference should exist. In fact, they are rather sympathetic towards the acceptance of a notice on the reverse of a wall plaque but feel bound by the Register's memorandum which prohibits the registration of a copyright claim to a published print if the copyright notice appears on the reverse of the print, even though it be a postcard both sides of which readily come under the observation of any one who would infringe it. The majority's view, therefore, is based upon a desire for consistency in interpreting the law in the same manner for prints as for works of arts, yet in seeking such consistency between two different classes there appears no positive wish to obtain consistency within a class. To repeat, the minority can see no difference between the reverse of a wall plaque and the bottom of a statuette. Both are out of sight until one either removes the statuette from its pedestal and turns it over or removes the wall plaque from the wall and likewise turns it over. Why then if the notice is acceptable on the bottom of a statuette is it not likewise acceptable when placed on the reverse of a wall plaque? It is not believed that an infringer making an actual copy (other than photograph) either of the statuette or wall plaque could avoid liability by stating that in the process of making the copy the copyright notice was not brought to his attention. It is very doubtful that the infringer could find a successful defense in Section 18 of the Act. In the case of an object having three dimensions, such as found in a work of art, if the copyright notice appears somewhere upon a portion of the work observable to anyone who may pick up and examine the object, at least until a court rules otherwise a doubt must be entertained in the mind of the minority, and there being a doubt it must be resolved in favor of the applicant. The minority, therefore, recommends registration as applied for.

* Received same date from same claimant four statuettes; notice underneath resting portion; registered Class G-41174-41177. These entries conform with Register's Memo 6/19/41. (See attached copies and Memo.)


L. C. Smith