

LCS:cw
3-10-43

MP-1601

NOTICE
PLACEMENT

THE LIBRARY OF CONGRESS—COPYRIGHT OFFICE

MEMORANDUM

March 10, 1943

TO ~~THE LIBRARIAN OF CONGRESS~~ Mr. Howell

FROM ~~THE~~ L. C. Smith

REFERRING TO Position of the copyright notice upon works for which EI applications are filed.

Mr. Lasica advises me that you welcome my preparing this memorandum as "amicus curiae" in connection with certain G. Schirmer applications recently come before the Revisory Board. I have two in mind, one covering a work entitled "Ten Quartets" by W. A. Mozart, in which the copyright is claimed on the running commentary by André Mangeot and on the Publisher's Preface and Editor's Introduction, and the other, a work entitled "Laments" from the "Goyescas" by Enrique Granados, in which the copyright is claimed on the editing by Carl Deis and the explanatory footnote by Willis Wager, in each case an EI application being filed in which the new matter consisted only of text matter. In each case, the copyright notice appeared upon the first page of music. The application for the first-mentioned work was rejected unanimously by the board, for the text matter appearing on the first few pages before the music bore no separate copyright notice. There was a title page immediately proceeding the text matter, and it, too, bore no copyright notice. The complete work as deposited certainly falls under the general classification of "music", and the Library of Congress will recognize that to be the correct category, for the work will be placed on the shelves of the Music Division of the Library of Congress and will be so catalogued. It is true the music is in the public domain and the text is new. I seriously doubt that the text matter in the present instance is without copyright protection, or that a court would consider the notice misplaced because a liberal interpretation of Section 19 of the Act will permit this work to be called "a musical ~~composition~~ ^{work}", and thus permit the copyright notice to be on the title page or first page of music.

It is my understanding that the present opinion of the Register of Copyrights is that the notice is not only misplaced in cases such as the above, but also that it is misleading to the public in that they will be led to believe that it is the music (which is in the public domain) which is copyrighted. This ^{latter} is admitted, and the ruling of the Register of Copyrights might be upheld on this basis, but I must admit there is a doubt in my mind that the notice is misplaced under Section 19 of the Act, and, further, that once registration has been completed, it might not be held that the public is misled, in view of the fact that the records of the Copyright Office are available to them for inspection. The applications in the present instance specifically limit the claim to text matter and not music. Suppose a copyright notice had been put on the title page of the book. Would not the public have been equally as misled that the music was under copyright, for Section 19 permits the notice to be placed upon the title page of a musical work. In view of the fact that the Register's ruling is not a recent one, I suggest a reconsideration of the whole question, fully appreciative, however, of the spirit in

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which the original ruling was established and the good which it can accomplish in protecting the public. It is only the doubt which exists in my mind that it ^{does not} meet the provisions of Section 19 that causes me to suggest reconsideration. I am not ready to say that Section 29 can be considered in connection with this question, in view of the presence of copyrightable matter in the work, which would make it extremely difficult, if at all, to prove any "fraudulent intent" in connection with the placing of the notice.

The second-mentioned application referred to a work entitled "Laments". The Revisory Board has divided, the majority taking the view that the copyright notice is on the first page of the music, upon which also appears the text, and the notice does not specifically limit itself to the text. Hence, it is not acceptable. If we are to consider the text matter as being sufficient to represent the copyrightable writings of an author, then I am ready to say that the position of the notice certainly must be accepted, for the same reasons considered in connection with the first application.

It is particularly important that the above matter be given consideration at this time, for there ^{is} before the Office two renewal applications covering works entitled BEETHOVEN SONATA NO. 15 (E 367154, October 7, 1915) and BEETHOVEN SONATA NO. 7 (E 367552, November 3, 1915). These works do not contain any new musical composition, but there is present in each of them copyrightable text matter. There is an inadequate copyright notice (lacking the year date) upon the title page. The first page of the music, however, does bear the correct copyright notice. The renewal registrations can be completed if there is a relaxation of the rule which now prohibits the registration of copyright claims to works containing only copyrightable text matter, in which the copyright notice does not appear upon the title page, but rather upon the first page of the music, which makes up the majority of the work.

Respectfully,



L. C. Smith

P.S. Please particularly note that Section 19 of the Act refers to a "musical work" and not "musical composition". Is it not natural for the ordinary man, exercising a reasonable amount of intelligence, to identify a book consisting of text and musical composition, the latter taking up the major portion of the space, to consider the volume as a "musical work", even though the "musical composition" may be in the public domain? If the conclusion is reached that this would be the view of the average man, then it can hardly be said or upheld in any court that a copyright notice is not properly placed in such case if it appears on the first page of music, rather than upon the title page. If this view cannot be admitted, then certainly those not accepting it might possibly entertain a doubt as to their position, and the doubt, of course, would have to be resolved in favor of the applicant.

(For DECISION see Minority Memorandum dated March 8, 1943.)

March 8, 1943

MP-1621
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Remitter: Schirmer, G. Inc.

Title: "Laments, or The Maiden and the Nightingale"

Question: Where two copyright notices each with a different year date appear on the first page of republished copyrighted music, one apparently being the original notice referring to the music still under copyright and the other being a new notice referring to the text on the same page, which text is the only new copyright matter and under the Office practice only registerable in Class A, is the new notice acceptable as referring to the new text matter so as to warrant registration in Class A?

The Board disagreed on the question, the minority (Mr. Lasica) voting in the affirmative.

The work is a republished musical composition (title supra) still under copyright, with text the only new copyrightable matter. The text appears at the bottom of the first page of music, on which page also appears the title of the work. Under the text is printed the original 1915 notice of copyright, referring to the music, and under this notice the new 1943 notice apparently referring to the text or new matter. Application has been filed on form E1, claiming copyright in the explanatory text and in editing.

By analogy the following Office rule applies (see Memo, January 15, 1942) and registration in this kind of cases can only be made in Class A for the text separately, provided the 1943 notice can be accepted as covering the text so registered:

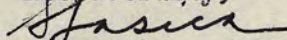
Where a musical composition in the public domain is reprinted and the only new matter with such music is a page or two of text matter, an application on form E1 (for a republished musical composition) with the statement of new matter as "text matter" cannot be accepted. The text matter may be subject matter of copyright if a notice of copyright is printed in connection therewith and an application on form A1 to cover such text matter can be accepted; but where a notice of copyright in such case is placed in the statutory position for a musical composition, no application can be accepted. Such a notice advises the public that a claim of copyright exists in music which is in the public domain.

While the minority admits that in view of the wording of this rule some doubt exists in this case, yet he feels that this doubt, in conformity with the Office practice in doubtful cases, should be resolved in favor of the applicant. After all, under Section 6 of the Act, this work is a new work subject to copyright, and the 1943 notice cannot, under this Section, extend copyright in the already copyrighted music. The Office does not question the multiplicity of notice in other types of new versions. Intelligent interested public cannot be misled. The presence of more than one notice on a work normally implies republication with new copyright matter, and this new matter can easily be ascertained by consulting the publisher or this Office. Moreover, this is not a case where the music is in the public domain, and the argument against public disception does not apply. Both notices are essential and both are valid. The 1943 notice is unquestionably a good book notice, the title of the work appearing as it does on the cover page.

Therefore, the minority is of the opinion that this 1943 notice should be accepted and that the applicant be advised to file application on form A1 stating after the title (space 6) that copyright is claimed in the new text matter only, or words to that effect.

(For DECISION, see reverse)

Respectfully,



S. LASICA

Member of Revisory Board