

CLB-KGC  
October 29, 1937.  
PB 2, p. 173

CLB file  
(CLB's copy in book only)

Mr. Wise's copy. MP-26  
notice.

DECISION

Re Ambrose M. Smith

I have gone very carefully into the facts and law involved in this request for re-consideration. I have also examined the decision of Record and Guide Co. vs. Brooley, 175 Fed. Rep. 156. As I read this decision the motivating ground for rejection of the notice is to be found in the fact that the Court felt that the statement which contained the date of publication was one entirely apart and distinct from the copyright notice. An examination of the facts of that case leaves me with the same impression. I do not feel that that decision is one which can serve in all ways as a precedent on which a determination of the present case can be based.

As the title-page of the particular book before us is printed it reads downward in great part and not across the page. Continuing to read downward from the words "Copyright 1937" these words are followed by the words "By Ambrose M. Smith". Ambrose Marye Smith is given on the application as the copyright owner. The sequence of the words "Copyright 1937 by Ambrose M. Smith" is, standing alone, in spite of the vacant space following the words "Copyright 1937", susceptible of an interpretation that Ambrose M. Smith is the person who is the copyright owner. All three elements required for adequate copyright notice are contained in the title-page and are in sequence reading the page downward, as it is obviously intended to be read. On the cover the words "By Ambrose M. Smith" do not follow the words "Copyright 1937", for the simple reason that those words are not included on the cover and, as they stand on the cover would have to be associated with the title and indicate no more than authorship. The application states that Ambrose Marye Smith is the author. It is possible that the title-page was printed from type set, for the purpose of meeting the requirements of the cover and stating merely the fact of authorship. It is also possible that the cover was printed from type set arranged for the title-page containing as it does the words "Copyright 1937", which was subsequently left off the cover. In other words, it is possible that the phrase "By Ambrose M. Smith" was intended in the first instance to indicate authorship apart from the question of copyright ownership. But this is a question which must remain in doubt as far as the Copyright Office is concerned. I cannot say that I am convinced that the notice does not meet with the requirements of the statute. This being so under the principles of rejection and entry adopted by this Office as a guide for its action in the premises, the application should be accepted. The action taken in this case must not be understood as in any way invading or denying the force of the rule that the mere fact that a title-page contains somewhere on it the three elements essential to a good copyright notice, is not sufficient to meet the requirements of the Copyright Act as to notice. However, the action taken in this case is to be accepted as indicating that a mere vertical space separation between the elements of the copyright notice, when those elements were in sequence, does not <sup>necessarily</sup> mean that the notice fails to meet the legal requirements. At the same time, when such separation exists care should be taken to determine whether the statement of facts thus separated constitute separate or one and the same statement.

C.L. Bouvé *clb*  
Register of Copyrights.

copyright notice.

October 26, 1937

On October 14 Mr. Ambrose M. Smith filed application, fee and copies for registration of his work entitled "A Supplement to the Compilation of Louisiana State & Municipal Bonds." Upon examination of the copies, the examiner rejected the application on the ground that the notice of copyright was fatally defective in that the name of the copyright owner was not included as a part of the notice. In the middle of the title page of the work in question there is printed the phrase "Copyright 1937." Two inches below this phrase appears the following statement, in this form:

By  
AMBROSE M. SMITH  
of  
A. M. SMITH INVESTMENT CO.

Facts.

The examiner was of the opinion that the copyright notice did not contain the name of the copyright owner. The Chairman of the Revisory Board when the matter came before him for review, felt that the case was wrongfully rejected and held it for consideration of the entire Board. After a careful discussion of the subject, the Board failed to reach an unanimous decision. Mrs. Rafter was of the opinion that the notice is fatally defective in that the name of Ambrose M. Smith is not sufficiently close to the phrase "Copyright 1937" to be considered a part thereof, and also she felt that it referred to authorship rather than to the copyright notice. Mr. Smith and Mr. Wise on the other hand argued that no one could read the title page without reaching the conclusion that the copyright in the work was claimed by Ambrose M. Smith, and therefore they were of the opinion that this copyright notice could not be held as failing to meet the requirements of the statute. There being a disagreement of the members of the Revisory Board, the case was submitted to Mr. DeWolf for consideration. The decision rendered is that the notice is fatally defective on two grounds: (1) the name is too far removed from the phrase "Copyright 1937" to be regarded as a part of the copyright notice; and (2) the phrase "By Ambrose M. Smith" serves as a statement of authorship, thereby to some degree at least negating the fact that it is a part of the copyright notice.

Reconsideration is respectfully requested on the following grounds:

(1) All of the elements constituting the notice are associated. It is true that the phrase "Copyright 1937" is separated by a space of some two inches from the name of the copyright owner, but it is submitted that the conjunction "by" connects the elements. When one reads the phrase "Copyright 1937" the eye catches the statement "By Ambrose M. Smith" almost at the same moment. In other words, the association of the two is made without any conscious effort.

(2) The purpose of the notice is to advise the public that copyright is claimed in the work, and among other things to disclose the name of the copyright owner. It is submitted that no one in this case can be deceived as to the identity of the copyright owner. There is no other name on the title page which can logically be associated with the notice of copyright. It has been argued that if the contention of Mr. Smith and Mr. Wise be admitted, the statement "By Ambrose M. Smith" must serve a dual purpose--that of authorship and also as a part of the copyright notice. For the sake of argument, this contention is granted, but it is felt that there is no serious objection to this so long as the public is advised that Ambrose M. Smith is the copyright owner of this work.

(3) It is felt that the Examining Board for some time has been in search of a yard stick to measure just how closely the elements of the copyright notice must be associated. It is believed that it will be difficult to keep this case from serving as a yard stick in future decisions. The important thing in a notice of copyright is that the elements comprising it be so associated as to definitely advise the public of three facts: (1) that copyright is claimed in the work; (2) the date when the copyright came into existence; and (3) the name of the copyright owner. It is believed that these three requirements are met in the present case, and that the application should be passed for registration.

Under the circumstances, it is respectfully requested that the case now under consideration be again reviewed.

Respectfully submitted,

Chairman of Revisory Board.

Concurring,

RCD:MPF

Member of Board.

In the case of Record & Guide Co. vs. Bromley, 175 Fed.Rep. 156, the court passed upon the validity of a notice containing the word "Copyright" and the name of the proprietor in one line, and the date in the line below. This notice was held invalid, and the reasoning of the court in this case seems applicable to the present case. Reference is made particularly to the paragraph in the opinion near its close, beginning "In each of these cases." This is the only case I have been able to find in which the facts are substantially the same as those in the instance case, and in my opinion the reasoning in the case cited would probably be followed if the question of the present notice should come up.

I am therefore confirmed in the opinion which I first expressed, that the notice in the present case is bad and that the application should be rejected.

Oct. 27, 1937

Assistant Register of Copyrights.

(2) The purpose of the notice is to advise the public that copyright is claimed in the work, and among other things to disclose the name of the copyright owner. It is submitted that no one in this case can be deceived as to the identity of the copyright owner. There is no other name on the title page which can logically be associated with the notice of copyright. It has been argued that if the contention of Mr. Smith and Mr. Wise be admitted, the statement "By Ambrose M. Smith" must serve a dual purpose--that of authorship and also as a part of the copyright notice. For the sake of argument, this contention is granted, but it is felt that there is no serious objection to this so long as the public is advised that Ambrose M. Smith is the copyright owner of this work.

(3) It is felt that the Examining Board for some time has been in search of a yard stick to measure just how closely the elements of the copyright notice must be associated. It is believed that it will be difficult to keep this case from serving as a yard stick in future decisions. The important thing in a notice of copyright is that the elements comprising it be so associated as to definitely advise the public of three facts: (1) that copyright is claimed in the work; (2) the date when the copyright came into existence; and (3) the name of the copyright owner. It is believed that these three requirements are met in the present case, and that the application should be passed for registration.

Under the circumstances, it is respectfully requested that the case now under consideration be again reviewed.

Respectfully submitted,

Chairman of Revisory Board.

Concurring,

Member of Board.

RCD:MPY

In the case of Record & Guide Co. vs. Bromley, 175 Fed. Rep. 156, the court passed upon the validity of a notice containing the word "Copyright" and the name of the proprietor in one line, and the date in the line below. This notice was held invalid, and the reasoning of the court in this case seems applicable to the present case. Reference is made particularly to the paragraph in the opinion near its close, beginning "In each of these cases." This is the only case I have been able to find in which the facts are substantially the same as those in the instance case, and in my opinion the reasoning in the case cited would probably be followed if the question of the present notice should come up.

I am therefore confirmed in the opinion which I first expressed, that the notice in the present case is bad and that the application should be rejected.

Oct. 27, 1937

Assistant Register of Copyrights.

*notice  
Initials of one  
copyright owner.*

## M E M O R A N D U M

November 16, 1937

Subject: Remitter New York Times and North American Newspaper Alliance, Inc.

Question: Adequacy of copyright notice in the following form:  
"Copyright 1937 by New York Times and NANA, Inc.

The application presented gives in space (1) provided for the name of the copyright owner, New York Times and North American Newspaper Alliance, Inc. The notice of copyright which is printed on the copies reads as follows: "Copyright 1937 by New York Times and NANA, Inc." It has been argued that this application should be rejected on the ground that the initials of one of the copyright owners has been used in the copyright notice rather than the full legal name as contemplated by the copyright statute. After considerable discussion and careful consideration the conclusion reached is that the notice in the above form is adequate for the following reasons:

- (1) The name of one of the copyright owners is given in full both in the application and in the notice of copyright, and the identification of this party is complete; the initials of the second copyright owner serve as a complete identification upon the consultation of the records of the Copyright Office.
- (2) In the present case the use of the initials NANA, Inc., is in the nature of a trade name, since the North American Newspaper Alliance, Inc., is often referred to in printed articles and <sup>Congressional</sup>hearings as NANA, and probably there are few in the literary world who would not readily identify NANA, Inc., as an abbreviation for the North American Newspaper Alliance, Inc.

Under the circumstances, therefore, the notice in the case under consideration is deemed sufficient to permit the application to be passed for registration.

*W. Harvey Wise*  
Chairman, Revisory Board