

## MINORITY MEMORANDUM

April 16, 1945

Remitter: Paul, Percy L. Jr. (MP-2565)

Title: "W. A. V. E. S."

Question: Is the copyright notice acceptable?

The Majority contend that the three elements required in the notice, even though scattered over the page of the newspaper, can be considered as applying to the periodical contribution and registration made in the name of the author.

The Minority is of the opinion that neither the year date nor the name of the claimant can be considered as appearing in juxtaposition with the word "Copyright". The notice as it now reads states that copyright is claimed by the one to whom the work is dedicated by the author. The author denies, however, that that person is the copyright owner, for in the application he himself claims the copyright. The year date, accepted by the Majority, is that which appears in its regular position at the head of the newspaper page.

Respectfully,

L. C. Smith, Member,  
Revisory Board.

Write author that if he is willing to acquiesce in Dorothy's claim as it stands on copy, registration can be made on application A-5 and he can arrange to have her assign the copyright to him or hold it in trust.

H. A. H.

April 20, 1945



Remitter: Edna Woodruff-Montague

Title: "All's Well That Ends--Better"

Question: Is the copyright notice acceptable where the claimant's name appears on the title page and the rest of the notice on the reverse thereof, the claimant being the author and the only person named on the title page who could claim copyright?

The minority contends that this notice is acceptable. The public could not possibly be misled as to who claims copyright. Taking the title page and the verso of it together, the notice is dispersed on the same sheet. If dispersed on either page it would be acceptable. We have even accepted a notice when dispersed on opposite pages, i.e. the verso of the title page and the page immediately following. And this irrespective of the <sup>other</sup> names which might appear on these pages. In this case the claimant is also the author, and only her name appears on the title page as the person who could claim copyright.

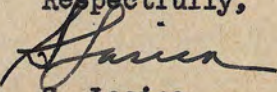
There is but one case, decided in 1897 under the old law, which could be cited against acceptance of this notice. It is Osgood v. A. S. Aloe Instrument Company, 83 F. 470. In this case the court invalidated the copyright notice in a book where the title page gave "Published by Osgood Art School 1891" and the verso page gave "Copyright, 1891. All rights reserved." The author's name was Adelaide H. Osgood and the name Osgood Art School was her trade name. The court apparently based its decision on the fact that the publisher is usually not the claimant, saying, "It is a matter of common knowledge that the publisher of a book is not necessarily or usually the author or the person securing copyright."

It is submitted that the notice in the case cited is distinguishable from the notice in question. In the Osgood case the name on the title page is clearly the name of the publisher, while in this case the name is obviously that of the author and the author is always presumed to be the claimant. The publisher, as the court pointed out, is not ordinarily the claimant. Looking at the title page and the page immediately following of the present book, one could not possibly conclude that anyone but the author claims this copyright. The notice is at least substantially in accordance with Section 18 of the Act. See Mifflin v. Dutton, 190 U. S. 205, 47 L. ed. 1043. If this notice is acceptable, then the claim may be registered on the copies later received with the full notice. May 27, 1944 can certainly be accepted as the date of publication. The claimant filed four applications, each sworn to, giving this date of publication. Besides, in her last letter received July 20, 1945 she says, "I publicly distributed the book in Los Angeles County on May 27, 1944--personally, with copyright notice. When I wrote my letter of March 12, 1945 I labored under a misunderstanding of the terms involved. I thought "distribution" referred to a general book store sale, through a regular publisher's agent. That had not been done, since I personally, had on May 27, 1944 already placed the book in distribution."

Enter under new Rule approved by  
Register of Copyrights August 28,  
1945. Then write advisory letter.

H. A. H. 8/28/45  
L. C. S.

Respectfully,

  
S. Lasica  
Member, Revisory Board