

NOTICE
YEAR DATE

MINORITY MEMORANDUM

Sept. 27, 1943

Remitter: American Map Co., Inc. (46680)

Title: "Cleartype Junior World Atlas."

Question: Notice lacks year date.

Deposit under consideration is a book and applied for in that category. The notice of copyright is defective for the recording of a book as it does not contain the year date of publication. Section 18 reads as follows:

"Sec. 18. 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, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. ..."

The publisher of this book has not used the full form of the notice as required for literary, musical and dramatic works, i.e., "Copyright 1943 by American Map Co., Inc." They have used on the cover and on each separate page a mongrel form: "Copyright American Map Co., Inc." In the opinion of the undersigned, if this work is to be recorded as a book, the notice is incomplete as it does not contain the year date of publication and does not convey the information to the public to which they are entitled: that the copyright expires within the twenty-eight year and is renewable for twenty-eight years more.

The separate contents of the book might be assumed to be in the public domain even now, and the only new feature of this publication to be the "cleartype" method of printing or lithographing used. It is hardly permissible for this remitter and claimant to preempt a claim in all maps because of a certain method of reproduction which they use. It is my understanding that it is their practice to employ this form of notice always, and it is my opinion that its defects should be called to their attention and a reminder given to them that the statute protects original authorship and purposeful compilation--not the method employed in the reproduction of, presumably, maps already either under copyright or in the public domain. The undersigned is in favor of rejection, as presumably these contents have already been recorded for copyright under the following:

No. A-431508, June 28, 1943, "Cleartype General Atlas of the World No. 9550", and

No. F-18207, July 21, 1943, "Cleartype Folder Atlas of the World No. 9458 A"

Such monopoly should not be permitted under the aegis of copyright.

MEMORANDUM

NOTICE
YEAR DATE

December 31, 1943

To the Assistant Register
of Copyrights

During the month of December every year the Office receives numerous applications with the work published in December but the copies bearing the postdated copyright notice. Although formerly such claims were always registrable with a warning letter, the present practice, adopted several years ago, is to refuse registration and refund the fee, using Circular Letter 39.

At the suggestion of the Chairman, the Revisory Board has recently considered the desirability of reverting to the former practice of registering these claims with a warning letter. The Board is unanimously of the opinion that the former practice is preferable and recommends that it be adopted immediately.

Several reasons may be advanced justifying the Office to discontinue its present practice of outright rejection in such cases in favor of the former practice:

A. There is no decision of a court of last resort invalidating the postdated notice. The language of the cases which refer to this notice is obiter dictum, the question not being directly before the court.

There is only one case which invalidated a postdated notice. This is *Baker v. Taylor*, 2 Fed. cas. 478 (Cir. Ct. 2d Dist., now District Court) decided in 1848, nearly a hundred years ago. It is not known that an appeal was ever taken.

B. Lacking a more authoritative precedent, the validity of a postdated notice may be considered an open question under the present law and until authoritatively determined by the courts.

C. The Office action of refusing registration amounts to adjudication of the question involving both the adjective and substantive law. This admittedly is not a function of the Copyright Office.

D. The Office action prevents, or at least retards, the claimant from complying with Section 12 of the Copyright Act which requires registration as a condition precedent to filing a suit for infringement, the only opportunity the claimant has for testing the validity of the notice before a court.

E. There is lack of uniformity in the Office practice as between this type of defects and others. In other equally doubtful cases the Office generally resolves the doubt in favor of the claimant and makes registration, sending him a warning letter. For example, this practice is followed where the elements of the notice are dispersed on the same page; where several names appear in proximity to the name of the claimant; where the name of the claimant

appears on the title page and the ~~rest of the~~ notice with only the claimant's initials is printed on the page immediately following; and in periodicals where the notice is given on the back of the title page instead of on the title page, first page of text, or under the title heading. The reason for this practice is that, notwithstanding certain decisions of the district courts, the Register of Copyrights has not felt bound to give so strict an interpretation ~~to them~~ for the purpose of administration.

Herbert A. Howell

Chairman, Revisory Board

(Prepared by Mr. Lasica)

The above recommendations are approved. Applications will not hereafter be rejected merely because of a year date in the copyright notice subsequent to the actual date of publication as shown by the application. However, when such applications have been passed for registration a letter will be written to the applicant pointing out that Baker v. Taylor ¹⁸⁴⁸ (2 Fed. cas. 478) decided that a notice with a year date subsequent to that in which copyright was secured was invalid, and that this decision has never been overruled, hence there must be a doubt as to the validity of the notice in such cases and corrections should be made in the notice where practicable in subsequently issued copies.

January 1, 1944

Richard B. De Wolf

Assistant Register of Copyrights