

MINUTES OF THE REVISORY BOARD  
COPYRIGHT OFFICE  
August 2, 1941

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The Revisory Board met at 9:30 A.M. and adjourned at 11:00 A.M. Those present were: Mr. Smith, Mrs. Brady and Mr. MacCarteney.

The first portion of the meeting was attended by Mrs. Rafter as a member of the Revisory Board in connection with corrective entry cases.

Total time consumed, 1 hr. 30 mins.  
Unanimous decisions, 10

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Corrective entries--

1. Marsen, Arlene (51737)--(Class E unpub. 262131). "I Hear You Singing." The applicant's request for a corrective entry does not contain sufficient information so that the Board can pass upon the merits of the case. The applicant should be advised as follows: (1) If it is merely desired to change the ownership in the work, that should be done by means of assignment; (2) If at the time of the original registration the application did not contain the names of the legal owners in space (1) in which that information is requested, a corrective entry can be made at this time.
2. Oberholtzer, Alton V. (5025)--Class D unpub. 73100. "Today's Daughter or Citric Passion or Little Paradise" (revised version). Applicant desires to make corrective entry for the purpose of omitting the middle name. The case does not merit a corrective entry.

Usual copyright business--

3. Buchanan & Company (47147 & 49104)--Class A-5 (?). "Buchanan Florida Oranges Juicier! Grown nearer the Tropical Sun" and "Buchanan Florida Oranges Juicier! Grown Nearer the Tropics." The periodical contributions are made up of the following text matter--

(1) "Buchanan & Company Florida  
Oranges  
Juicier! Grown nearer the Tropical Sun  
Buchanan & Company, Inc.  
1501 Broadway, N.Y.C.  
Copyright 1941, Buchanan & Co., Inc."

(2) "Buchanan & Company Florida  
Oranges  
Juicier! Grown Nearer the Tropic  
Buchanan & Company, Inc.  
1501 Broadway, N.Y.C.  
Copyright 1941, Buchanan & Co., Inc."

The Examiner requests that A-5 applications be filed. The Revisory Board holds that there is no copyrightable matter present, and the material should be rejected. *Also MP-843; 865.*

4. Voss, (Mrs.) Kitty Keepers (50346)--Class (?). "We Dream While." The applicant deposits a book of 37 pages containing unpublished poems. Page 1 indicates that these poems are to be read over the radio. The Examiner sustained in rejecting this work as a "lecture."
5. Summy Co., Clayton F. (47389)--Class E-1. "The Pleasant Companion." The deposit consists of a musical composition which was transcribed from ancient musical notation to the modern, in addition to piano or harpischord accompaniment. The work also consists of compilation. Examiner recommends that the claim in the E-1 application be based on transcription, the accompaniment and the compilation. The Revisory Board deletes reference "from transcription," and holds that the claim should be limited to the piano or harpischord accompaniment and the compilation.
6. Parker, Sarah Elizabeth (50521)--Class E. "The Star Spangled Banner." The Examiner recommends rejection on the basis that the work does not contain sufficient new matter. The material is returned to the Examiner that a statement be furnished to show what new matter if any is contained in the work, so that the Revisory Board can take further action. *Also on MP-867.*
7. Mathes, J. M. Inc. (51131)--Class KK. "Always Specify Color-Locked Imperial Washable Wallpapers" in Glenn Falls Time, July 17, 1941. The applicant files KK application with his deposit. The print and label Examiner attached a pencilled note to the material suggesting it was A-5 and sent it to the Examining Section, where a recommendation was made that an A-5 application should be substituted. The periodical contribution, however, does contain pictorial matter and does advertise an article of manufacture; therefore, the applicant's classification should be accepted.
8. Murray, Sackhoff & Paddack (Deposit Acct.)--Class A-1. "Ward Manual Nursing Arts"--3rd Edition Revised. The Examiner rejects in that the notice does not contain the name of the copyright claimant. It is noted, however, that the name of the copyright claimant is in close proximity to the words "Copyright 1941," so that it can be held to accompany the word "Copyright" and the year date of publication. Enter.

9. Destiny Publishers (17770)--Class A<sup>2</sup>. "Is Israel a Nation in the World Today?", "Isaiah" & 3 others. The claimant states that he has removed the copyright notice from all the works in question, and that he does not care to claim copyright, and that further the present works are reprints of English publications, some of which appeared many years ago. In view of the fact that great doubt exists whether any copyright is present in the works, file the applications without further action and refund, the copies to be transferred to the Library of Congress.
  
10. Kitchin, Reed (51751)--Class A-1. "Rays of Heavenly Light" The work presumably contains two title pages, the first one does not bear the copyright notice, but the second title page which is separated from the first title page by a single page, containing the author's photograph and text matter, bears the copyright notice. Some doubt existed in the discussion before the Board whether this second title page could actually be considered the title page for the purpose of the Act as found in Section 19. The doubt was resolved in favor of the applicant by accepting this second title page as within Section 19 as to the placing of the notice. Enter.

MINUTES OF THE REVISORY BOARD  
COPYRIGHT OFFICE  
August 5, 1941

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The Revisory Board met at 10:00 A.M. and adjourned at 11:00 A.M. Those present were: Mr. Smith, Mrs. Brady and Mr. MacCarteney.

Mrs. Rafter sat in on the first part of the meeting to participate in a case dealing with corrective entry.

Total time consumed, 1 hr.  
Unanimous decisions, 6  
Divided decisions, 2  
Reconsideration, 1

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Corrective entry--

1. Music Publishers Holding Corp. (E-487853) "Avalon". The applicant files all the necessary material whereby corrective entry can be made. The copies deposited, however, are of a later edition, which contain guitar chord indications. Mr. MacCarteney and Mr. Smith are of the opinion that corrective entry should be made with the material at hand, while Mrs. Brady and Mrs. Rafter hold that copies as originally published in 1920 should be deposited.

Usual copyright business--

2. Watson, Cole, Grindle & Watson (42446)--Classes A-1 & KK. Applicant through his attorney points out that several thousands of copies of the first edition consisting of five thousand were published without the copyright notice. Reject, as work is in public domain. (Title: Directions for Playing Snake Eyes.)
3. Godfrey, Edward (52040)--Class A-1. "Godfrey's Structural Tables." The Examiner suggested that the work is a mere reprint, but examination shows that considerable material is added which is subsequent to the 1905 edition. The work, however, bears an inadequate notice, as it does not contain the name of the copyright claimant. Also MP 853.
4. Hillard, Mrs. Ruth Adele (48086)--Class ?. "Daddy's Friend." The present applicant has attempted on several occasions to get a registration of a copyright claim to her poem, which has on occasion been published without the copyright notice and on other occasions with the copyright notice. Reject again, pointing out

that if a work is published without the notice it is thrown into the public domain. The applicant had been earlier advised that a print which also bore the poem might be subject to copyright under Class K, this action having been approved by the Assistant Register of Copyrights.

5. Higley Press (45519)--Class A-1. Additional information is required to determine who was the actual copyright owner at the time of publication of the works in question, and further whether the name appearing in the copyright notice, The Visual Art Company, was the name under which the Higley Press was doing business.
6. Ashfort, Elsie (47353 & 52103)--Class I-2. "Electric 'Sun-Ray' Clothes Dryer." The statements made in the applicant's letter indicate that publication of the technical drawing deposited has not taken place. This work, however, is a revised version of an earlier copyrighted unpublished drawing. Suggest I-2 for the revised version, and explain publication.
7. Stone Stable Press (48574)--Class A. "Dot Leetle Fur Cap." The Examiner rejects the deposit as being obscene and indecent, and she is supported by Mrs. Brady. Mr. MacCarteney and Mr. Smith, however, hold that the work can be considered as expressing a typical Pennsylvania Dutch scene on Christmas Eve, and is not repulsive in nature and should not be thrown into the same category as material that is vulgar, obscene and indecent. Mr. MacCarteney and Mr. Smith do question, however, the statement made by the applicant in his application in which he states the copyright is claimed on new matter consisting of "revision of dialect, and complete typography." No copyright claim can be laid to the typography, and question arises of what "revision of dialect" consists. Inquire if that constitutes a translation from the original Pennsylvania Dutch, or an entirely original version of the story which may be possibly taken from Pennsylvania Dutch folklore. Also MP-10368 1057; ALSO "Basis of Claim"
8. Barlow, Fred W. (49918)--Class ?. "Barlow's Handicap Method." The deposit consists of a single photostat sheet. It is the positive copy of a compilation of handicap figures used for horse racing. The copyright notice has been placed upon the photostat copy by means of a typewriter, and there is also typewritten in the margin of the copy a statement: "Sold to J. Doubleday one copy for \$1.00 and other considerations July 18, 1941." It appears that publication has not yet taken place. However, at the request of the Register of Copyrights the Revisory Board gave this case special attention. The Revisory Board sustains the Examiner. Ordinarily, the material would have been passed without this action by the Board, as the Examiner feels the material could have gone straight for correspondence without the present action. The Examiner's recommendation is as follows: "Doubtful publication. Notice typed in and statement of one copy sold, etc. A method as such is not registrable. Explain publication and ask whether it has taken place in form deposited." Also MP. 868.

Reconsideration--

9. Van Meter, John Milton (43954)--Class A-1. "A Stimulating Sales Plan." In the Revisory Board meeting of July 24, Mrs. Brady took the minority view, but at this time reverses her decision and joins with Mr. MacCarteney and Mr. Smith in holding that the work should be entered as a published book. This action is taken by her because of the holding by the Register of Copyrights in connection with the work entitled "Cross Out". See minority memorandum dated July 22 of Mrs. Brady and the remarks of Mr. Wise which were the result of his consultation with the Register of Copyrights July 31, 1941.

MEMORANDUM

August 5, 1941

Remitter: Music Publishers Holding Corp. (E-487853)

Title: Avalon

Question: Shall a corrective entry be made?

The applicant files all the necessary material whereby corrective entry can be made. The copies deposited, however, are of a later edition, which contain guitar chord indications. Mr. MacCartney and Mr. Smith are of the opinion that corrective entry should be made with the material at hand, while Mrs. Brady and Mrs. Rafter hold that copies as originally published in 1920 should be deposited. (It is to be especially noted that the applicant states: "It will be an impossibility for us, at this time, to deposit two copies of the edition as originally published in 1920".)

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L. C. SMITH

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R. M. MacCartney

Register on copies deposited. W.H.W. 8/16/41

MINORITY MEMORANDUM

August 5, 1941

Remitter: Stone Stable Press (48574)

Title: "Dot Leetle Fur Cap"

Question: Whether deposit is obscene and therefore  
registration refused.

The undersigned is of the opinion that the indecency of the work in question forbids its protection under the statute. It appears to her that it would be against the public interest to permit publication with notice of a work of this character. In her opinion it should be called to the attention of the Post Office Department who has the authority under Section 598 of the Postal Laws and Regulations to determine whether or not such literature isailable.

M. C. BRADY



MAJORITY MEMORANDUM

August 5, 1941

Remitter: Stone Stable Press (48574)

Title: "Dot Leetle Fur Cap"

Question: Shall the work be considered obscene and registration of the copyright claim be refused?

The Examiner rejects the deposit as being obscene and indecent, and she is supported by Mrs. Brady. Mr. MacCarteney and Mr. Smith, however, hold that the work can be considered as expressing a typical Pennsylvania Dutch scene on Christmas Eve, and is not repulsive in nature and should not be thrown into the same category as material that is vulgar, obscene and indecent. Mr. MacCarteney and Mr. Smith do question, however, that statement made by the applicant in his application in which he states the copyright is claimed on new matter consisting of "revision of dialect, and complete typography." No copyright claim can be laid to the typography, and question arises of what "revision of dialect" consists. Inquiry should be made if the "revision of dialect" constitutes a translation from the original Pennsylvania Dutch, or an entirely original version of the story which may be possibly taken from Pennsylvania Dutch folklore.

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L. G. SMITH

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R. H. MAC CARTENEY

Do not reject on ground of obscenity. Ordered after consultation with Col. Bouré. W.H.W., 8-8-41

MINUTES OF THE REVISORY BOARD  
COPYRIGHT OFFICE  
August 6, 1941

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The Revisory Board met at 3:15 P.M. and adjourned at 4:15 P.M.  
Those present were: Mr. Smith, Mrs. Brady and Mr. MacCarteney.

Total time consumed, 1 hr.  
Unanimous decisions, 9  
Divided decisions, 1

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1. Luhrs, H. E. (52553)--Class ?. "Stunt Halloween Quiz", & 11 others. The deposits consist of various gameboards, game devices, candle and lamp shades, and various paper novelties. Two of the deposits, however, were especially discussed by the Board, and they were the novelty streamers which were made up by stapling together cut-out letters of the words "Merry Christmas" and "Happy New Year", upon which are printed various pictorial illustrations representative of the holiday season. Examiner sustained in identifying all of these deposits as articles of manufacture and possibly subject to protection by means of design patent.
2. Hancock, Braxton Legrand (46424)--Class ?. "A Chart showing the Fingering and Notes of the first five Positions on the Violin and Mandolin Fingerboard." The deposit is identified by the applicant as an unpublished technical drawing, and consists of a chart showing the fingering and notes of the first five positions on the violin and mandolin fingerboard. The Board sustains the Examiner in recommending rejection, and holds that the "positions" presumably follow the accepted laws of harmony and the drawings are conventional reproductions of the ordinary violin and mandolin fingerboard.
3. Athena (The) (52164)--Class A-1. "The 1941 Athena." The Examiner would reject, holding that the copyright notice which appears upon the first page containing printed matter inside the front cover does not contain the name of the copyright claimant. (This page has a pictorial representation of the face of a clock with the months of the year surrounding it, and superimposed upon this in different colored print is the word "Athena" and the year 1941.) The Revisory Board holds that this is not the title page. The title page is located on page 15 of the volume and contains an adequate copyright notice.
4. Collier-Tyson Co. (46479)--Class A-1. "A Merry-Go-Round of Fun." The Office had questioned publication of the work. The applicant

responds and states that the brewery "distributed a number of these books to their wholesale distributors," and adds "that, we contend, complies with the regulation about distribution." Accept the applicants statement as representing publication and enter if no other informality exists.

5. Shady Hill Press (20272)—Class A-1. "Learning the Letters - Books 1-6." The copies bear the notice "Copyright 1941 Shady Hill School." The application which gives the name of the copyright owner as Anne Coolidge, is accompanied by a letter which includes the statement, "The Shady Hill School herewith assigns to Anne Coolidge the copyright of 'Learning the Letters'" (which is the title of the deposits). This letter is signed by the Director of the Shady Hill School. The Examiner does not wish to register in the name of Anne Coolidge at this time until there has been filed a formal assignment and that assignment has been recorded in the Copyright Office. Examiner overruled. Registration can be made in the name of Anne Coolidge, but explain that this letter, or if desired a more formal assignment, should be placed upon the Office records by following the procedure outlined in the Copyright Office Circular 10.
6. Gehman, Dr. Jesse Mercer (51609)—Class ?. "Little Hercules Play-Ur-Way Exercise Instruction Chart." The deposit is a chart containing numerous photographs of various phases of a series of exercises, and also has upon it text matter some of which is for purposes of instruction and description, while that found upon the coupon may possibly be held to advertise an article of merchandise, namely, "Super-Chart of Exercises" and "Vitamin and Food Chart," in addition to a book "How to Keep Your Child Healthy and Happy." The purchase price of these three items is given as \$2.00. Refer to Print and Label Section for consideration. (The Examiner had held that the material was possibly a book and bore inadequate notice in that it contains C within a circle. The Examiner further questioned a possible variance in claim.)
7. American Automobile Association (52569)—Class F. "Visitors' Map of Indiantown Gap Military Reservation" & 1 other. One deposit bears a notice "AAA American Automobile Association, Washington, D. C. Copyright." The notice is partially within a decorative border. Elsewhere upon the copy is the statement "Published and copyrighted by American Automobile Association, Washington, D. C. for the Pennsylvania Motor Federation." The Examiner questions whether the copyright claimant is the American Automobile Association as given in the application, and inquires if the Pennsylvania Motor Federation should not be included on the claimant's line on the application. The Revisory Board recommends entry in the name of the American Automobile Association as applied for.  
The other deposit bears a notice "Copyright AAA 1941." Reject, as the full name of the copyright claimant does not appear elsewhere on the copy. The Examiner is sustained in this recommendation.
8. Charness, David (Esq.) (52669)—Class ?. "Victory Bag." The deposit

is a cloth bag bearing the words "Victory Bag - Courage for Hitler's Victims from U.S.A. MAN," and the copyright notice (see full notice on back). The Print and Label Examiner refers the matter to the Revisory Board for opinion. The Revisory Board supports the Examiner in his suggestion that the work is not proper subject matter for KK classification, and further that the work is not copyrightable in any other class.

9. Scott, Foresman & Co. (Deposit Account)--Class A. "Classroom Activities." The deposit is a house organ published at irregular intervals and is not considered by the Revisory Board as falling under the classification "periodical". Request "A" application. Also on MP 885.
10. Burns, Fritz B. (52811)--Class ?. "Toluca Wood 'Homes at Wholesale'." Deposit is a circular consisting of a single sheet folded several times. It advertises a desirable home location at "Toluca Wood". Its purpose is to sell homes in that Vicinity. The Board divides, however, as to whether or not the work falls under classification KK, Mrs. Brady and Mr. MacCarteney holding that it is a "book" in that it does not advertise an article of merchandise, but rather homes securely fastened to the land, that is, real property. Mr. Smith, however, contends that the work can be considered Class KK material in that the builder suggests to prospective home owners that they should visit his huge warehouse, look over the various building materials stored there. The inference is made that such visit can result in the selection of materials to be used in the homes, such as woodwork, plumbing fixtures, hardware, roofing, and the like, in addition to landscaping. These items can be held to be articles of merchandise, and that this particular circular advertises such articles for sale in connection with the purchase of a house. Mr. Smith does not take, however, the broad view that the advertisement for sale of a house alone, that is, the finished product completely constructed and part of the real property, would constitute an article of merchandise. It is only that because the circular refers to separated parts which can be viewed and purchased prior to their attachment to the land that he considers the deposit Class KK material. In this regard, it is to be especially noted that Mrs. Brady and Mr. MacCarteney contend that it is the finished product, that is, that it is the house that is being advertised and sold not the separate parts making up the house before they are attached to the land.

MINORITY MEMORANDUM

August 6, 1941

Remitter: Frits B. Burns (52811)

Title: "Toluca Wood 'Homes at Wholesale'"

Question: Is the deposit KK material?

Deposit is a circular consisting of a single sheet folded several times. It advertises a desirable home location at "Toluca Wood". Its purpose is to sell homes in that vicinity. The Board divides, however, as to whether or not the work falls under classification KK, Mrs. Brady and Mr. MacCarteney holding that it is a "book" in that it does not advertise an article of merchandise, but rather homes securely fastened to the land, that is, real property. Mr. Smith, however, contends that the work can be considered Class KK material in that the builder suggests to prospective home owners that they should visit his huge warehouse, look over the various building materials stored there. The inference is made that such visit can result in the selection of materials to be used in the homes, such as woodwork, plumbing fixtures, hardware, roofing, and the like, in addition to landscaping. These items can be held to be articles of merchandise, and that this particular circular advertises such articles for sale in connection with the purchase of a house. Mr. Smith does not take, however, the broad view that the advertisement for sale of a house alone, that is, the finished product completely constructed and part of the real property, would constitute an article of merchandise. It is only that because the circular refers to separated parts which can be viewed and purchased prior to their attachment to the land that he considers the deposit Class KK material. In this regard, it is to be especially noted that Mrs. Brady and Mr. MacCarteney contend that it is the finished product, that is, that it is the house that is being advertised and sold, not the separate parts making up the house before they are attached to the land.

L. C. SMITH

House or home permanently affixed to the realty is not article of merchandise as contemplated by Copyright Act. Purpose of work deposited is to sell homes. Classification of "book" sustained.

W.H.W., 8-3-41

MINUTES OF THE REVISORY BOARD  
COPYRIGHT OFFICE  
August 8, 1941

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The Revisory Board met at 2:45 P.M. and adjourned at 4:00 P.M. Those present were: Mr. Smith, Mr. MacCarteney and Mr. Pforzheimer.

The first part of the meeting was attended by Mrs. Steagell, Assistant Chief Examiner, in connection with three possible corrective entries.

Total time consumed, 1 hr. 15 mins.  
Unanimous decisions, 9

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Corrective entries--

1. National Cash Register Co. (J<sup>2</sup>-32599, 32624 & 32630). "The Weaknesses of Unprotected Written Records"; "Profitable Food Merchandising"; and "Geared to The Years". The Revisory Board had previously acted upon the question of corrective entry and divided, whereupon Mr. Wise after consultation with the Register of Copyrights deemed it advisable to secure further information from the applicant. The applicant replies and insists on corrective entries. The Revisory Board is now unanimous in approving corrective entries. *First MP 807*
2. King, Miss Madeleine (D unpub. 75665)--"The Myoptics." The deposit as originally made contained a typewritten title page which incorrectly gave only a part of one of the author's names, and read "Sydney Wilson" instead of "Sydney Wilson Boyd." The Office thereupon assumed that Sydney Wilson was a pseudonym of Sydney Wilson Boyd and made the record, and certificate issued accordingly. The variance should have been noted between the application and the copy and other information appearing upon the title page of the copy, and there was nothing on which this Office should have based the conclusion that Sydney Wilson was definitely the pseudonym of Sydney Wilson Boyd. The applicant now files a corrected title page and asks that it replace the incorrect one. The Revisory Board has come to the conclusion that a corrective entry is not required; that the new title page can be stapled to the present copyright deposit with an explanation, the old title page, however, to remain intact. The applicant should be requested to return the certificate for correction, and the original record should furnish the true information by having an explanatory statement stapled or otherwise fastened to the record book page.

3. Liberman, Wm. R. (G pub. 38238-39). "Discovery" and "Seabiscuit." The applicant incorrectly furnished information concerning the authorship of the work, and now brings to the attention of the Office his error. The Office acted upon the information supplied in the application and made the record accordingly. The applicant should now be advised that the only solution is a corrective entry if he desires the record to furnish the true name of the author and to obtain a certificate accordingly. The procedure for making a corrective entry should be explained to him.

Usual business--

4. Evans & Co., Victor J. (53113)--Class ?. "Forbes Field Aunt-Minnies-Dipsy-Doodle." This matter was before the Revisory Board on July 24, and it sustained the recommendation of the Examiner in rejecting the deposit as not a photograph. The applicant replies that our reference to the work as a gameboard was incorrect, in that the work was actually a drawing of Forbes Field, Pittsburgh. Applications for the work both as a photograph and print have been filed. The drawing is deposited in copies reproduced by photographic process. The Revisory Board now takes the action in recommending that publication should be questioned, and further, whether publication has taken place or not, do copies deposited represent the best edition? *Also on MP-838*
5. Guild, The (14444)--Class G. "Squirrel," "Camel," & 7 others. This matter was before the Board on January 16, 1941. The matter as presented now raises the question whether the work when published actually bore the copyright notice. If so, registration can now be made by the deposit of the required copies, with application forms G-1 and the necessary registration fees to cover each of the works.
6. Carpenter, Nay, Caiger & Harding (52666)--Class ?. "Kemp's Picpac." Deposit consists of a paper wrapper to be fastened to a candy box cover, and contains the words "Kemp's Picpac Candies," with a brief statement of the ingredients of the candy. Examiner sustained in holding that there is nothing upon which to base a claim of copyright. It is to be noted that the word "Picpac" has in connection with it the statement "Trade Mark registered."
7. Graf Specialty Co. (52415)--Class ?. "Spell-Out-Tickets." There have been deposited a number of small cardboard slips bearing a very brief statement of their purpose. It appears that what the applicant desires to obtain by his claim of copyright is a monopoly to the idea of the contest in which the tickets form a part. Reject as there is no copyright in the idea, and there is not present any copyrightable authorship. (It is to be noted in this regard that the Examiner suggested proper A-1 applications be filed.)

8. Christensen, James H. (37335)--Class ?. "Amaranth." This matter was before the Revisory Board on June 19, 1941. It is now again before the Board, and the question arises whether or not the illustrations appearing upon the covers of the various books, which illustrations bear a proper copyright notice, are subject to copyright under Class K or A. The Revisory Board holds that the only part of the book to which the applicant states in his communications he now lays claim by his copyright notice is the illustration upon the covers, and therefore the Board comes to the conclusion that application form K is proper. (It will be noted that the Examiner would suggest an A-2 limiting the claim to the illustration upon the cover.)
  
9. Pallucca, Joseph (Giuseppa) (52418)--Class A1. "Cosa Fa': Cos'E' La Donna??! Iu Nun Lu Sacciu!" The Examiner rejects, holding that the notice is inadequate; that the name is separated from the notice by an intervening line. It is true that if the name appearing above the words "Copyright 1941" was intended as the claimant's name in the notice rejection might be based upon the line that separates the name from the words "Copyright 1941." However, in the present instance the name also appears below it, in a paragraph written in Italian, in which a statement is made of a reservation of rights. The Revisory Board has thus come to the conclusion that the words "Copyright 1941" are accompanied by the name of the copyright owner, and entry should be made.



MINUTES OF THE REVISORY BOARD  
COPYRIGHT OFFICE  
August 11 and 12, 1941

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The Revisory Board met from 3:15 to 4:30 P.M., August 11, and from 9:30 to 11:00 A.M., August 12. Those present were: Mr. Smith, Mr. MacCarteney, and Mr. Pforzheimer.

The first part of the meeting was attended by Mrs. Rafter in connection with corrective entries.

Total time consumed,	August 11,	1 hr. 15 mins.
" " "	August 12,	1 hr. 30 mins.
Unanimous decisions,	13	
Divided decisions,	4	

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Corrective entries---

1. Allied Music, Inc. (E un. No. 259802). "Give Me Those Dreamy Old Melodies Again." Registration was made in the name of Irvin Oak, whereas it should have been made in the name of Mrs. Irvin Oak. The error was on the part of the applicant, and it is suggested that a corrective entry can be made furnishing the true legal name of Mrs. Oak, if the usual procedure for a corrective entry is followed.
2. Wright, Frank (D un. No. 75637). "Hero of the Week." Before the Revisory Board can pass upon the question whether corrective entry is in order it is necessary to have information concerning the contractual relations between the various parties concerned, to determine if there exists employment for hire between the advertising agency, the manager of the advertising agency, and the employee. The manager, Frank Wright, of the concern wishes to claim the authorship and the copyright to the work on the basis of having furnished the employee, Mr. Manlove, with the necessary information, continuity, plot, required by Mr. Manlove to prepare the work. The advertising agency, however, it would appear employs both the manager and the employee, and the question arises whether or not the Theodore H. Segall Advertising Agency might not be considered the author and possible copyright owner. In the text of the copy is a statement that Manlove is the author of the work. Before action can be taken upon Wright's request, that his name appear in the work as author and corrective entry be made accordingly, further information is required.
3. Ziff-Davis Pub. Co. (B-501418). "Fantastic Adventures, Vol. 3, No. 6,

August 1941." The Examiner suggests that the date of publication given in the application is incorrect, registration having already been made and certificate issued. Examiner suggests that a new application be filed furnishing the correct date of publication if the one given in the application now in hand is incorrect, and that the certificate should be returned in that event so that a new record can be made and new certificate issued. The Board is of the opinion that the matter should stand as it is. If the applicant finds upon the receipt of the certificate that he has furnished the wrong date of publication he can then enter into correspondence with the Office, and at that time a corrective entry can be suggested.

Usual copyright business--

4. Flaherty, L. Edward (53046)--Class ?. "Come In Without Knocking! Go Out The Same Way." The deposit consists of a card bearing the words "Come in without knocking! Go out the same way." The Examiner contends that this is not subject matter of copyright, and the Board supports the Examiner in that contention.
5. Miller, Monroe (52919)--Class A1. "Contract of Sale." On the title page of the copy, which consists of a single sheet, are the words "Copyright 1941", and immediately above is the name and address of the copyright owner, the name of the owner and the statement of copyright being separated by the address of the owner, his phone number and a line. Examiner would reject that notice does not contain name of the copyright owner. The Board, however, accepts the notice as adequate but suggests that a warning letter be written as to future publications.
6. Evans & Co., Victor J. (53113)--Class J. "Forbes Field Aunt-Minnies Dipsy-Doodle." Publication of the work deposited was questioned by this Office, and in reply the attorney for the applicant makes the following statement--

"The applicant makes copies of the original and sells these copies and has elected to make the copies in the form of photographs. Certainly he would be entitled to register the work if the reproduction were in the form of prints and because he has elected to make photographs does not appear to present a sound reason for rejection."

The applicant originally filed an application on form K, and subsequently filed on form J-1. The drawing is reproduced by photographic process. It is difficult to assign it to Class K, and it would not seem proper to include it in Class H. Registration should be made for the work under Class J, and publication should not be questioned in view of the statement made by the attorney of the copyright owner. Also MP-813; 835.

7. J & J Music Shoppe (52088)--Class B. "Pause and Note." Vol. 1, No. 2 July 1, 1941. The deposit consists of a single sheet folded once to form a four-page periodical. The notice is on the last page. The Revisory Board overrules the Examiner and holds that the notice is acceptable in that when the sheet is opened it can be held that it is upon the title page, in the same manner that the notice is accepted in the case of a book consisting of a single sheet when such notice appears on the back of the book, and also in the case of a sheet of paper bearing a pictorial print and a copyright notice on the same side as the print, however the deposit when published is so folded that the notice is actually in back of the print.
8. Pacific Pictures and Publications (52965)--Class A. "Supplement to Prospectus Pacific Pictures and Publications." The title page of the deposit reads as follows (each asterik indicates a star upon the copy separating the text matter)--

"Supplement to Prospectus

\*

Pacific Pictures and  
Publications

\*

209 Seneca St.

Seattle, Wash.

6060 Sunset Blvd.

Hollywood, California

\*

This booklet is the property of Pacific Pictures and Publications. Contents may not be used in whole or in part, either in writing or by verbal quotations, without written permission of the owners hereof.

\*

Published 1941

Copyrighted 1941"

The Examiner would reject holding that the name of the copyright claimant is not in the notice. The Revisory Board overrules the

the Examiner in holding that the notice is adequate, but that it is advisable to write the usual warning letter as to future publications.

9. Moynihan & McKeown (53322)--Class ?. "Love Will Come Again." This is the usual case of a syndicate filing material in which publication is questionable. The deposit consists of a story made up of numerous chapters which will no doubt be published serially in some newspaper. The copyright claim is in the name of the author. In view of the fact that the material is similar to that in question in connection with the King Features Syndicate or similar material received in connection with the Bell Syndicate, it is suggested that the usual letter be written and the material referred to the Register of Copyrights.
10. Douglas Aircraft Co., Inc. (52860)--Class A. "Drafting Manual." The copy on the inside cover contains the following statement--

"NOTICE

The material contained in this volume is the property  
of

Douglas Aircraft Company, Inc.

Its transmission or publication to persons outside  
the employ of the company is prohibited.

Copyright 1941

Douglas Aircraft Company, Inc.  
Santa Monica, California."

The Examiner rejects, stating that "such limited use would not constitute publication." The copy is of such nature that it must have been reproduced at a great cost in printing, and every indication is that numerous copies were made. It is contained in a special binder which has the title and certain pictorial matter imprinted in gold leaf. The work as a whole consists of approximately two hundred pages, separated at intervals by specially prepared markers. The work was made from both typesetting and by means of planograph. It does not seem that such a work was prepared for limited publication; nor that it can be considered the same as lectures distributed in a classroom. Accept the applicant's statement of publication in the affidavit. It is suggested, however, that the copies be brought to the attention of the Register of Copyrights, so that he might determine if the Librarian of Congress should be advised that they may possibly contain secrets of vital interest to the National Defense, so that he might take the necessary steps to prevent them from reaching the hands of those members of the public who should not be entitled to see them. Also MP. 855.

11. American Social Hygiene Association (42627--fee rtd.)--Class M. "In Defense of the Nation." The copy of the film as originally

deposited gave the name of the copyright claimant at the beginning of the film and at the end of the reel was the statement: "A Jam Handy Production Copyright 1941." The application giving as the name of the copyright owner, American Social Hygiene Association," was rejected, and the applicant now returns and asks can we enter in the name of the Jam Handy Production and then have the Jam Handy Production assign to them. The motion picture Examiner refers it to the Revisory Board for consideration. The Revisory Board takes the position that no copyright ever came into being at the time of publication of this work because of non-compliance with the provisions of the copyright law, and therefore holds that the applicant must be so advised and its informal application for registration in the name of the Jam Handy Production be rejected.

12. Chryssoloras, Epaminondas (53372)--Class A-1 & E. "Divine Liturgy of the Greek Orthodox Church." The applicant deposited a book containing a collection of Greek musical compositions. With the deposits he submits an A-1 application and an E application. The copyright notice appears not on the title page or the reverse (which is blank) but on the very next page. Following that page upon which appears the copyright notice is the first page of music. Mr. MacCarteney and Mr. Smith contend that the work has the format of a book and the notice is acceptable, but that application form E should be accepted. Mr. Pforzheimer contends that the notice does not comply with the provisions of the statute, as it is not in the position for a book; that is, on the title page or the page immediately following, and not for music, that is, not on the title page or the first page of music. The Examiner had recommended entry on form E, but pointed out several informalities existing in the present application. Mr. MacCarteney and Mr. Smith support her in this regard. A)so MP. 845
13. Chemung Canal Trust Co. (23834)--Class A. "The Lowmans in Chemung County." The work bears a notice, "Copyright 1939 by Seymour Lowman, Elmira, N. Y." The application was received in this Office on March 28, 1941, and gave the name of the claimant "Seymour Lowman Estate". This Office requested a new application giving the name "Seymour Lowman Estate, Executor (or Administrator) of the estate of Seymour Lowman." The matter comes before the Revisory Board and the question arises whether registration can be made for a work which on the date of its publication the author whose name is given in the copyright notice is deceased. In other words, can a copyright under such circumstances come into being if the notice contains the name of a dead man. If there exists a will in which an executor is named, to execute the copyright, or in the absence of such a will if an administrator of the estate is named in the application as copyright owner should registration be made without any question. Mr. Smith and Mr. MacCarteney are of the opinion that registration should be made without inquiring as to the date of the death of the author. If such information is obtained, they hold then the Office must go into the substantive rights of the executor to claim the

copyright, and this Office takes the position that it has the power to interpret whether the provisions of Section 8 of the law are such that an executor under the circumstances named can claim a copyright if it is found that the author was dead on the date of publication. In this regard, reference should be made to the provision in Section 23 which gives the right to the executor if the author is dead in the renewal year to claim the renewal copyright. The question has so many angles in which the determination of substantive law is involved that registration should be made by this Office without requiring evidences as to the date of the death of the author. Mr. Pforzheimer, however, contends that before any further consideration can be given to the case there should be furnished the date of the death of the author, at which time the Office should then determine whether a valid copyright came into being. *Also on MP-860.*

14. Appleton-Century Co., Inc., D. (50422)--Class A. "The Sound of Wings." This case is similar to that mentioned above (Chemung Canal Trust Co.) The application filed in this instance gives as the copyright owner, United States Trust Co. of N. Y., executor of the estate of Arthur Goodrich. The Examiner is prepared to make entry as applied for, but sent the material to the Chairman of the Revisory Board so that response may be made to a question asked in the letter which accompanied the application. It was in this way that the matter came before the Board, in view of the fact that it was considering the Chemung Canal Trust Co. case. Mr. Smith and Mr. MacCarteney sustain the Examiner, while Mr. Pforzheimer is of the opinion that it is essential to know the date of death of the author before final consideration can be given the application. *Ultimately filed without action. See mem. book under "Notice of ©"*
15. Orange, Samuel P. (53164)--Class ?. "America In My Heart" (lyrics and drawing). The deposit consists of an unpublished poem, immediately beneath of which is a heart enclosed within a larger heart, thus forming a border, which border contains X marks and the initials A.I.M.H. The smaller heart represents a simple shield, the upper portion of which is blue and the lower portion made of a few red and white stripes. The Examiner considers the present deposit subject matter under Class G, no doubt due to the fact that works of an equally simple nature accepted by the Office in the past and registration made, may have misled her. Two of the members of the Revisory Board, Mr. Pforzheimer and Mr. MacCarteney, cannot help but feel that the deposit cannot be considered as a work of art. It is suggested that when this Office writes to the applicant that it point out when the complete work (unpublished poem and drawing) is published with the copyright notice registration can be made for it as a "book". Mr. Smith recognizes the deposit as a drawing. It is a borderline case as to whether or not the drawing is so simple in nature that it contains no original authorship, and he therefore recommends that the benefit of the doubt be given to the applicant and registration made of the copyright claim to the drawing upon the

receipt of a proper application.

16. Buchanan and Company (47147)--Class ?. "There's More Juice in Buchanan & Company Florida Oranges.." in Staten Island Advance July 5, 1941, & 1 other. This case was before the Revisory Board on August 2, 1941, at which time Mr. MacCartney, Mrs. Brady and Mr. Smith held that the two deposits then before them should be rejected as not containing any copyrightable matter. An example of one of the deposits (they are very similar) is as follows--

"Buchanan & Company Florida  
Oranges  
Juicier! Grown nearer the Tropical Sun  
Buchanan & Company, Inc.  
1501 Broadway, N.Y.C.  
Copyright 1941, Buchanan & Co., Inc."

After the Board had concluded its deliberations on August 2, the suggestion was made that it would be wise to examine deposits of periodical contributions made on the same date by the applicant but which were passed for registration because no informalities were found in the applications. A search resulted in disclosing that material similar to that rejected by the Board on August 2 was entered, and it is because of that the Board must now take the action of recommending to the Register of Copyrights that the certificates issued in connection with those deposits which were passed for registration be recalled and the particular registrations cancelled. Also MP-825; 865.

17. Brogle & Co., Inc. (B-505807-808). "Royal Standard" Vol. 32 No. 9 May 1941 & Vol. 32 No. 10, June 1941. The Revisory Board sustains its Chairman in the memorandum which he has prepared for the Register of Copyrights, and in which he points out that for some years in the past the Examiner of periodicals has noted variances between the application and copy by clipping a slip of paper to the particular application containing a brief statement of the variance. This slip of paper acted as a guide for the various clerks in the Office making index cards and records of the registration, including the certificate which was issued. After all of that had been completed, this slip was detached with the result that the application was filed containing statements which varied with those found upon the record and the issued certificate. The periodical Examiner advises that on the average there are more than a dozen such cases every day, and it is because of this the Revisory Board after consulting the periodical Examiner and the Chief Examiner has come to the conclusion that this must be brought to the attention of the Register of Copyrights for whatever action he deems advisable.

"The Sound of Wings"; remitter: D. Appleton-Century Co.

August 19, 1941.

To Mr. Louis C. Smith,  
Chairman, Revisory Board

According to the dissenting memorandum the author died on June 26, 1941. The manufacture of the book with the author's name as copyright owner was accomplished four days later on June 30. Deposit was made on July 16 and publication accomplished on July 18, which merely means that formal deposit must be regarded as having been accomplished on July 18. Unusual dispatch seems to have characterized the making of the deposit.

In Section 8 of the Copyright Act Congress provided that copyright can be acquired by the executor of an author "under the conditions \* \* specified in this Act." One of the conditions of the acquisition of copyright is publication with "the name of the copyright owner." Under Section 9 persons entitled under the Act to acquire copyright can do so by publication of such a work as this with the proper copyright notice.

Literally reading and applying the statute, no copyright can be obtained by the publication of a book the copyright notice of which bears the name of a copyright owner who at the moment of publication does not exist. Literally read and applied the statute means that where the dead man has arranged for the manufacture, affixing of notice, and publication in strict compliance with the terms of the Act, should he by chance die one minute, one day, or three weeks before publication, the work which is published with the copyright notice containing his name goes into the public domain on the date of publication.

It is doubtful in my mind as to whether or not it was the intention of Congress that a work should pass into the public domain under such conditions. If Section 8 can be justly said to be subject to an interpretation which would not bring about such a result in the case of a work with respect to which it seems obvious that every attempt to meet the conditions of the statute was made, I think it should be so construed at least for the purposes of copyright registration. It is proverbial that where a literal construction and application of the terms of an Act would seem to oppose the intention of the legislators, such interpretation will, if possible be avoided.



The literal terms of Section 24 of the Act dealing with renewals provide that certain persons, including the author's executor, "shall be entitled to a renewal and extension of the copyright" in a copyrighted work "when application for such renewal and extension shall have been made to the Copyright Office \* \* \* within one year prior to the expiration of the original term of copyright."

Literally construed, the right to renewal cannot arise until the twenty-eighth year of the original copyright term, and if the author dies prior to that time he has no right of renewal to devise. I recognize, of course, that an author can bind himself by an agreement to exercise the right when it shall accrue to him; but that point is not involved. Literally construed, the executor would have no "right of renewal" to account for. Such was the contention of counsel in the case of Fox Film Corporation v. Knowles (261 U.S. 326, 329), but the court did not agree, stating that

"The section, read as a whole, would express to the ordinary reader a general intent to secure the continuance of the copyright after the author's death, and none less so if the actual continuance was effected by creating a new estate, or if the beneficiaries in certain cases are pointed out." (p. 329).

And the court further stated the well-known principle that

"The executor represents the person of his testator, and it is no novelty for him to be given rights that the testator could not have exercised while he lived." (ibid p. 330)

It is, of course, clear that an exact analogy cannot be claimed between the situation in the Fox Film case and that in the case before us. However, it seems obvious that the purpose of Section 8 is to enable the executor of the author to acquire a copyright which the author had a right to acquire. Is it going too far to suggest that the purpose of Section 8 is to enable the executor of the author to acquire a copyright which the author had taken or arranged to take every step to acquire, but was interrupted by death from doing so?

Not only in this case did the author have a right to acquire a copyright in his work but he did all that he could do when alive to procure it in accordance with the provisions of the Act. He saw to it that the book was manufactured in accordance with the provisions of Section 15 of the Act, that it was manufactured so as to include a copyright notice in his name, and arranged for its publication with such notice. He died four days before manufacture was completed and

twenty-two days before publication and deposit.

I think it at least questionable whether or not, in view of the applicable provision cited from Section 8, Congress intended that the work should in such circumstances fall into the public domain.

This Office has no court decisions bearing on such a situation to guide it along this doubtful path. The question as to registration must, therefore, be solved by this Office without such help. I am the last to contend that the propriety of registration does not hang by a very slender thread; or that if made, it will only be made because the Office is not convinced that under the Act it should not be made.

I suggest that before final action is taken in this case a letter be directed to the remitter calling attention to the relevant facts as expressed in the minority opinion of the Board with the request that the Office be furnished with a statement of the grounds on which the remitter may feel justified in supporting its application.

Register of Copyrights

MINORITY MEMORANDUM

August 11 and 12, 1941

Remitter: Samuel B. Grange (53164)

Title: "America In My Heart" - Lyrics & drawing.

Question: Is the drawing deposited subject to registration under Class G?

The work as deposited consists of an unpublished poem, immediately beneath which is a heart enclosed within a larger heart, thus forming a border, which border contains X marks and the initials A.I.M.H. The smaller heart represents a simple shield, the upper portion of which is blue and the lower portion made of a few red and white stripes. The Examiner considers the present deposit subject matter under Class G, no doubt due to the fact that works of an equally simple nature accepted by the Office in the past and registration made, may have misled her. Two of the members of the Advisory Board, Mr. Pforzheimer and Mr. MacCartney, cannot help but feel that the deposit cannot be considered as a work of art. It is suggested that when this Office writes to the applicant that it point out when the complete work (unpublished poem and drawing) is published with the copyright notice registration can be made for it as a "book". Mr. Smith recognizes the deposit as a drawing. It is a borderline case as to whether or not the drawing is so simple in nature that it contains no original authorship, and he therefore recommends that the benefit of the doubt be given to the applicant and registration made of the copyright claim to the drawing upon the receipt of a proper application. It is of course to be pointed out that no copyright claim can be made to the poem itself until after it has actually been published with the copyright notice and registered as a "book", or else set to music and deposited here as an unpublished work, or published with the copyright notice and registered as a published work.

L. C. SMITH

Examiner sustained as to rejection of manuscript. Omit any reference to drawing. WHW, 8-16-41 After consultation with Col. Bouvé.

MINUTES OF THE REVISORY BOARD  
COPYRIGHT OFFICE  
August 14, 1941

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The Revisory Board met from 11:15 to 11:45 A.M., and 2:15 to 3:30 P.M., August 14, 1941. Those present were: Mr. Smith, Mr. MacCarteney and Mr. Pforzheimer.

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The first part of the meeting was attended by Mrs. Rafter in connection with corrective entries.

Total time consumed, 1 hour, 45 minutes  
Unanimous decisions, 12

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Corrective entries--

1. Allied Music, Inc. (E unq No. 254858)--Class E-2 "Little Sweetheart." Applicant has discovered that in the original application a wrong address has been given and now wishes to have the record corrected so as to furnish the true address of the copyright claimant. The Board recommends that no corrective entries should be made, but rather the applicant should be advised that an index card will be placed in the files of this Office furnishing the true address.
2. Marsen, Arlene (51737)--Class E-2 "I Hear You Singing" On this matter being further considered at the time it was being held for correspondence, it was found that what the applicant wishes to accomplish is to have the records of this Office furnish only her pseudonym and that the legal name be removed from the claim line on the application and record book. She states "This change is being requested so that no confusion of many names will occur when being published - one set of names both for ownership and authorship are requested." The Board recommends that a letter be written explaining to the applicant that the record should remain as it is, and that at the time of publication of the work the applicant should then decide whether she wishes to use her legal name both as copyright claimant and author on the copy, so that there will be no confusion of names. It should be pointed out that in the case of the name of the copyright claimant, only the true legal name should appear in the notice and not the pseudonym; but in the case of the name of the author, the pseudonym may be used.
3. Thomas, R. M. (9440)--Class E "Love Me Today" The applicant gave the first name of the claimant as "David" in his application for registration of the copyright claim. The correct name of the copyright claimant, however, is "Daniel H. Thomas." It is suggested that a corrective entry be made and the applicant be advised of the procedure.

Usual copyright business--

4. White-Smith Music Publishing Co. (Deposit Account) Class ? "Foundation of Modern Music Playing" The copies contain instructions for modern flute playing with the major portion consisting of various exercises. An E-1 application was filed, claimed upon "Pages 7-8-9-10-11-12 and also chart." These pages contain various scales, as does the chart. The examiner, after carefully going over the deposit, discovers that there is new text matter and exercises, and suggests that an A-2 application form be filed limiting the claim to "additional text matter and exercises," without, however, any reference to the separate chart. The Revisory Board sustains the examiner to the extent of asking for an A-2 application, but holds that the claim to new matter should include the chart and thus read, "Chart, additional text matter and exercises."
5. Broadcast Music, Inc. (Deposit Account) Class E "De'il Ma Care!" The Office questioned the authorship of the work because the name of the author of the words did not appear upon the copy as originally deposited. There are now deposited copies which do give the name of the author of the lyrics, and the examiner questions whether the original application can be used, for the examiner is of the belief that a new date of publication should be given. The copies, however, are identical except for the addition of the name of the author of the lyrics. These latter copies, it is contended by the Board, are copies of the best edition, and should be registered as applied for without questioning the date given in the application.
6. Chryssoloras, Epaminondas (53372) Class E "Divine Liturgy of the Greek Orthodox Church" This is a reconsideration of a case originally before the Board on August 12, 1941. The purpose of the reconsideration is to give the opportunity to Mr. Pforzheimer of joining the majority in sustaining the examiner.
7. Sullivan, J. H. (53291) Class ? "Victory Symbol" The deposit consists of a large letter "v" enclosed in a plain square border. Superimposed upon the letter "v" is a bar of music. (This contains but four notes.) The Revisory Board sustains the examiner in holding that registration cannot be made of this work under Class G, as it is not subject to copyright.
8. Kunz, A. H. (39529) Class A-1 "Practical Ideas to Success" The applicant has deposited new copies with an application giving as the new date of publication August 1, 1941. In his letter of August 2nd he makes this statement: "On account of the delay I never made use of them I sent previously." The examiner, nevertheless, would again question publication. The Revisory Board, however, is of the opinion that publication should not again be questioned, and that copies be accepted as received on August 5, 1941. Also on MP. 884.

(3 news items)

9. North American Newspaper Alliance (53121) Class A-5 The copyright notice contains the initials of the copyright claimant, "NANA." The examiner rejects, holding that the name of the copyright claimant is not found in the copyright notice. This matter was before the Revisory Board sometime in the past, and after correspondence it is understood that the applicant pointed out that "NANA" was a trade-mark. Because of the action taken at that time by the Revisory Board, the material now submitted should be passed without questioning the name of the claimant in the notice.
10. Monel, Rawles (54048) Class K "V for Victory Sticker" The deposit consists of two flags joined at the ends of their staffs. Immediately beneath them appears three dots and a dash. The flags are those of the United States and Great Britain. The examiner suggests registration under Class K after the work has been published with a copyright notice. The Revisory Board over-rules the examiner, holding that there is new copyrightable subject matter present in the deposit and that therefore the material should be rejected as not copyrightable.
11. Thomas, Powell (41086) Class KK "Military Measurer" The deposit consists of a ruler and an instrument used to assist a draftsman in drawing squares and circles and to note the various degrees of the circle on a special scale. The Board sustains the examiner in holding that these are articles of utility--that is, instruments or measuring tools, and that therefore they should be rejected as devices.
12. United Feature Syndicate, Inc. (Deposit Account) Class ? "Tarzan No. 544 and Tarzan, 613-618" There is deposited material similar to that of the King Features Syndicate. Registration, however, is claimed to only certain cartoons of the "Tarzan" series, and not to the whole deposit itself. Question publication and bring the matter to the attention of the Register of Copyrights. In taking this action the Board sustains the examiner. It is to be noted that the complete publication bears the copyright notice, "Copyright, 1941, by the United Feature Syndicate, Inc." while the individual contribution contains the notice, "Copyright, 1941, Edgar Rice Burroughs, Inc."

MINUTES OF THE REVISORY BOARD  
COPYRIGHT OFFICE  
August 15, 1941

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The Revisory Board met from 10:00 A. M. to 10:45 A.M. on August 15, 1941. Those present were: Mr. Smith, Mr. MacCarteney, and Mr. Pforzheimer.

The first part of the meeting was attended by Mrs. Rafter in connection with corrective entries.

Total time consumed, 45 minutes  
Unanimous decisions, 11

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Corrective entries--

1. Saturday Review Company, Inc. (B-502512) Class ? "Saturday Review of Literature, Vol. 24, No. 6, May 31, 1941" The Office has already corresponded with the applicant, pointing out that the date of publication given in their original application was possibly in error. At the time this action was taken, however, entry had already been made and the certificate issued. In the same communication inquiring as to the date of publication, the Office inclosed an application and stated that if an incorrect date had been given, a new application should be filed and the certificate returned for correction. A new application was filed without the certificate, however. The examiner proceeded to put the copyright number upon the new application with other required information which he transferred from the original application. The original number upon the first application was marked out and the application was then filed in the UB envelope, which was sent out for correspondence with the request that the certificate be returned so that it too might be corrected as well as the original record. The Revisory Board takes the position that the recommendation of the examiner cannot be followed; that the correction can only be made by means of a new entry. The mistake was that of the applicant. The record was made based upon the incorrect information and the certificate issued. The applicant should now be advised that in returning his application for correction, he neglected to file the required two copies and fee, and that he further neglected to return the certificate so that a corrective entry could be made. Unless he does so the original entry will remain as applied for.

Usual copyright business--

2. Press, Fred (54469) Class G-1 "Choir Boys Singing" The applicant deposits a sculpture consisting of two choir boys. He also deposits a work of like character, which, in addition to the two boys, contains a receptacle for holding a candle. The Board sustains the examiner in accepting the first-mentioned copies as works of art and rejecting the latter object as an article of utility.
3. Salisbury, Charlotte (18966) Class E-2 "Poodoo Poochie Poochie Poo," "Shamrocks from Killarney" and "You May Not Know It" The Office has attempted to secure applications which give the legal name of the owner in addition to the abbreviation of the first name of that legal owner, thus: "Lottie (Charlotte) Salisbury." The name of the owner as found in the copyright notice is "Charlotte Salisbury." In the absence of any reply, the Board recommends entry as applied for.
4. DePew, F. G. (54377) Class G-1 "He's My Uncle" Registration is attempted for a published work of art consisting of a sculpture representing Uncle Sam with his hands so placed as to make an appropriate receptacle for a flag. Photographs furnished show such use of the statue. The examiner is sustained in refusing this as a work of art and holding that it is an article of utility.
5. Lerner, Carl (20535) Class D-2 "Let's Play Lingo" This Office has attempted to secure from the applicant an application which will furnish, in addition to the title, an identifying episode number. In the absence of any reply, and with nothing to indicate that there have been any other registrations of this work, entry should be made as applied for.
6. Locke, Sam David (30160) Class D-2 "Having a Wonderful Time, Wish You Were Here" This case is similar to the Lerner case just mentioned. Enter as applied for.
7. Simon and Schuster, Inc. (Deposit Account) Class A "Low on the War" The deposit consists of a book containing a compilation of the cartoons of David Low, presumably published in England, and, it is believed, also in this country in such newspapers as the New York Times. In addition to the cartoons there is descriptive text beneath each of them with an introduction of considerable length by the cartoonist, David Low. The application gives the name of the cartoonist, David Low, as the author. The examiner, however, questions this and is of the belief that in view of the previous publication of these cartoons, the name of the compiler should be given as author and not that of the cartoonist. There is nothing present to show that David Low did not make the compilation or write the descriptive text (the introduction is signed by him) except the application giving the name of the author as David Low. Enter as applied for.



8. Healy, Thomas F. (53784) Class A-1 "Magland Syndicate Presents Wild Bill McGee in Professional Football" The deposit consists of material similar to that deposited by the King Features Syndicate, the United Features Syndicate, and others. It is a collection of cartoons in strip form all, however, of the same series. In the applicant's letter the statement is made: "You will note that the copyright notice does not appear on the first page or page immediately following. However, the said copyright notice does appear on each comic strip, and it is our belief that said copyright notice is sufficient for the purpose of copyrighting the comic strips in book form." The examiner is sustained in questioning publication of these cartoons in the form deposited. The usual syndicate letter should be written.
9. Friday, Inc. (31866) Class B-1 "Friday, Vol. 2, No. 19, May 9, 1941" The Office has attempted to secure from the applicant information concerning whether or not the date of publication given in his application is correct. In the absence of any response, the date of publication will be accepted as given in the application. If, after the applicant has received his certificate and discovers that this date is wrong and he wishes to correct it, a corrective entry will be the only remedy.
10. Boosey and Hawkes, Inc. (Deposit Account) Class E Foreign "Approach to Music" The deposit "Approach to Music" is an instruction book for playing the piano. The copyright notice does not appear upon the first page found inside the cover, but on the reverse of the next sheet; that is, page four of the book. The title of the work again appears on this sheet, and at the bottom is the copyright notice. There also appear a few simple exercises on this page. The copyright notice of this work should be accepted for the purpose of registration of a copyright claim under the classification of music. In taking this action the Revisory Board has not given consideration to other informalities discovered by the examiner.
11. Johnson, Robert (2485) Class E-2 "Recalling Dreams of You" This Office has written to inquire whether the surname of the author of the words is "Whitehead," as found on the application, or "White Head," as found upon the copy. In the absence of any reply, a careful examination of the copy in this instance discloses that an attempt was made to make the capital "H" upon the copy a small "h", and thus the Board is led to believe that "Whitehead" as a single word is correct.

MINUTES OF THE REVISORY BOARD  
COPYRIGHT OFFICE  
August 18, 1941

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The Revisory Board met from 2:15 P.M. to 3:30 P.M. on August 18, 1941. Those present were: Mr. Smith, Mr. MacCarteney, and Mr. Pforzheimer.

The first part of the meeting was attended by Mrs. Rafter in connection with corrective entries.

Total time consumed, 1 hr. 15 min.  
Unanimous decisions, 9  
Divided opinions, 1

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Corrective entries--

1. Monroe, William C. (No Fee) Class E-2 "When Stars Are Born on Broadway" At the time of the filing of the original application, there was omitted the name of one of the joint authors. Likewise this name was omitted from the copies. The examiner contends that no corrective entry is necessary in that the matter can be taken care of when the work is published. Held: Corrective entry should be made so that the original registration of this copyright claim can furnish all of the names of the authors, which information is very important at the time of renewal.
2. Weinstein, Syd (No Fee) Class E-2 "The Owl and the Pussy Cat" The composer's name has been incorrectly given on the original registration. Suggest corrective entry.

Usual copyright business:--

3. American Viewpoint Society, Inc. (82318) Class A "We and Our Government" The examiner is of the opinion that there is insufficient new matter upon which to base the copyright claim. The application Form A-1 states the new matter to be "a few corrections only." The title-page of the deposit states, "Revised and enlarged edition." Request application Form A-2, giving a statement of new matter in conformance with the statement found upon the copies.
4. Marks, Edward B. Music Corp. (Deposit Account) Class E-1 "Yours (Quiéreme Mucho)" This matter came before the Revisory Board on July 31st, at which time the Board overruled the examiner in holding that there was a notice which referred to the arrangement. The examiner now brings before the Board information which shows that the present deposit does not contain any new musical matter in the form of an arrangement upon which a valid copyright claim can be based. Reject accordingly.

5. Breeze Corporations, Inc. (52701) Class A-1 "Breeze Radio Ignition Shielding. Book No. A-0741-A.," and 20 others. The averment of the affidavit on Form A-1 gives the typewritten form of the first name of the author as "Kenneth," while the affiant signed his name as "Kenith." The examiner requests new applications furnishing affidavits which do not contain this variance. The Board recommends entry under the doctrine of "idem sonans."
6. Brown and Sharpe Manufacturing Company (52527) Class A-2 "Practical Treatise on Gearing" The examiner questions the copyright notice, which reads "Copyright, 1929, Brown & Sharpe Mfg. Co." (The application gives the date of publication as June 20, 1929.) The examiner further is not satisfied with the statement of new matter: "Some revisions in certain chapters." The examiner is of the opinion that the work may be a reprint, or else one containing very minor corrections. Enter; do not question statement of new matter or the copyright notice. (Examiner was led to express the opinion she did by virtue of statements made in the first paragraph of the applicant's letter of July 30, 1941, and also the last paragraph in the same communication.)
7. Weyles, Edward M. (W.R. 37411) Class AA "Standard Baby Health Chart" and three others. The copyright notices contain only the initials of the copyright claimant. There are three different deposits. In two, the full name of the copyright claimant appears at some distance elsewhere on the deposits, while in the case of one of the works deposited, the full name of the copyright claimant is in close proximity of the notice, which contains only the initials of the claimant. Reject all of the deposits as not containing copyright notices as provided by the law and as recommended by the examiner.
8. Evans, Melvin J. (52341) Class A-2 "Democracy in Action" The examiner would reject the application on Form A-2, which gives as the statement of new matter, "Introduction and conclusion added." Her examination of the copies leads her to believe that what may be the introduction and conclusion consists of material previously published, a valid copyright claim of which cannot be made at this date by the applicant. The Board, however, contends that before taking final action, inquiry should be made to determine what the applicant means by the term "introduction and conclusion," so that the Office may be advised as to what material is included in the new matter.
9. United Feature Syndicate, Inc. (Deposit Account) Class B-2 "United Feature Comics, Vol. 3, No. 7, Aug. 8, 1941" The Board recommends the taking of the same action as in the case of the material sent this Office by the same remitter referring to

"Tarzan," (see Revisory Board minutes dated August 14, 1941); the present deposit is identical to the copies submitted in the case of the "Tarzan" comics.

10. Manke, Albert A. (37548) Class A "Table for Calculating Gallonage or Partly Filled Horizontal Cylindrical Tanks" The applicant states that before he had placed the copyright notice upon these works: "I gave away and sold a few to auditors, Government field men, et cetera. I finally decided it worthwhile having them copyrighted." He also makes this statement in a later letter after this Office had corresponded with him regarding publication with notice: "I only had six typed copies, one of which I used, two I gave away and sold three." Two of the members of the Revisory Board, Mr. Smith and Mr. Pforzheimer, are of the opinion that publication has taken place with the notice, and that no registration can be made of the original work so published. Mr. MacCarteney, however, contends that there was a limited distribution which did not amount to publication, and he suggests accepting the deposits which were sent here bearing a copyright notice which reads:

"Devised, 1923-1925, Copyright 1941  
Albert A. Manke, Norfolk, Nebraska"

MINUTES OF THE REVISORY BOARD  
COPYRIGHT OFFICE  
August 19, 1941

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The Revisory Board met from 3:00 P. M. to 3:50 P. M., on August 19, 1941. Those present were: Mr. Smith, Mr. MacCarteney and Mr. Pforzheimer.

The first part of the meeting was attended by Mrs. Rafter in connection with corrective entries.

Total time consumed, 50 minutes  
Unanimous decisions 6

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Corrective entry--

1. Wachob, Virginia Sanford (Mrs.) (No Fee) Class E-2 "Only Ashes." The surname of the author was incorrectly spelled at the time of the original filing of the application, and a corrective entry is recommended at this time.

Usual copyright business--

2. Godfrey, Edward (52040) Class A-1 "Godfrey's Structural Tables." This matter was before the Board on August 5, 1941, at which time the examiner was instructed to limit rejection to inadequate notice, and not to hold that the work was a mere reprint of an earlier publication. The Revisory Board again has the material brought to it by the examiner for an explanation of its action. It was pointed out to the examiner that the work could not be a mere reprint, as it contained a bibliography of material published subsequent to the original edition of this particular work; hence showing that it was more than a mere reprint of the original edition. The examiner thereupon amended her original recommendation as follows:

"Explain publ. if publ. as deposited too late to amend notice.  
If not publ. correct notice may be added and ask for A-2."

The Board sustains the examiner in this action.

3. Jewel Tea Company, Inc. (55440) Class KK "Little Scamps" The deposit is primarily a print, stapled to which is a small calendar pad consisting of twelve pages--one page for each month. It differs from the usual calendar pad in that each page bears, in addition to the calendar, a short, catchy phrase to encourage the purchase of Jewel Tea Company products. The copyright notice is in full form, and is upon the piece of cardboard bearing the print, but is located on that portion covered by the calendar pad. The applicant files application Form K. The material was sent to the Print and Label Section

by the Examining Section for consideration as KK material. Mr. Reed thereupon questioned whether the material is KK, and refers the matter to the Revisory Board. The Board's findings are as follows:

The work to be protected is a print and not a book, and serves to advertise products sold by the Jewel Tea Company; notwithstanding the fact that there is stapled to the print the calendar pad (thus possibly suggesting that the work consists of more than one sheet). The applicant should be requested to file application Form KK with the additional fee of four dollars--two dollars having already been deposited.

4. National Schools (No Fee) Class A-1 "Curso de Ingles Practico Lección Numero 1," and "Ejercicio Numero 1" The deposit consists of an instruction book to assist Spaniards located particularly in Latin American countries to learn the English language. The publisher and copyright claimant is located in Los Angeles, California. No application has been filed, and there is nothing to indicate where the work was printed. The notices lack the year date of publication. The examiner recommends in part: "...If printed in the United States, can only be registered after publication here with correct notice....letter would indicate that publication had not taken place..." The Revisory Board, however, recommends that in corresponding with the applicant the Office should limit inquiry to whether this work has been published in the United States with faulty notice, and further points out that if not published as yet, the correct notice should be placed upon the copies, and subsequent to publication with that notice registration made in this Office with the required deposit of application and fee.
5. Clay-Adams Company (No Fee) Class I-1 "Anatomical Drawing of the Skin and Anatomical Drawing of the Kidneys" This matter was before the Revisory Board on July 1, 1941, at which time the Board sustained the examiner in holding that if the material is to be lithographed in Canada and sold in the United States, it will be unregistrable. Further information has now been furnished the Office, and the Revisory Board changes its position so as to recommend that entry be made as applied for under I-1, basing its action upon Section 15 of the Copyright Act in that it considers the deposit as illustrating a scientific work. While some doubt may arise as to such application of Section 15, the doubt should be resolved in favor of the applicant and registration made.

6. Douglas Aircraft Company, Inc. (52860) Class A-1 "Drafting Manual" The Revisory Board further amends its recommendation in regard to this case (previously before the Board on August 12 and August 18) to the fact that even though it is of the opinion that the work is published, caution should be used before registration is completed, and a letter should be addressed to the applicant inquiring an explanation of the statement found in front of the copies to determine whether there is such a limitation upon the distribution of the copies that the work cannot be considered as "published" under the provisions of the copyright law.

MINUTES OF THE REVISORY BOARD  
COPYRIGHT OFFICE  
August 21, 1941

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The Revisory Board met from 9:30 A.M. to 10:30 A.M. on August 21, 1941. The following members were present: Mr. Smith, Mr. MacCarteney and Mr. Pforzheimer.

Total time consumed:	60 min.
Unanimous decisions	5
Divided opinions	1

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1. Rachman, Jules W. (54667) Class A-1 "Movie Monie - Good for 2 Cents" The deposit is a coupon, simple in design, the only pictorial matter being a border which the Revisory Board considers to be of the conventional kind to be found in a printer's font of type. The text matter is so slight that the opinion is reached that it does not contain such original authorship as to be considered copyrightable subject matter. Reject accordingly and advise applicant that an idea as such is not copyrightable.
2. Sunshine, Emanuel J. (55215) Class A "General Motors Dealers Accountants Handbook" The name of the author and the name of the publisher are separated by a distance of several inches. Located between the names and at an equal distance from them are the words, "Copyright, 1941." The author is given as the copyright claimant in the application. The examiner is sustained in rejecting this as a defective notice, as it would be impossible for the public to definitely determine whether the author or the publisher was the copyright owner from an examination of the title-page alone.
3. Fight for Freedom, Inc. (No Fee) Class ? "Fight for Freedom Symbol" The deposit consists of a drawing of the letter "V", immediately beneath which is the Morse Code of the letter "V", consisting of three dots and a dash. Superimposed upon the letter "V" is a very simple drawing of a bolt of lightning. The Revisory Board is of the opinion that the work does not represent copyrightable subject matter. In addition to this it should be noted that the drawing is used on the stationery of the applicant and does not bear a copyright notice.
4. Daprato Statuary Company (55538) Class G-2 "Nos. 2815 and 2816," (Baptismal Fonts), and "Jesus Expires on the Cross," and "Jesus Comforts the Women of Jerusalem," Stations of the Cross. The examiner is sustained in rejecting the baptismal fonts as articles of utility. Design patents should be suggested even though it must be admitted that the works in the absence of the utilitarian feature would definitely be works of art of a very high order.



The applicant also submits Stations of the Cross. In the case of one of the deposits, the Station is made more attractive by a very artistically designed border which the examiner places in the category of a "frame" and recommends that the applicant be advised that while the Station of the Cross is protected by copyright as a work of art, the frame is not, and that protection should be sought by means of design patent. The Board notes, however, that the principal part of the fraome is made of the same piece of iron as the Station of the Cross itself, and therefore overrules the examiner in suggesting that no mention be made to the applicant as to the extent of his copyright protection. The Board is further of the opinion that in the case of each of the Stations of the Cross the applicant should file new applications and identify the works as "sculptures," and not as "models," for it appears from the identifying reproductions that the work of art is not a model, but the completed work itself.

5. Bianco, Salvatore Lo. (48856) Class ? "Destination Unknown" The examiner requests a new application in which the applicant should give as his domicile "Brooklyn, New York," and not, as he has given in his application, "New York City at above address." His address above is given as "1915 Fifty-eighth Street, Brooklyn, New York." The Board recommends that the Office accept the statement of domicile as given by the applicant in view of the fact that Brooklyn is a part of Greater New York, New York.
6. Clifford & Lawton, Inc. (54528) Class A "Interior Decorator Hand Book, Fall, 1941" The copyright notice appearing on the title-page reads as follows:

Copyrighted 1941

Matson Hall, Business manager

Estelle Quinlan, editor

Published by

CLIFFORD & LAWTON, INC.

The distance between each line as shown above is possibly one-quarter of an inch. The name "Clifford & Lawton, Inc." is more than twice the size of any of the other type of the words given above. The copyright claimant given in the application is Clifford & Lawton, Inc., and the name of the author, William O. Hall. The name of William O. Hall does not appear upon the title-page. Mr. MacCarteney and Mr. Pforzheimer sustain the examiner in rejecting the notice as defective, contending that the name of the copyright claimant does not appear in the notice. Mr. Smith, however, is of the opinion that the notice is acceptable, and that, due to the heavy black type in which the name "Clifford & Lawton, Inc.," is written, and the close proximity of that name

to the words "Copyright, 1941" is sufficient notice to the public that they are the copyright claimants, and further that the public would not readily come to the conclusion that the employees of the publishers, the business manager and the editor, were claiming the copyright to the work.

MINORITY MEMORANDUM

August 21, 1941

Remitter: Clifford & Lawton, Inc. (54528) Class A

Title: "Interior Decorator Hand Book, Fall 1941"

Question: Is copyright notice adequate?

The copyright notice appearing on the title-page reads as follows:

Copyrighted 1941

Matson Hall, business manager

Estelle Quinlan, editor

Published by

CLIFFORD & LAWTON, INC.

The distance between each of these lines in the copy is approximately one-quarter of an inch. The name "Clifford & Lawton, Inc." is more than twice the size of any of the other words in the notice. The copyright claimant given in the application is Clifford & Lawton, Inc., and the name of the author is William O. Hall. The name of William O. Hall does not appear upon the title-page. Mr. MacCarteney and Mr. Pforzheimer sustain the examiner in rejecting the notice as defective, contending that the name of the copyright claimant does not appear in the notice. Mr. Smith, however, is of the opinion that the notice is acceptable, and that, due to the heavy black type in which the name "Clifford & Lawton, Inc.," is written, and its close proximity to the words "Copyright, 1941," there is sufficient notice to the public that "Clifford & Lawton, Inc.," is the copyright claimant. It is difficult to maintain the position that the public could not recognize the copyright owner when the only other names appearing upon the title-page are those of employees of the copyright claimant; namely, the business manager and the editor of the publication. It is only natural for one to assume that the employer would control the product resulting from the labor of his employees. The Copyright Act itself recognizes this fact when in Section 62 provision is made that "...the word 'author' shall include an employer in the case of works made for hire." Any doubt which might exist under these circumstances as to the adequacy of the copyright notice should be resolved in favor of the copyright owner.

Respectfully submitted

Chairman, Revisory Board

Notice of copyright adequate. Name of copyright proprietor sufficiently closely associated to word "Copyright" and the year date as to fully advise the public as to the name of the copyright proprietor.--W. H. Wise 8/26/41

REVISORY BOARD MINUTES  
COPYRIGHT OFFICE  
August 22, 1941

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The Revisory Board met at 10:00 A.M. and adjourned at 11:15 A.M. on August 22, 1941. Those present were: Mr. Smith, Mr. MacCarteney and Mr. Pforzheimer.

Total time consumed, 75 minutes  
Unanimous decisions, 7  
Divided opinions, 3

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1. Hammel, Riglander & Company, Inc. (43588) Class A-2 "The Moe Diamond Weight Gauge," or "The Moe Diamond Weight Calculator." The deposit bears a copyright notice containing the year date of publication "1902" in the name of Charles Moe, who is now dead. On the same page also appear statements containing the word "Copyright" and year dates of publication, but without indicating the name of any particular claimant. Application has been filed giving the name of the daughter of Mr. Moe, Maud Moe Borzman, who is sole heir, as copyright claimant of the 1941 edition. Considerable correspondence has been had with this applicant. Reject finally; the name of the copyright owner is not in the notice for the 1941 edition.
2. Heath, Fred L. & Company, Inc. (54811) Class A-1 "Remember, This is Only Temporary." The deposit consists of the phrase "Remember; This is Only Temporary," and scattered about the card at random are various words, such as "War," "Bad Weather," "Pain," "Joys," et cetera. Rejection should be made of the material, but rejection should be limited to a statement which points out that catch-phrases or similar expressions are not subject to copyright, as explained in circular No. 19-C. Do not suggest the possibility of Class A-1 at this time for the material.
3. Rose, June (51618) Class A-1 "Buddies" The name, "June Rose" in the copyright notice appears to be the pseudonym of the copyright owner given in the application, Elsa Marie Bettenson. There is also a question as to whether the name "June Rose" is in such proximity to the words "Copyright Applied For, 1941," as to be a part of the notice. Reject the new material as the name of the copyright claimant is not in the notice. Also M-P. 929.

4. Chemung Canal Trust Company (23834) Class A "The Lowmans in Chemung County." This material was before the Revisory Board on August 12, 1941, at which time there was a division of opinion. Mr. Pforzheimer, who took the minority view, now wishes to join in the majority view because of certain information which has come to his attention, and which has enabled him to ascertain that the copyright claimant did not die until after the actual first publication of the work bearing the correct copyright notice. Entry may therefore be made in the name of the present owner of the copyright.
5. Taiani, Hugo (55919) Class E-2 "The Yoo-Hoo Polka" The copy spells the surname of the author of the music as "Taiani," the "T" being printed on the copy. The application written in longhand makes the "T" look like an "F" to the examiner, and she recommends that correspondence be entered into to determine whether the first letter of the surname of the composer is "T" or "F". The Revisory Board recommends the copy be followed, as "T" seems to be correct.
6. Chester, Arthur M. (55529) Class K "Let's Keep the Americas for Americans." The deposit is unusual in that it consists of an envelope made up of a single sheet of paper. This paper is so folded in forming the envelope that the copyright notice appears on the back of the envelope, while the print to which it refers is on the front of the envelope. In addition the print bears a "C" within a circle, without any additional mark. If the paper forming the envelope was spread open in a single sheet as it was at the time it was printed, the notice would be on the same side of the sheet as the print. The Revisory Board recommends that the position of the notice be accepted and registration made of the work under Class K.
7. Lattimore, Henry F. (55638) Class K "United for Victory" and "'V' for Victory." Both of the deposits consist of various simple drawings of the letter "V". Between the prongs of the letter are found two crossed flags, one of the United States and the other of Great Britain. Upon one deposit is superimposed the words "For Victory," and upon the other are found the words, "United for Victory." The examiner rejects the present "K" application, holding that the work is not as yet published. The Revisory Board feels, however, that there should be a complete rejection of the material and the applicant advised that the deposits do not contain any copyrightable subject matter.

LCS:MPF  
9-3-41

To all members of the Staff who receive copies of the  
Revisory Board Minutes:

Please note that on page 861, an error has been made in  
the case numbered 8 . Near the end of the last sentence, the  
word "rejected" is used. This is incorrect and should have  
been "registered," so that the sentence now reads--

"Mr. MacCarteney takes the minority view and joins the  
Examiner in recommending that the work be registered as a  
'print'."

L. C. SMITH

8. Grizzard Advertising (55461) Class K "Hit Hitler's Puss--It's Fun" The deposit consists of an ordinary rifle target, superimposed upon which is a caricature of Hitler, the center of the target representing his nose. Above the target is the title of the work: "Hit Hitler's Puss--It's Fun," and beneath the target is a blank space with the name, score and date lines and also a list of points received for hitting within one of the particular circles of which the target is composed. Mr. Smith and Mr. Pforzheimer reject the deposit as a game or part of a game, on the same basis as gameboards are rejected; they view the shooting of a bullet at the target and the pinning of a tail on a donkey in the same light. The donkey, if properly scored, would be rejected as a gameboard, so why not a target? Mr. MacCarteney takes the minority view and joins the examiner in recommending that the work be ~~rejected~~ *registered* as a print.
9. O'Brien, Clarence A. (Deposit Account) Class A-1 "The Hauswirth Plan - A Practical Solution." The application shows that the work was completed on April 9, 1941, and yet there is a statement in the printed foreword of the copies which refers to an event which took place after the completion of the printing; namely, that the author of the book died on April 11, 1941. All of the members of the Revisory Board agree that there is doubt as to whether or not April 9, 1941, can be considered the date of completion of the work. The copyright notice gives the name of the deceased author, Charles A. Hauswirth, as the copyright claimant, (although it may be possibly ascertained that this is not the name of the deceased author, but rather that of his son of the same name, who neglects to use "Jr." after his name.) Of this there is some doubt, since nowhere in the copy does Mr. Hauswirth's name appear with the word "Jr." after it. The main question at issue, and upon which the Revisory Board is divided, is whether a copyright came into being with the name of the deceased author in the notice, and whether the executor and administrator of that author and copyright claimant can now register a valid copyright claim. Mr. Smith and Mr. MacCarteney are of the opinion that the registration of the copyright claim can be made in the name of the administrator or executor of the estate of the deceased copyright claimant, in view of Section 8 of the Copyright Act and Justice Holmes' reasoning in interpreting Section 24 of the Act in the case of Fox Film Corporation v. Knowles, et al., 261 United States 326. In other words, it was

never the intention of Congress that the work of an author's estate should be deprived of copyright if, in the preparation of the work it was contemplated to have the author claim the copyright and the notice was so worded, and then prior to the actual publication of the work with such notice the author dies. It is felt that Section 8 will entitle the executor and administrator to file a valid renewal claim. Mr. Pforzheimer, however, takes the opposite side as he did in the case which appeared before the Revisory Board a few days ago. (D. Appleton-Century Company, Revisory Board Minutes, August 12, 1941.) Mr. Pforzheimer is of the belief that no copyright came into existence for the dead man's name in the notice on the date of publication.

10. Rockhill, Margaret H., Estate Of (14840) Class ? "Medical Woman's Journal, June, 1941" This case is somewhat similar to that just discussed above. The copyright claimant, Margaret H. Rockhill, died before the publication of the work, and there is every evidence that the publishers had knowledge of her death, as there appears within the copy an obituary in addition to an editorial commenting upon the death of Margaret H. Rockhill. Application is now being filed in the name of the Estate of Margaret H. Rockhill. The Revisory Board divides in the same manner as it did in the case discussed above in reference to the work of Charles A. Hauswirth. The two members holding the majority opinion believe the matter considerably involves questions of substantive law which only a court of competent jurisdiction is entitled to determine, and that this Office is fully justified in making the registration in the name of the executor or administrator of the deceased copyright claimant because of Section 8 of the Copyright Act. Also M-P. 934.



MINORITY MEMORANDUM

August 22, 1941

Remitter: Grizzard Advertising (Class K?) (55461)

Title: "Hit Hitler's Puss -- It's Fun"

Question: "Whether a pictorial rifle target is registerable as a print, or must be rejected upon the same basis governing game boards.

The work deposited is a rifle target consisting of a series of concentric circles on which has been imposed a pictorial, caricature outline of Adolph Hitler's face, with his nose forming the bull's eye. The target bears the adjuration: "Hit Hitler's Puss -- It's Fun."

It is the contention of Mr. Smith and Mr. Pforzheimer that the work in question should be denied registration upon the same basis as that governing game boards. To Mr. MacCarteney this view seems strained. The Office currently accepts applications for registration of rifle targets under the classification of "drawing of a scientific or technical character" where technical originality is visibly established. It is his contention, therefore, that if targets are registerable as published technical drawings upon the basis of copyrightable technical drawing, then targets may likewise be registered as prints where the element of originality is pictorial. It is his opinion that the difference in classification of copyrightable content does not change the essential character of the work as a target. If a technically drawn target is registerable, then a pictorial target is likewise registerable. Mr. MacCarteney supports the recommendation of the Chief Examiner in admitting the work for copyright registration as a "print or pictorial illustration" upon receipt of an application on Form K.

Respectfully,

R. S. MacCarteney  
Member of the Board

Register as print or pictorial illustration (k). The work filed is a picture classifiable as K, and the fact that it may be used as a target should not bar registration.--W.H.Wise 8/26/41

MAJORITY MEMORANDUM

Remitter: Rockhill, Margaret H., Estate of (Class ?) 44340

Title: "Medical Woman's Journal, June, 1941"

Question: Is copyright notice valid?

This case involves a question similar to that raised in connection with the work "The Sound of Wings," by Arthur Goodrich. (See Minority Memorandum, Mr. Pforzheimer, August 15, and Register of Copyrights' Memorandum referring to this dissent, August 19, 1941.)

Mr. Smith and Mr. MacCarteney recognize the fact that the publishers had knowledge of the death of the copyright claimant before the completed copies of the work left the press. This is evident, for the work itself contains an obituary and an editorial which refer to the death of the copyright claimant. It is not conclusive, however, that the title-page was printed subsequent to those pages containing the obituary and editorial, as those pages may have easily been set up and run off the press well in advance of the actual death of the copyright claimant. It is admitted that there was opportunity for the publishers to stamp out the name of the copyright claimant in such instance and replace it with the one which he would know to be proper. It is quite possible, however, that such information was not available to the publisher; that is, matters of probate had not been settled; the will may not have been read; or there may have been no approval or appointment by the Court of the executor, administrator or trustees as required by the laws of the domicile of the deceased. To obtain all this evidence and pass upon it places the Office in the quasi-judicial position of interpreting questions of substantive law which it is not believed should be done--not alone because the courts seem to be jealous of permitting questions of substantive law to be determined finally by an administrative body, but also the Office has not made it a practice to attempt to determine the rights of a person to claim a copyright when such would involve serious questions of substantive law. It is believed that Section 8 of the Act is so worded that the Register of Copyrights is justified in interpreting it in favor of those who claim to succeed to the rights of the author as either executor or administrator of the claimant (who, it appears, might be considered as author of the work in her late capacity as managing editor of the work). The Supreme Court has already rendered an opinion on the rights of an executor under Section 24 of the Act; Fox Film v. Knowles, (261 U.S. 326), and it appears possible, if not probable, that a similar conclusion would be reached regarding Section 8, under circumstances similar to those in this case.

There is a doubt which must be recognized, and where such doubt exists, it has been the policy of the Office to resolve the doubt in the favor of the applicant. The undersigned, therefore, recommend entry, but suggest that an application be filed giving as the copyright claimant the name of the executor, administrator or trustee, or such other person controlling the estate of the deceased as provided by the laws of her domicile at the time of her death.

L. C. Smith,

R. S. MacCarteney

Reject--W. H. Wise

MINORITY MEMORANDA

Remitter: Rockhill, Margaret H., Estate of (Class ?) 42840

Title: "Medical Woman's Journal, June, 1941"

Question: Is copyright notice valid?

Registration is here sought, in Class B-1, for the June, 1941, issue of a monthly periodical entitled "Medical Woman's Journal." The copyright notice reads: "Copyright, 1941, by Margaret H. Rockhill." The issue was published on June 23, 1941, and line (1) of the application for registration states the name of the copyright owner to be the "Estate of Margaret H. Rockhill."

The Board, both majority and minority, takes the same position as in the Hausfirth case, ruled on the same day, except that no question concerning an incorrect date in the affidavit of manufacture is at issue here. Suffice it to say, however, that this issue of the magazine contains not only an editorial, as an integral part of the editorial page, on Margaret Rockhill and the loss occasioned by her death, but also a special two-page obituary and tribute bound in with the text. It would have been a simple matter, in the course of printing and binding this issue, to ascertain the correct form of notice of copyright under these circumstances. Certainly all parties concerned knew of the death of the copyright owner. The notice was fatally defective and registration should be denied.

Respectfully submitted

Member, Revisory Board

Reject--W. H. Wise

REVISORY BOARD MINUTES  
COPYRIGHT OFFICE  
August 25, 1941

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The Revisory Board met at 10:45 A.M. to 12:00 A.M., and from 1:45 P.M. to 2:30 P.M. on August 25, 1941. Those present were Mr. Smith, Mrs. Brady and Mr. MacCarteney.

The first part of the meeting was attended by Mrs. Rafter in connection with corrective entries.

Total time consumed: 2 hours  
Unanimous decisions: 14

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Corrective entry:--

1. Heider, Mattie (Mrs.) Class E-2 263086 "How I Laugh to Cover My Tears." The application as submitted by the agent for the copyright claimant gave the claimant's name as "Mattie Heider." She now advises the Office that it should have read "Mattie Joe Heider," and desires to have the record changed accordingly. The Revisory Board recommends that no corrective entry be suggested, and that the applicant be advised that the original record cannot be corrected.

Usual copyright business:--

2. Darrow, Wayne H. Class M 46142 "Harvests for Tomorrow," in three reels. The deposit, from information before the Board, appears to be a Government publication. It is understood that Government employees prepared the script and controlled the preparation of the work. Government funds are used in the renting of equipment and in contracting for the services of any additional persons needed in the work. The claimants of this particular work are as follows: United States Department of Agriculture, Agricultural Adjustment Administration, and Wayne H. Darrow. The Revisory Board is of the opinion that under Section 7 of the Copyright Act this copyright claim is not a valid one, and hence registration cannot be made. The Revisory Board was advised by its Chairman that the matter, however, would be brought before the Register of Copyrights for attention.

3. Wheeler, John L. Class M 52590 "Hydro," in four reels. The copyright claimant in this instance is, according to the application received on August 4, 1941, John L. Wheeler, Chief, Information Division, Bonneville Power Administration, Department of the Interior. The Revisory Board comes to the same conclusion as it did in the case of the film entitled "Harvests for Tomorrow," mentioned above.
4. Winter, Helen E. Class G-2 50242 "Rushin' Through," or "A Few Lines in a Hurry," etc., and "Illusion of Girl Standing at Microphone Singing." The drawings deposited are of a very unusual nature, as they carry out a modernistic trend. In one instance the drawing of a girl is completed in 14 lines. It must be admitted that it is a drawing; the Revisory Board further holds that it is definitely a work of art. It thereby overrules the examiner, who suggested that the idea of such drawings was not subject to copyright, and further that the present copies are questionable as unpublished works. The Board holds that no question should be raised as to the unpublished status of the works, and that entry should be made as applied for on the application, which was received on July 23, 1941, provided no other informality is discovered by the examiner.
5. Heirloom Needlework Guild, Inc. Class KK 56152 "Hiawatha Real Needlepoint Wool Calculation Chart." The deposit is a device upon which has been placed text and pictorial matter which definitely advertises an article of merchandise, and is used in connection with the sale of a particular article of merchandise; namely, needlepoint wool skeins of yarn. The Print and Label examiner recommends KK registration of the work. The Revisory Board rejects, holding that it is a device and therefore must be rejected. In taking this action the Board holds that the ruling of Mr. Howell on April 24, 1941, in connection with the application of the Pepsi-Cola Company covering "Vest-Pocket Baseball" should not be considered as applicable in the present case. At that time Mr. Howell stated that commercial prints and labels stand on a different footing from other writings of an author, and that therefore registration could be made of that deposit, which consisted of a gameboard which had also attached to it a spinning arrow upon a dial used in connection with the board. The device feature upon the gameboard was essential in the playing of the game, as it noted the particular position a ball-player would take. To apply the principle of that case to this in accepting Mr. Howell's ruling, the present deposit should be accepted; however, the present deposit is a device such as the Register of Copyrights considered in the past as uncopyrightable, hence registration should not be made of this calculator, even though there appears upon it material which falls under Class KK.

6. Penschuck, William John Class ? 51434 "Mother's Day Ballad," and "It's Up to You." The applicant originally deposited the works with E-2 applications. The Office then questioned whether or not the works were unpublished, and sent the applicant Forms E. The applicant responded by returning these forms properly filled in and giving the date of publication. The examiner now requests that the applicant definitely advise the Office that these works are publicly distributed. The Revisory Board overrules the examiner, holding that this question should not be raised, in that it has been answered by the filing of Form E by the applicant following the advice of the Office. Entry should therefore be made as applied for on the applications for published works received August 19th, provided no other informalities exist.
7. Timely Comics, Inc. Class B-2 Deposit Account "Amazing Detective Cases," Vol. 1, No. 7, November, 1941. The examiner questions the date of publication (August 15, 1941) of the November, 1941, issue of this work. This question should not be raised by the examiner in view of this type of publication, which is usually distributed months in advance of the date appearing on the copy. In this instance Mr. MacCarteney, a member of the Board sitting in this case, stated that he had seen copies of this publication upon the newsstands already, thus removing the idea that it has not as yet been available to the public.
8. Hitt, William Mayo Class F 55725 "Map of Alhambra, Calif.," and "Maps of Western States." In the case of the deposit entitled "Maps of Western States," the examiner rejects the application for registration as a book, holding that the notice on the front cover, which omits the year date, is not acceptable. The book contains nothing else than sixteen maps, one on each page. Each map bears a separate copyright notice, also omitting the year date. A collection of musical compositions is accepted by the Office as Class E material. The Revisory Board holds that in the case of a collection of maps, as in the present instance, registration should be made in Class F, and hence the notice is acceptable. The deposit should not be considered a "printed literary publication" requiring the full form of the notice upon the title-page.
9. Buchanan and Company Class ? 49104 "There's More Juice in Buchanan & Co. Florida Oranges--They're Grown Closer to the Sun." This matter was before the Revisory Board on August 2, 1941, and again on August 11, 1941. In both those instances the material was rejected as not containing copyrightable matter, but at the second meeting considering the material it was suggested that it be recommended to the Register of Copyrights that certificates which have been issued in connection with previous registrations of copyright claims to similar material be recalled and cancelled.

The Board now is of the belief that such recommendation need not be made to the Register of Copyrights, in that it is felt that the applicant should keep the certificate he now holds, but that it be pointed out to him that nothing can be served by continuing to make registrations of this kind, as this material not now registered is very similar to registrations already made--identical but for a word or two.

10. Cochran, Madalyne S. (Mrs. E.R.) Class ? 55985 "International Peace." The deposit consists of a photographic copy of a drawing made up of eighty-one squares, each containing an illustration with text matter. There is every evidence to lead the Board to believe that the particular squares form steps to be made in the playing of a game. The work is not an unpublished drawing, but must be considered as a gameboard. Registration therefore cannot be made for it either as published or unpublished. The examiner was of the opinion that the work might be registered as a book after publication. The Board recommends complete rejection with refund of registration fee.
11. Wright, Rogers and Margolin Class A 55509 "Emphasize Your Americanism." The deposit consists of an envelope containing a sheet perforated into a number of gummed stamps, each stamp bearing nothing more than the Great Seal of the United States, beneath which is the slogan "We're 100% U.S.A. 'All the Way'." The stamp is rejected for two reasons: first, it does not bear a notice; and second, it does not contain any copyrightable matter. A copyright notice does appear upon the envelope, and registration should therefore be requested for this envelope as a label. The applicant should be sent application Form KK with a request for an additional registration fee of four dollars. At the same time it should be pointed out to the applicant that no copyright can be secured upon the Great Seal of the United States or the slogan which he has used upon it.
12. Honeck, Stewart G. Class ? 55991 "Liberty Exchange Stamp." The deposit consists of a proof copy of a stamp containing copyrightable subject matter. The stamp itself does not bear a printed copyright notice, but on the proof sheet is a type-written copyright notice. In the applicant's letter sent with an A application, it is indicated that these stamps are published in book form with the copyright notice appearing on the front cover of the book. The examiner would reject outright, on the basis that the stamp does not bear a notice. The Revisory Board, however, holds that a letter should be written requesting copies as actually published be deposited, then further consideration will be given the application. Also M-P. 924.

13. Rippey, John D. Class A 55237 "The Key to Better Business." This matter was before the Revisory Board on March 24, 1941, at which time it was rejected on the basis that there was no publication but only a limited distribution. There is now presented in behalf of the copyright claimant an argument by his attorney, which points out that there has been compliance with the statute regarding publication. The attorney states, "The book has been published as required by the Statute to initiate statutory copyright. Copies of the book have been distributed to the 'public' - to more than one person - in an unrestricted manner, as explained in Weil Copyright Law, pages 123-4-5." It does not appear that any purpose will be served by rejecting the application again. Registration should be made on the basis of the present statement of publication, for no great injustice will be done the public in so acting. A letter should be written to the attorney, however, pointing out that no copyright is secured on the idea or system described in the book, and that registration is only made at this time because of the applicant's insistence that the work is published. This Office's letter of April 3, 1941, explained to this attorney that no copyright could be secured to the idea.
14. Parker, Sarah Elizabeth Class E 50521 "The Star Spangled Banner." The Revisory Board sustains the examiner, holding that the verse of the "Star Spangled Banner" deposited by the applicant does not contain any new musical matter, in that there has only been a transposition of a few notes which might have been made by any skilled musician so as to avoid the high and low notes in singing. This matter has been previously before the Board on August 2, 1941.
15. Munn, Liddy, Glaccum and Kane Class KK Deposit Account "Please -- Try Our Way First. Directions for Black Dye." This Office had requested the applicant to file KK and not Form A. The applicant, however, insists that the work is a book. The examiner considers it a label, while the Revisory Board contends that it is a commercial print. Application KK should again be requested, describing the work as a print. The reason the applicant held that this work is a book was because it was distributed to the public, not as a label on the outside of the package, but as a sheet of instructions inside the package, and that therefore it did not tend to advertise the particular product. However the Board takes the position that it is used for an article of merchandise, and is published in connection with the sale of an article of merchandise; therefore registration should be made for it as a print. It is not a label because it is placed on the inside of the container.



REVISORY BOARD MINUTES  
COPYRIGHT OFFICE  
August 27, 1941

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The Revisory Board met at 11:00 A.M. and adjourned at 12 M. on August 27, 1941. Those present were Mr. Smith, Mrs. Brady and Mr. Pforzheimer.

Time consumed: 1 hour  
Unanimous decisions, 8

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Mrs. Rafter attended the first half of the meeting in connection with corrective entries.

Corrective entry:--

1. Perelman, Helyn Class E-2 258445 "Yesterdays." This Office is now advised that the application originally filed upon which the registration was based and the certificate issued contained the actual names of the authors of the words and music, but in space (1) of the application only the name of one of the authors was given as copyright owner. It is not believed that at this time a corrective entry should be suggested, but rather it should be pointed out that if the author not named as copyright owner desires to obtain a half-interest, it can be accomplished by means of an assignment.

Usual copyright business:--

2. Barlow, Fred W. Class A 49918 "Barlow's Handicap Method." This question was before the Revisory Board on a previous occasion, August 5, 1941, at which time the examiner was sustained in questioning publication of the work. The applicant now replies and sends copies of what he claims are the actual works as they are published by him. They are still of a doubtful nature, as it does not appear that the material filed at this time is in a form in which it is practical to publish. However the applicant's statement of publication will be accepted and rejection will be made of his application, as the name of the copyright owner in the application varies from the name of the copyright claimant appearing in the notice upon the copies. The applicant should be advised that the work has already been published with what appears to be the incorrect name of the copyright owner, and accordingly there should be refunded to him the two-dollar registration fee.
3. Jackson, Emma L. Class E 46731 "I'm a Witness," "Look and Live," and "I'm Living on Borrowed Land." A careful study of the correspondence had with this applicant shows that at the time of publication of the work the name of the copyright owner did not appear

in the notice, and accordingly the application must be re-jected and a refund made of the registration fee of six dollars sent in connection with the several applications filed.

4. Leslie, Jess M. Class C 55467 "Resting Genes." The examiner observes that there is a variance between the name of the claimant as filed upon the application and as it appears in one place on the copy; that is, the signed signature at the end of the work. The examiner is sustained in this regard, but is over-ruled in questioning whether the deposit is a lecture. Classification of the work as a lecture should not be questioned.
5. Kay, Ellen Packard Class ? 56835 "Letters..." The examiner of Prints and Labels refers to the Revisory Board a deposit which consists of nothing more than a letterhead, upon which there has been placed two straight lines superimposed upon which is a simple rectangle. Upon the rectangle, in the upper right-hand corner is a small square to represent a stamp, upon which has been placed the mark, "3/4." Elsewhere upon the letter are a few words and one catch phrase. The Board has come to the conclusion that there is not present any subject matter of copyright, and a lack of copyrightable original authorship. It is also noted that the copy does not bear a copyright notice. The application should be rejected, and refund made of the six dollars sent in payment of the registration fee.
6. Dutton, E. P. and Company, Inc. Class A Deposit Account "Pursuit of Destiny." This Office had by correspondence pointed out to the applicant that the affidavit was executed one day before the work was published. The original application and affidavit was returned to the applicant with the correspondence. The applicant has now returned that same application, in which the date of execution has been corrected so as to be on the date of publication. The examiner does not wish to accept this corrected affidavit, and requests that a new affidavit be filed. The Revisory Board is of the opinion that the date supplied should be regarded as correct; that is, to be the date upon which the sworn affidavit was made, even though from the facts before it there is evidence to show that the affidavit was corrected. The Revisory Board takes the position that the affidavit was made upon the date of publication, but that the notary supplied the incorrect date, and upon being informed by this Office of the error, he corrected it so as to conform to the actual date upon which the affidavit was made.

7. Acme Corporation Class A-1 56773 "Lube-X Tractor Index." The title-page of the work and the index page which follows both bear incomplete copyright notices, as the year date of publication was omitted. The remaining pages of the work all bear their own individual copyright notice, complete in form as provided by the statute. The examiner rejects, holding that there is no notice for the complete book. The Revisory Board, however, is of the opinion that registration can be made for the copyright claim to this work, but that the applicant should be sent a warning letter as regards further publications of this kind.
  
8. Louisiana State University Press Class A-3 Deposit Account "Histoire de la Louisiane Francaise." The matter was before the Revisory Board on July 22, 1941. The examiner, however, still questions the right of the Office to register a copyright claim to this work. The Revisory Board has reviewed the correspondence in the matter and has come to the conclusion that the work was printed in France, first published in that country, and was written by an author who was a citizen of France at the time of such publication. The work is in the French language. The copyright claimant is the author, who at this time still claims to be a citizen of France. Registration should be made and the A-3 application form received August 21, 1941, be used.

REVISORY BOARD MINUTES  
COPYRIGHT OFFICE  
August 29, 1941

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The Revisory Board met at 2:15 P.M. and adjourned at 3:45 on August 29, 1941. Those present were Mr. Smith, Mrs. Brady and Mr. MacCarteney.

Time consumed: 1 hr. 30 mins.  
Unanimous decisions: 10  
Divided decisions: 2

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Mrs. Rafter attended the first half of the meeting in connection with corrective entries.

Corrective entries:

1. Chartered Institut of American Inventors (I unpub. 28952) "Handy Cutter Figs. 1-3." The copy which was deposited for registration and for which a certificate has already been issued, is similar to the one now furnished the Office for substitution, except that one of the illustrations in the upper left hand corner was upside down in the copy first deposited. There is nothing to justify corrective entry, as the position of this drawing is simply reversed there being no change in the drawing itself.
2. Caroline Art Association (44392) "A Charleston Sketchbook 1796-1806." Through some unexplainable reason the applicant's letter of November 5, 1940, was not given a date of receipt in this Office until June 24, 1941. There was enclosed with this letter an application, likewise marked received June 24, 1941, with a money order of \$2.00. On December 19, 1940 and on January 22, 1941, this Office advised the applicant that there could not be located the application and money order to which reference is made above. The applicant then sent a second application, received here on February 17 with the registration fee of \$2.00. This application gave as the name of the author Alice R. Huger Smith, while the application marked received June 24, 1941, gave the name of the author as Charles Fraser. Entry was made on the application received February 17, 1941, under No. A-150572, and the certificate issued. At this late date the Examiner now suggests a corrective entry based upon the application received June 24. It appears, however, to the Revisory Board that Alice R. Huger Smith is actually the author of the work in that Charles Fraser died in the past century, and there is no basis for a corrective entry. The \$2.00 should be returned to the applicant, stating that the \$2.00 sent with their letter of November 5, 1940, was only recently discovered in this Office and is being refunded to them.

3. Robbins Music Corp. (No Fee) "Rio Cristal." The applicant points out to this Office that the previous registration did not include the name of one of the authors of the words either upon the copy or the application, so that the record of that registration does not give the name of the author in question. Deposit is now made of a copy giving the name of that author of the words omitted from the original deposit. Suggest corrective entry be made.

Usual copyright business:

4. Miketta, C. A. (57207) "Sea Captain" & 2 others - Figurines for condiment shaker or bottle. This Office rejected the applications for registration as unpublished models or designs for works of art. The works of the applicant were described in each of the applications as being adapted for decoration as a condiment shaker or bottle. The basis of the rejection was that these were articles of utility, and protection should be sought by means of design patent. A recent communication received from the attorney for the copyright claimant makes the following statement--

"It is respectfully submitted that the applications for copyright registration which have been requested are for figurines adapted for decoration. As a matter of fact, these figurines or models may never be employed as models of condiment shakers or bottles. At the present time they are simply artistic figures adapted for purposes of decoration. Perhaps the applications were in error in calling attention to the fact that these particular models could possibly be used as models for bottles or condiment shakers. Actually, the photographs submitted with the applications were not of bottles or condiment shakers but instead of modeled clay objects."

In view of this statement, the Revisory Board is of the opinion that registration can be made but there should be furnished new G-2 applications which properly identify the deposits as works of sculpture and give a correct description, which does not refer to the works as condiment shakers, bottles, or other articles of utility.

5. Farm Journal, Inc. (Deposit Account) "Farm Journal & Farmer's Wife, Vol. 65, No. 9, Sept. 1941." The periodical Examiner asked a new application which will furnish the date of issue in that portion of the application in which he believes such information should be supplied, instead of the date of publication as given by the applicant. It is not the applicant's error but rather that of the Office in the particular wording of the application, which was printed in 1937. Line (4) of the application reads: "Published at Philadelphia Vol. 65 No. 9 Date 8/18/41." The more recently prepared applications now being distributed by the Office have corrected that line so that instead of giving the word "Date" it now reads, "Date of issue." The Revisory Board is of the opinion that all the old applications now outstanding which have only the word "Date" and in that event the

applicant gives the date of publication it should be accepted, for the general public would be led to interpret that question on the part of the Office to be answered by the date of publication and not the date of issue. *Also on MP-888.*

6. Petrando, A. S. (56449) "American Canary Magazine, Dec. 1938." The periodical Examiner is of the opinion that the date of publication given by the applicant, December 1, 1938, is incorrect; that the correct date of publication is December 30, 1938. He bases this conclusion on the fact that the November 1938 issue of the same periodical gave the date of publication November 30, 1938. The periodical Examiner, however, did not take into account that the contents of the December issue of the periodical indicate that the publication must have been published in the early part of December, for advertisements appearing on pages 11 and 13 announce bird shows as early as December 9 of that year, with a further statement in one of the advertisements that entries for the show close on December 5. One can only come to the conclusion that the periodical must have been published at least a few days in advance of December 5. Otherwise, that particular ad would have been of no value. Enter as applied for.
7. Oral Hygiene Internacional Inc. (55741) "Oral Hygiene. Edicion Latino-Americana, Vol. 12, No. 8, Agosto, 1941." The periodical Examiner requests from the applicant an application because of the variance between the copy and the application. The copy reads "Tomo 12, No. 8, Agosto 1941," while the application reads "Vol. 12, No. 8, August 1941." The periodical Examiner, however, did not take into consideration that the copy is written in the Spanish language and that it is only natural when the applicant filled out the application that he should furnish the date of publication in that application in the English language. Enter as applied for.
8. Nelson System Corporation (56943) "A History of Mayo and His College." Class A. The deposit consists of nothing more than proof sheets of the title page, certain introductory matter, the preface, and index of Vol. 1 of "A History of Mayo and His College." The copyright notice appears next to the last page, that is, at the end of the index, a half dozen pages away from the title page. The Examiner rejects for misplaced notice. The Revisory Board, however, believes that the proper recommendation should be rejection of the material on the basis that the work is not published in the form deposited, with an explanation that copyright is only secured after actual publication of the work bearing the copyright notice upon the title page or the reverse of the title page, and further pointing out that if actual copies had been distributed and made available to the general public in its present form, then that portion of the work is now in the public domain, but does not prevent subsequent publication of the complete book with the proper copyright notice.
9. Jones, Robert F. (53251) Class ?. "Victory." The deposit consists

of a V immediately beneath which is the Morse code, ...-, enclosed within a circle. Superimposed upon the letter V is a poor reproduction of the main portion of the Great Seal of the United States. The Examiner recommends registration under Class G upon filing of the proper application. The Revisory Board, however, is of the opinion that there is nothing copyrightable in the deposit, in that no copyright can be secured either on the letter V, the Morse Code, or the Great Seal of the United States, and further that the combination of all three within a circle does not represent any copyright authorship.

10. Baptist Sunday School Committee (56952) "Baptist Training Course Manual" Class A. The deposit bears a copyright notice upon the title page which is questionable. At the top of the title page is the title in heavy black type. In the center of the title page is the following--

"By  
A. L. Patterson, M. A.  
Copyrighted 1941"

At the bottom of the title page is the name of the Baptist Sunday School Committee, Texarkana, Ark.-Texas. The application gives the name of this committee as the claimant. The Examiner rejects, holding that the name of the copyright claimant is not in the notice. The Revisory Board sustains the Examiner, even though two of the members, Mr. Smith and Mr. MacCarteney are of the belief that there may be present a variance in claim. A letter should be written rejecting in the first instance, in compliance with the Examiner's recommendation. If there is any variance of claim the applicant can then explain.

11. Staley & Welch (48284 --fee rtd.) Class A. "Conscription Announcement." The deposit consists of a birth announcement, which the Examiner feels is a blank form and should be rejected. Mrs. Brady and Mr. Smith are of the opinion that the work is a blank form, while Mr. MacCarteney contends that even though there is the presence of a blank form the few words separating each blank line represent original authorship subject to copyright protection. Mr. MacCarteney appeals.
12. Decca Records, Inc. (Deposit Acct.) Class ? . "Peer Gynt" & 8 others. The applicant is firmly of the belief that the material which it has been depositing for some time in the past as "books" is not to be considered under the print and label classification. In one instance the material came before the Revisory Board, February 11, 1941, at which time the Board was of the unanimous opinion that the material fell under the classification "KK". Each of these deposits has a number of phonograph records. On the front cover of each is a rather attractive print varying with each copy. Each work consists

of a single sheet, sometimes folded more than once. In addition to listing the titles of certain phonograph records, a biography is given of the outstanding artist whose work appears upon the phonograph record. It is admitted by all members of the Revisory Board that primarily the work is a "book," but the presence of pictorial matter upon the title page, and the fact that such pictorial matter falls under the definition of a commercial print as outlined in this Office's Circular 46, the work should be registered under Class KK. The practice of this Office has been to consider material of this nature as commercial prints, and if a different position is taken it will have a decided effect upon what action this Office will take in connection with material submitted by other applicants with A-1 applications, which in the past this Office has refused to register under Class A and requested KK applications. The matter is of such importance, that the Revisory Board recommends that a special memorandum be written to the Register of Copyrights so that this particular case can be brought to his attention.



## MINORITY MEMORANDUM

August 29, 1941

Remitter: Staley and Welch, Class A - 48284

Title: "A Conscription Announcement"

Question: Whether the cards must be considered entirely as constituting blank forms or, in view of the limited amount of text, may be registerable under a liberal interpretation of the meaning of "book."

The works in question are two folded cards which are in reality birth announcements. One of the cards is applicable to the birth of a boy, and the other to the birth of a girl. Mr. Smith and Mrs. Brady hold that the cards are essentially nothing but blank forms and should be rejected as such. Mr. MacCarteney, on the other hand, feels that because of the military language which has been employed, the cards rather cleverly give the impression of a so-called conscription announcement through the evolvment of the language around the idea that it would be possible to consider each of the cards as showing a certain amount of literary merit. Mr. MacCarteney admits that the cards may not be works of pretentious merit, yet they do evidence some original intellectual merit as to conception, composition and arrangement. He holds that these cards, with their plays on words, are far more works of mental labor and literary originality than many of the works such as coupons, blank book instructions, et cetera, made up of a sentence or two of factual statements that are accepted for registration as "books" and he is inclined, therefore, to grant registration for the cards in question for what such registration may be worth, upon the basis that they do represent the result of a certain amount, however small, of literary originality, and do thereby constitute the "writings of an author."

Respectfully submitted

Member, Revisory Board

Register--new idea in way of announcement. Resolve doubt in favor of applicant.--W.H.Wise, after consultation with C. L. Bouvé.

MINUTES OF THE REVISORY BOARD  
COPYRIGHT OFFICE  
Sept. 2, 1941

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The Revisory Board met at 2:30 P.M. and adjourned at 4:00 P.M.  
Those present were: Mr. Smith, Mrs. Brady and Mr. Pforzheimer.

Total time consumed, 1 hr. 30 mins.  
Unanimous decisions, 15  
Divided decisions, 2

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1. Fiction House, Inc. (Deposit Account)--Class ?. "1941 Football Stories." The Examiner of book and pamphlet material recommends an "A" application for the deposit, acting upon the advice of the periodical Examiner that the work is an annual publication. Examination of the title page discloses that it is a quarterly publication. Therefore, the Revisory Board recommends that the work be registered as a periodical as applied for.
2. Taylor, E. J. (56600)--Class A. "Reports of Cases Decided in the Supreme Court of the State of North Dakota--Vol. '70." The application gives the name of the copyright owner and the author as the State of North Dakota. Examiner contends that there is a variance between the application and copy, as the title page bears information to the effect that E. J. Taylor is the reporter, and the copyright notice reads, "Copyrighted for the Benefit of The State of North Dakota by E. J. Taylor, Supreme Court Reporter 1941." The Revisory Board is of the opinion that the ownership of the work is in the State of North Dakota. Second, that E. J. Taylor, acting as a reporter for the court can be accepted as an employee, and in that capacity the State of North Dakota can be the author, and further that it is quite possible that a number of the annotations, notes, and the like, usually considered the work of the reporter, were written by members of the court. Also on 8961 MP-883
3. Clifford & Lawton, Inc. (57126)--Class A. "Interior Decorator Handbook Winter & Spring 1941." In this case the Revisory Board is of the opinion that the notice is acceptable, Mr. Smith taking the same position as he did in a similar case filed by the same remitter, which came before the Revisory Board on August 21, 1941. Mrs. Brady and Mr. Pforzheimer accept the present copyright notice in view of the opinion of the Senior Attorney in the case of August 21, 1941.
4. National Federation of State High School Athletic Associations (39802)--Class A. "Basketball Rules 1941-1942. National Federation

Edition." The applicant explains that the Association selected Oswald Tower to claim the copyright, as it was understood by them that only an individual could make such a claim. The Examiner is of the belief that the wrong name of owner is in the copyright notice. The Board, however, is of the opinion that Tower was selected to hold the legal title although it may have been so held in trust for the Association. His name should be accepted as copyright claimant, though explanation should be made that in the future if the Association wishes they may claim the copyright as an association.

5. Towell, Inc., Arthur (57491)--Class A. "Sales Ammunition for Your Profit Producing Vitamin D Campaign." The copyright notice containing the initials of the copyright claimant appears in several places upon the copy. The full name of the copyright owner likewise appears quite prominently throughout the copy but not in juxtaposition with the notice itself. The Examiner is sustained in holding that the name of the copyright claimant is not in the notice. The name of the copyright claimant in this instance is the Wisconsin Alumni Research Foundation, which is not of such national prominence that its initials alone might be accepted as the legal name.
6. Hall Brothers, Inc. (Deposit Account)--Class B. "Hall Brothers Handy Book. May 1937." The deposit is of an unusual character. It would ordinarily be accepted as a "book," but it is published periodically, and hence the Examiner rejects in that the copyright notice is on the reverse of the title page. The Revisory Board, however, accepts the copyright notice, but suggests the sending of a warning letter, holding that the notice is upon the title page, physically so, though it might be strictly held that actually it is on the reverse side, that is, the back of the page upon which the title is printed. This position is taken by the Revisory Board as it is believed that the deposit can be considered a "book," except for the fact that it has in the past been published in various months of the year.
7. Vienot, Carl G. (53511)--Class ?. "This Car Is Defense Checked to Save Gasoline." The copyright notice contains nothing more than C within a circle, followed by the surname of the claimant and the city in which he resides, thus, "© Vienot, Boston." The Examiner suggests that this be accepted with a warning letter. The deposit, however, is nothing more than a simple shield divided in three parts, the upper portion blue, the center portion white, and the bottom portion red. The shield bears the following words: "This Car is Defense Checked to Save Gasoline." The Revisory Board is of the opinion that the work should be rejected for two reasons: 1. There is no copyrightable subject matter present; 2. The name of the copyright claimant is not in the notice.

8. Kodak Hawaii Ltd. (57039)--Class J. "H-323 Silversword - Hawaii." The same Examiner as in the case just mentioned above, is of the opinion that in the present instance the surname appearing in the copyright notice cannot be acceptable. It is true that in this instance the city in which the claimant resides is not given in the notice, although it would appear from the subject matter of the photograph that he is from Hawaii. Even though it is felt that a Mr. Tarleton might be more easily found in Honolulu where the present claimant resides, than Mr. Vienot in Boston, the Revisory Board is of the opinion that the present work should be rejected in that the legal name of the copyright claimant does not appear in the notice.
9. Orswell, Merrill C. (57186)--Class A. "Engineer's Rating Report." The deposit is made up of more than thirty different suggestions for checking the rating of the employee with relation to performance on his present job. Some of these suggestions consist of a few words. Following each suggestion are suitable spaces for checking the various ratings. Other blank spaces can be found upon the form for certain desired information. The Revisory Board joins with the Examiner in rejecting the work as a blank form, holding that while the case is close to the border line between a blank form and a "book," no such doubt exists in the mind of the Examiner as to its being a blank form that would enable her recommending registration of the copyright claim.
10. Forsyth, Nathaniel F. (40585)--Class ?. "The Bible Speaks: The Word of God" & 7 others. The applicant submits what he intends to be lectures, consisting in some cases of but a few lines. With his lectures, and appearing in the same copy, are excerpts from The Bible and selections of religious hymns. It is not believed either by the Examiner or the Revisory Board that this material can be held to be lecture material. If any copyright is to be had on the compilation, it must be under Class A after publication with the notice. This matter is not taken into consideration by the Revisory Board, and it rejects that what the applicant submits since it is not understood to be a lecture under the copyright law.
11. Peters, Mary (48367--fee rtd.)--Class A. "French Phono-Finder." The applicant has deposited what is in part a device, which by revolving a wheel punctured at appropriate spots discloses through the windows thus made certain appropriate information, enabling the user to more properly pronounce sounds in the French language. There is considerable more text matter elsewhere upon the copy, which does not in itself form a part of this device feature. The copyright notice is upon the revolving dial. Immediately beneath this notice is the statement, "Consonants on Reverse Side of Chart." It is the belief of the Revisory Board that this statement appearing beneath the copyright notice can be accepted by the Office as indicating

that the notice extends not only to the information disclosed by the phono-finder but also covers the material which does not form a part of this phono-finder. There is therefore upon the copy a copyright notice which serves a dual purpose: 1. To extend to the phono-finder in which there is a doubt whether it is copyrightable because of the device feature; and, 2. To the writings of an author appearing elsewhere upon the copy and not forming a part of the phono-finder device. Registration should therefore be made of the copyright claim to this work, as it does contain copyrightable subject matter. Under Section 3 copyright extends to the copyrightable component parts. While it may be found at a subsequent date that copyright would not extend to the phono-finder, it must be admitted at this time that the copyright does cover the writings of an author not forming a part of the device found elsewhere upon the copy. Registration should be made as applied for if the Examiner finds no informality in the application itself other than that which is discussed above.

12. Godfrey, Elois (50122--fee rtd.)--Class E. "You Have A Way." The Examiner's opinion that deposit when compared with an earlier registration contains but few changes, very slight in nature in that only a few notes have been corrected, is sustained by the Revisory Board. No new registration is in order.
13. Association Press (26143)--Class A. "Gearing Into Life." The work is prepared by an editorial committee consisting of a chairman and four members, one of which is the research editor of the work. The application in the author line reads: "Prepared by Editorial Committee, John A. Ledlie, Chairman." The Examiner does not consider this statement of authorship sufficient in the application, and recommends that after it be given in brackets, "and others." The Revisory Board, however, contends that the application should be accepted in this regard as applied for.
14. American Photo-Engravers Association (45185--fee rtd.)--Class ?. "Photo-Engraving Price Estimator." The deposit is definitely a device. The applicant was advised, however, that further consideration would be given to his application in this Office's letter dated July 28. In view of the fact that the new rule concerning devices was recently published in the Federal Register, the applicant can now be advised definitely that the work which he has deposited is a device and registration of his copyright claim cannot be made.
15. Alderman, Edith V. (54384)--Class ?. "The V and Morse Code - three dots and a dash." This case is similar to the one of Robert F. Jones which was before the Revisory Board on August 29, 1941. The copies are almost identical, except that the one in the present case is a much better drawing. The Revisory Board rejects the material for the same reasons as in the Jones case.

16. Barbizon Corp. (57367)--Class A. "Barbizon Fall Style Book." Upon the copy on the front cover in attractive lettering is the word "Barbizon." No other appropriate title which properly identifies the work appears elsewhere upon the copy. The first page of the work is blank; the second page consists of what appears to be a preface; the third page has the heading "Barbizon" in similar type and the same size as found on the front cover. Immediately beneath this name is the price list and index of the work. On the page immediately following, and at the end of the price list and index, is the copyright notice. The title given on the application is "Barbizon Fall Style Book." This title does not appear anywhere upon the copy. Mr. Smith is of the opinion that this notice is acceptable, but that a warning letter should be sent the applicant. Mrs. Brady and Mr. Pforzheimer, however, contend that the notice does not conform to the provisions of the copyright law, and hence should be rejected.
17. Ben-Horim, Nahum (Rabbi) (56201)--Class K (?). "The Star Spangled Banner; President Roosevelt's Call to Nation to Defend Liberty, etc." The deposit is a piece of silk cloth upon which is imprinted in the upper left hand corner an unfurled U. S. flag waving upon a staff. In the right hand corner is a print of President Roosevelt placed in a very attractive border, at the top of which is an outspread eagle. Between the flag and the picture of President Roosevelt is printed "The Star Spangled Banner," and immediately beneath this are excerpts from the President's 4th of July address. Appropriately positioned upon the copy are red and blue six-pointed stars and red, white and blue bars. It must be admitted that no copyright can be claimed to "The Star Spangled Banner," and the excerpts from the President's speech. However, Mr. Smith and Mr. Pforzheimer are of the opinion that the remaining printed matter upon the copy is not only attractive but contains what is possibly the result of original authorship. This is especially true of the print of President Roosevelt. They contend that the classification "K" selected by the applicant in his application received July 21 should be accepted, although it is necessary to secure a new application form correctly filled in. Mrs. Brady contends that there is no copyrightable subject matter present in the copy and that therefore registration should not be made in any class.

LIBRARY OF CONGRESS  
COPYRIGHT OFFICENOTICE (Nov., 1938—2,000)  
with deceased author's  
name

## MEMORANDUM

REFERRING TO "The Sound of Wings"; remitter: D. Appleton-Century Co:

DATE August 19, 1941.

To Mr. Louis C. Smith,  
Chairman, Revisory Board

According to the dissenting memorandum the author died on June 26, 1941. The manufacture of the book with the author's name as copyright owner was accomplished four days later on June 30. Deposit was made on July 16 and publication accomplished on July 18, which merely means that formal deposit must be regarded as having been accomplished on July 18. Unusual dispatch seems to have characterized the making of the deposit.

In Section 8 of the Copyright Act Congress provided that copyright can be acquired by the executor of an author "under the conditions \* \* specified in this Act." One of the conditions of the acquisition of copyright is publication with "the name of the copyright owner." Under Section 9 persons entitled under the Act to acquire copyright can do so by publication of such a work as this with the proper copyright notice.

Literally reading and applying the statute, no copyright can be obtained by the publication of a book the copyright notice of which bears the name of a copyright owner who at the moment of publication does not exist. Literally read and applied the statute means that where the dead man has arranged for the manufacture, affixing of notice, and publication in strict compliance with the terms of the Act, should he by chance die one minute, one day, or three weeks before publication, the work which is published with the copyright notice containing his name goes into the public domain on the date of publication.

It is doubtful in my mind as to whether or not it was the intention of Congress that a work should pass into the public domain under such conditions. If Section 8 can be justly said to be subject to an interpretation which would not bring about such a result in the case of a work with respect to which it seems obvious that every attempt to meet the conditions of the statute was made, I think it should be so construed at least for the purposes of copyright registration. It is proverbial that where a literal construction and application of the terms of an Act would seem to oppose the intention of the legislators, such interpretation will, if possible, be avoided.

The literal terms of Section 27 of the Act dealing with renewals provide that certain persons, including the author's executor, "shall be entitled to a renewal and extension of the copyright" in a copyrighted work "when application for such renewal and extension shall have been made to the Copyright Office \* \* \* within one year prior to the expiration of the original term of copyright."

Literally construed, the right to renewal cannot arise until the twenty-eighth year of the original copyright term, and if the author dies prior to that time he has no right of renewal to devise. I recognize, of course, that an author can bind himself by an agreement to exercise the right when it shall accrue to him; but that point is not involved. Literally construed, the executor would have no "right of renewal" to account for. Such was the contention of counsel in the case of Fox Film Corporation v. Knowles (261 U.S. 326, 329), but the court did not agree, stating that

"The section, read as a whole, would express to the ordinary reader a general intent to secure the continuance of the copyright after the author's death, and none less so if the actual continuance was effected by creating a new estate, or if the beneficiaries in certain cases are pointed out." (p. 329).

And the court further stated the well-known principle that

"The executor represents the person of his testator, and it is no novelty for him to be given rights that the testator could not have exercised while he lived." (ibid p. 330)

It is, of course, clear that an exact analogy cannot be claimed between the situation in the Fox Film case and that in the case before us. However, it seems obvious that the purpose of Section 8 is to enable the executor of the author to acquire a copyright which the author had a right to acquire. Is it going too far to suggest that the purpose of Section 8 is to enable the executor of the author to acquire a copyright which the author had taken or arranged to take every step to acquire, but was interrupted by death from doing so?

Not only in this case did the author have a right to acquire a copyright in his work but he did all that he could do when alive to procure it in accordance with the provisions of the Act. He saw to it that the book was manufactured in accordance with the provisions of Section 15 of the Act, that it was manufactured so as to include a copyright notice in his name, and arranged for its publication with such



notice. He died four days before manufacture was completed and twenty-two days before publication and deposit.

I think it at least questionable whether or not, in view of the applicable provision cited from Section 8, Congress intended that the work should in such circumstances fall into the public domain.

This Office has no court decisions bearing on such a situation to guide it along this doubtful path. The question as to registration must, therefore, be solved by this Office without such help. I am the last to contend that the propriety of registration does not hang by a very slender thread; or that if made, it will only be made because the Office is not convinced that under the Act it should not be made.

I suggest that before final action is taken in this case a letter be directed to the remitter calling their attention to the relevant facts as expressed in the minority opinion of the Board with the request that the Office be furnished with a statement of the grounds on which the remitter may feel justified in supporting its application. *its*

Register of Copyrights

Remitter: D. Appleton-Century Co., Inc. (50122) Class A-1 "The Sound of Wings"

Statement of Facts:

An application for registration of the copyright claim of the novel "The Sound of Wings" was executed on July 18, 1941. The deposit copies were received in the Copyright Office on July 16 bearing notice of copyright which read "Copyright, 1941, by Arthur Goodrich." Cir. 23 was then sent the publisher asking for application other than in the name of the deceased. A new application was then filed on Aug. 1, listing the name of the copyright owner as "U. S. Trust Co. of N.Y., executor of the estate of Arthur Goodrich." It is the contention of the majority that this second application should be accepted without further action and registration made. It is the contention of the minority that the date of Mr. Goodrich's death should be ascertained in order to determine whether he passed away before or after publication of the novel. If he died before publication there may be so fatal an error in the notice of copyright that no copyright may subsist in the work. To ascertain this date is within the duties of this Office. Not to ascertain this date is shutting our eyes to a fact of the possible existence of which we were put on notice when the application was filed with the name "Arthur Goodrich, deceased," as copyright owner. The majority contends that this date is not within the ~~scope of the~~ Board's purview. The minority takes issue with this.

Argument:

Inquiry would reveal that Arthur Goodrich died on June 26, 1941. The affidavit of manufacture on the application form shows that the printing of the text was completed on June 30--four days after Goodrich's death, and more than three weeks prior to publication. Sec. 18 of the Copyright Act states that the notice of copyright should contain the word "Copyright," accompanied by the name of the copyright owner, and Sec. 201.8 of the Code of Federal Regulations of the Copyright Office further provides that the claimant's name as printed in the notice "should be the real name of a living person." These requirements look to publication. By no accepted definition would publication occur in this case until July 18. At that point the notice was defective, for it was in the name of a dead person--contrary to the rules of the Office. Copyright could only be obtained by publication with the correct name of the proprietor--the executor--in the notice. Lest this appear to be unduly harsh, it should be noted that the author was a distinguished man of letters. Surely his publishers must have known of his death in sufficient time to hold up the printing and change the notice. Printing was not completed until four days after the author's death. The publishers must have known this in sufficient time to remove copies in the hands of the book-sellers and reviewers, for more than three weeks intervened between death and publication. Surely the executors or the family should have realised the impending publication, for the New York Times' obituary column states that the novel was to be published in the coming month.

Conclusion:

The majority of the Revisory Board have indicated that should Arthur Goodrich have died before publication of his work, some doubt would be entertained as to the validity of the copyright. Because of this the minority contends that the date of death should receive official cognizance and consideration. Arthur Goodrich died before publication. The notice of copyright was, therefore, fatally defective and registration of the work should therefore be declared invalid and the claim rejected.

Respectfully submitted

*Walter L. Forzheimer*  
Member, Revisory Board

This application was ultimately filed without action upon receipt of a letter from D. Appleton-Century Company dated November 28, 1941, to the effect that "There are apparently no further representations that we can make." the Copyright Office having requested that a case be made for the registration.

R. S. MacCarteney, 12-4-41

LCS:emb  
8-26-41

MAJORITY MEMORANDUM

MP-8627934  
NOTICE

with deceased author's  
name.

Remitter: Rockhill, Margaret H., Estate of (Class ?) 44840

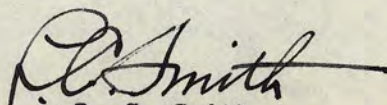
Title: "Medical Woman's Journal, June, 1941"

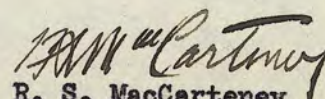
Question: Is copyright notice valid?

This case involves a question similar to that raised in connection with the work "The Sound of Wings," by Arthur Goodrich. (See Minority Memorandum, Mr. Pforzheimer, August 15, and Register of Copyrights' Memorandum referring to this dissent, August 19, 1941.)

Mr. Smith and Mr. MacCarteney recognize the fact that the publishers had knowledge of the death of the copyright claimant before the completed copies of the work left the press. This is evident, for the work itself contains an obituary and an editorial which refer to the death of the copyright claimant. It is not conclusive, however, that the title-page was printed subsequent to those pages containing the obituary and editorial, as those pages may have easily been set up and run off the press well in advance of the actual death of the copyright claimant. It is admitted that there was opportunity for the publishers to stamp out the name of the copyright claimant in such instance and replace it with the one which he would know to be proper. It is quite possible, however, that such information was not available to the publisher; that is, matters of probate had not been settled; the will may not have been read; or there may have been no approval or appointment by the Court of the executor, administrator or trustees as required by the laws of the domicile of the deceased. To obtain all this evidence and pass upon it places the Office in the quasi-judicial position of interpreting questions of substantive law which it is not believed should be done--not alone because the courts seem to be jealous of permitting questions of substantive law to be determined finally by an administrative body, but also the Office has not made it a practice to attempt to determine the rights of a person to claim a copyright when such would involve serious questions of substantive law. It is believed that Section 8 of the Act is so worded that the Register of Copyrights is justified in interpreting it in favor of those who claim to succeed to the rights of the author as either executor or administrator of the claimant (who, it appears, might be considered as author of the work in her late capacity as managing editor of the work). The Supreme Court has already rendered an opinion on the rights of an executor under Section 24 of the Act, *Fox Film v. Knowles*, (261 U.S. 326), and it appears possible, if not probable, that a similar conclusion would be reached regarding Section 8, under circumstances similar to those in this case.

There is a doubt which must be recognized, and where such doubt exists, it has been the policy of the Office to resolve the doubt in the favor of the applicant. The undersigned, therefore, recommend entry, but suggest that an application be filed giving as the copyright claimant the name of the executor, administrator or trustee, or such other person controlling the estate of the deceased as provided by the laws of her domicile at the time of her death.

  
L. C. Smith,

  
R. S. MacCarteney

Reject--W. H. Wise

WLP:emb  
8-25-41

## NOTICE

## MINORITY MEMORANDA

Remitter: Rockhill, Margaret H., Estate of (Class ?) 44840

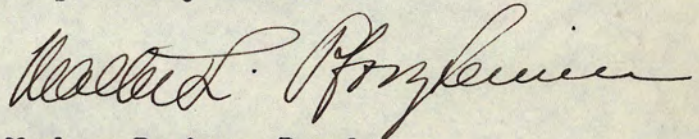
Title: "Medical Woman's Journal, June, 1941"

Question: Is copyright notice valid?

Registration is here sought, in Class B-1, for the June, 1941, issue of a monthly periodical entitled "Medical Woman's Journal." The copyright notice reads: "Copyright, 1941, by Margaret H. Rockhill." The issue was published on June 23, 1941, and line (1) of the application for registration states the name of the copyright owner to be the "Estate of Margaret H. Rockhill."

The Board, both majority and minority, takes the same position as in the Hauswirth case, ruled on the same day, except that no question concerning an incorrect date in the affidavit of manufacture is at issue here. Suffice it to say, however, that this issue of the magazine contains not only an editorial, as an integral part of the editorial page, on Margaret Rockhill and the loss occasioned by her death, but also a special two-page obituary and tribute bound in with the text. It would have been a simple matter, in the course of printing and binding this issue, to ascertain the correct form of notice of copyright under these circumstances. Certainly all parties concerned knew of the death of the copyright owner. The notice was fatally defective and registration should be denied.

Respectfully submitted



Member, Revisory Board

Reject--W. H. Wise

*Melrose*

MEMORANDUM

Remitters: Melrose Bros. Music Co., Inc. - No. 54998  
Title: Muskat Ramble  
Question: Adequacy of copyright notice.

Facts.

The copyright notice appearing on the title page of this work is in the following form—

Copyright MCMXXVI by Edward Ory  
Copyright transferred MCMXXXVII to Melrose Bros. Music Co., Inc.

The question raised is whether this is an adequate copyright notice.

Decision.

Notice acceptable.

Reasons.

It has been argued by Mrs. Rafter that strictly speaking this is not a notice of copyright but rather a notice of assignment. Upon search it was found that in 1926 Edward Ory registered for copyright a manuscript musical composition of this title, consisting of the melody. At this time there has been filed for registration a complete band arrangement, which on the title page repeats the 1926 copyright notice, and adds the statement that the copyright is transferred to the Melrose Bros. From the foregoing it is obvious that this is a notice of assignment and not a notice of copyright in the orchestral arrangement. However, from the practical viewpoint, there can be no possible doubt that the public is fully advised that copyright in this composition is owned by the Melrose Bros. Music Co., Inc. There is considerable doubt in the event of a copyright suit whether the infringer would be permitted to set up as a defense that the notice used is inadequate and did not fully advise him that there was copyright subsisting in the musical composition and that it was claimed by Melrose Bros. Music Co., Inc. Since there is an existence of a doubt, the application must be passed for registration, and that action will be taken upon receipt of an application from Melrose Bros. Music Co., Inc., giving the name of the arranger, Bob Haggart, which is inadvertently omitted from the original instrument. Furthermore, all pages except the first few bear the correct notice - Copyright MCMXXXVII Melrose Bros. Music Co., Inc.

*W. Harvey Wise, Jr.*  
Chief, Revisory Board.

Approved by:

MINORITY MEMORANDA

NOTICE  
with deceased author's  
name

Remitter: O'Brien, Clarence A. (Class A-1, Deposit Account)  
Title: "The Hauswirth Plan - A Practical Solution"  
Question: Is copyright notice valid?

Registration is sought in this Office under Class A-1 for a booklet entitled "The Hauswirth Plan," by Charles A. Hauswirth, late Mayor of Butte, Montana. The copyright notice reads as follows: "Copyright 1941, by Charles A. Hauswirth," and the application for registration states him to be the copyright owner. The affidavit of manufacture states that the printing of the booklet was completed on April 9, 1941, and that the book was published on August 1, 1941.

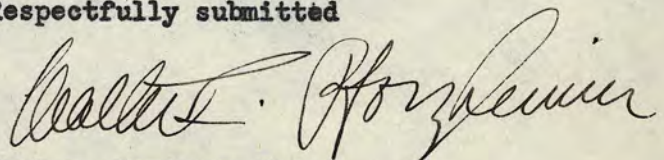
The copyright notice is correctly affixed inside the front cover, as the cover also serves for a title-page. The next page consists of a foreword, the opening sentence of which states that Hauswirth died on the 11th of April, 1941. The Copyright Office is thus put on notice that Hauswirth died prior to publication of his booklet, and that the copyright notice therein is fatally defective, as it is in the name of a dead man. This is contrary to the provisions of the Copyright Act, and the regulations of the Copyright Office as set forth by the undersigned in his dissent in the similar case of Arthur Goodrich on August 15, 1941.

It is noted that the page containing the foreword is a part of the same leaf on which the last page of text is printed, and that therefore it was necessary to print these pages after the death of Hauswirth. This in turn was after the date on which the affidavit of manufacture states that printing of the text was completed. Furthermore, in order to add the foreword to the printed text it was necessary to bind the booklet after the foreword had been added. Therefore no hardship would have been caused by adding a new corrected notice of copyright on the booklet with the proper name for the claimant in the notice. Ignorance of the law is no excuse, and had there been any question in the minds of decedent's executors, they might have inquired of the Washington counsel who was retained to secure this registration.

The majority of the Revisory Board holds that the notice in this booklet is valid, and that a good copyright was obtained upon publication. They have ruled that a letter should be sent, however, stating that the application for registration should be amended to place the name of the executor or administrator in line (1) as copyright owner, and that the affidavit of manufacture should be corrected to give the proper date of completion of the printing.

The minority holds that as the notice could have been corrected without any hardship prior to publication of the booklet, and as same was fatally defective as a matter of law, the attempted registration should be finally rejected for failure to comply with the Act. Furthermore, the minority contends that the affidavit of manufacture was made in flagrant disregard of the facts and cannot be cured by merely making a new affidavit with the proper date.

Respectfully submitted



Member, Revisory Board