

NOTICE  
with deceased  
author's name

## MINORITY MEMORANDUM

August 1, 1942

Remitter: Lippincott, J. B., Company (Deposit Account)

Title: "Murder Will In"

Question: May registration be made for a book bearing a notice in the name of a person who was not living at the time of publication?

The case under consideration is concerned with the book entitled "Murder Will In," by Carolyn Wells. Two copies of this work bearing notice of copyright in the name of the author were received in this Office on May 14, 1942, accompanied by an affidavit stating that the book was published on the 7th day of May, 1942. The fact that Carolyn Wells had died on March 26, 1942 was public knowledge, having appeared in numerous newspaper articles as she was a person of considerable reputation in the literary world.

In the opinion of the undersigned, registration may not be made in the name of a person not living at the time of publication of the work in question, as such registration does not meet the requirements of the law. Section 9 of the copyright law provides: "That any person entitled thereto by this Act may secure copyright for his work by publication thereof with the notice of copyright required by this Act..." Section 10 provides, "That such person may obtain registration of his claim to copyright by complying with the provisions of this Act, including the deposit of copies ..." Section 18 provides, "That the notice of copyright required by section nine of this Act shall consist either of the word "Copyright," or the abbreviation "Copr.," accompanied by the name of the copyright proprietor ..." The name of the copyright proprietor in the notice should be the real name of a living person, or his trade name if he always uses one, or the name of the firm or corporation claiming to own the copyright. This is the requirement in the Code of Federal Regulations of the Copyright Office, Chapter II, Title 37, as amended to October 1, 1941.

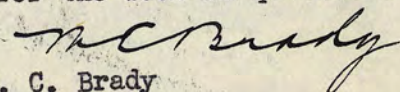
In the opinion of the undersigned no copyright registration of the work under consideration is permissible. Ample time, six weeks in fact, elapsed between the death of the author and the publication of the book to have permitted the affixing of a notice in the name of the administrator or executor of the estate. The undersigned is therefore in favor of refusing registration of this work.

Attention is called to the correspondence in a similar case, concerning the book "The Song of Wings" by Arthur Goodrich, who was deceased at the time of publication. This correspondence was conducted personally by the Register of Copyrights with the publishers, D. Appleton-Century Co., Inc., and no registration was made for the book in question.

Minority Opinion sustained.

C.L.B., Aug. 4, 1942

M. C. Brady



THE LIBRARY OF CONGRESS—COPYRIGHT OFFICE with deceased  
author's name

## MEMORANDUM

REFERRING TO divided opinion of the Revisory Board in the case of "Murder Will In,"  
remitter: J. B. Lippincott Co. (deposit account):

DATE August 4, 1942.

To Mr. Richard S. MacCarteney  
Chairman, Revisory Board

1. Section 8 of the Copyright Act provides that there are two classes of persons who may acquire copyright "under the conditions and for the terms specified in this Act." The first class consists of the "author or proprietor of any work"; the second, "his executors, administrators or assigns." It is believed that it was the purpose of Congress by this provision to provide that if the author or proprietor of a work had a common law right in it, his executor having the common law right as executor might acquire copyright in it. To my mind this goes no farther than to show that Congress intended that even if an author or proprietor should have died holding the common law right, the right to obtain the copyright should continue to vest in his estate. However, the law is explicit upon the point that the only way to obtain copyright is by following the provisions of the Act, and one of the provisions of the Act is that copyright can be obtained only by publication with the name of the copyright owner. It is obvious that if publication takes place after the decease of the author, it cannot be obtained by publication with the author's name; for the author never had copyright and never went through the process of obtaining it.
2. The undersigned is acquainted with the contents of the decision of the Supreme Court in the case of Fox Film Corporation v. Knowles (261 U.S. 326) and agrees with the statement in the penultimate paragraph of the Majority Memorandum that the decision in that case cannot be deemed an authority for registration of the original copyright in cases like the one under discussion.
3. It is said at the end of the second paragraph of the Majority Memorandum that the question as to whether registration can be made of a book published with a copyright notice stating that a deceased person is the copyright owner still remains unsettled. This presumably means unsettled as an administrative problem in handling matters of registration. It seems to me that one of the clearest indications which determines whether or not a point has been settled are rules and regulations of the Copyright Office. If in consonance with the statute, such rules and regulations have the force of law. Ever since the first impression of the "Rules and Regulations for the Registration of Claims to Copyright" issued by this Office it has been provided that "the name of the claimant printed in the notice should be the real name of a living person or his trade name if he always uses one."

This provision read in connection with the method of procuring copyright by publication with notice is strongly supplemented by reference in the rules and regulations as to who may obtain copyright--it being pointed out therein that authors or proprietors may obtain it on the one hand or the executors, administrators or assigns of the above-mentioned author or proprietor on the other. These specific provisions of the rules and regulations have been in force and effect for over thirty-two years. It seems to the undersigned that before abandonment or before holding that the conclusion which they have announced to the public for over a generation does not constitute a settled administrative question, their fallacy should be plainly established.

4. But look at Section 55 of the statute:

"That in the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of registration \* \* \* to contain the name and address of said claimant \* \* \*."

It is not believed that in making this provision the legislators had in mind the address of dead persons.

5. Thus far the question has been considered from the standpoint of the capacity of an executor of a dead person to acquire copyright under the Act by publication of the work with a copyright notice in the name of a deceased person who never owned or ever acquired any copyright. While in endeavoring to determine in any given case the duty on the part of the Copyright Office to register, the right to obtain registration can hardly ever be left out of the picture. The fact is that the Act approaches the problem of registration from two angles--from that of the applicant for registration in Sections 9 and 12 and from the aspect of the duty to register or not to register on the part of the Register of Copyrights. It is the determination of this duty which in the last analysis must solve the question of whether to register or not. Section 10 deals simply with the question of registration quite apart from the question of acquisition of copyright. As I read that section, a right to registration arises only if the provisions of the Act have been complied with. One of the provisions is the publication of the work with the name of the copyright owner. The purpose of this is obviously to tell the public who the copyright owner is. Inversely it prohibits registration in the Copyright Office unless the requisites of the Act have been complied with, and no one will deny that one of those formalities which is a requisite to registration is publication of the work with the copyright notice bearing the name of the copyright owner. The words of Section 10 read with other pertinent provisions of the Act seem of themselves to make this perfectly clear, but here I call upon an authority which far exceeds that of the Register of Copyrights--that is the opinion of the Committee which reported the bill which became the present Act. I refer, of

course, to Report 2222 to accompany H.R. 28192 (60th Congress, 2d Session) where it was stated:

"Section 10 explains the method for obtaining registration of the claim to copyright and what must be done before the register of copyrights can issue to the claimant a certificate of registration."

Minority opinion sustained.

A handwritten signature in cursive script, appearing to read "C. L. Dawne".

Register of Copyrights