

Upon personal representations made by applicant's attorney on Jan. 29, 1942, the notice of copyright was deemed sufficiently acceptable to permit entry. By order of the Acting Register of Copyrights

MP-1076

MINORITY MEMORANDUM

Notice

December 30, 1941

Remitter: Fraternity of Phi Gamma Delta (81075)

Title: "Songs of the Fijis and Their Colleges"

Question: Whether a notice of copyright inscribed on the page opposite the first page of music of a song book is acceptable as substantially complying with the provisions of Section 19.

The work in question is a book of songs and at the bottom of the Foreword on the page across from the first page of music there appears a copyright notice in the name of the Fraternity of Phi Gamma Delta. Mrs. Brady and Mr. Pforzheimer hold that the appearance of the notice on the page across from the first page of music does not constitute compliance with Section 19 providing that the notice in the case of musical compositions must appear either upon the title page or first page of music. In support of their contention they quote the language of the late Judge Patterson of the District Court of New York in the case of J. A. Richards, Inc. v. New York Post, Inc. in which the Judge expressed himself as follows: "It follows that a notice on any other page [than the title page or page immediately following] is ineffective." Further "But when the Act requires that copyright notice be applied at a particular place in a work, the courts may not dispense with the requirement and say that a notice appearing somewhere else is enough."

Mr. MacGartney contends that circumstances obtaining in the two cases, the one at issue and the decision referred to above, are not analogous. In the Richards case the notice was placed on the back cover of a 52 page pamphlet. In holding that a notice not placed according to the Statute, no matter how prominent, is ineffective Judge Patterson then specifically referred to the United Thrift Plan, Inc. and the Bessett case, both of which dealt with notices of copyright appearing on the back covers of multiple paged booklets. In the case at issue there are not "many pages intervening" between the strictly statutory position and the actual position of the notice. The notice is directly across from the first page of music where it could not possibly be overlooked. Indeed, one seeking to determine whether or not copyright was being claimed and thereby examining the first page of music could not fail to see the notice with the book open before his eyes where it appeared on the same plane on the opposite page.

It may possibly be that a court rendering a narrow decision in strict compliance with the letter rather than the spirit of the law might adjudge the notice incapable of supporting a suit for copyright infringement. It is the view of the Minority, however, that the Copyright Office being simply an office of administration should in its decisions take also into account the spirit of the law and where there has been substantial compliance any doubt as to the validity of an applicant's claim should be resolved in favor of the applicant and the registration granted.

Write--call attention to provisions of Act. any arguments presented will be considered. By order of R. W. C.

*R. W. C.*

W. H. W.  
1-2-42

NOTICE

MAJORITY MEMORANDUM

December 31, 1941

Remitter: Fraternity of Phi Gamma Delta (81075)  
Title: "Songs of the Fijis and their Colleges"  
Question: Whether a notice of copyright inscribed on the page opposite the first page of music of a song book is acceptable as substantially complying with the provisions of Section 19.

Application for registration of the claim to copyright in this work was filed upon Form Al, which is the classification for a "book." It is obviously the applicant's thought to secure copyright protection for this work as a "book."

The volume commences with a title page, upon the reverse of which (page two) appears a table of contents. Page three also consists of a table of contents, upon the reverse of which (page four) appears the Foreword. The notice of copyright appears under the Foreword upon page four.

The undersigned consider this a misplaced notice of copyright, sufficient to deny the application for registration. This denial is based upon the opinion of Judge Patterson (the present Undersecretary of War) prior to his elevation to the Court of Appeals of the Second Circuit, in the case of J. A. Richards, Inc. v. New York Post, Inc., 23 F. Supp. 619 (D.C., S.D., N.Y., 1938). As the Minority Memorandum points out, Judge Patterson states that

"The plaintiff is right in urging that substantial compliance with the Copyright Act is all that is required. But when the Act requires that copyright notice be applied at a particular place in a work (the title page or page next following), the courts may not dispense with the requirement and say that a notice appearing somewhere else is enough."

The minority contends that one examining the first page of music in this book "could not fail to see the notice with the book open before his eyes." Judge Patterson, in the case cited above states in this regard,

"By explicit provision of the statute the place for copyright notice in the case of a book or printed pamphlet is on the title page or the page immediately following. It follows that a notice on any other page, no matter how prominent, is ineffective." (underlining ours)

The majority feel themselves bound by this decision to hold that the notice of copyright is misplaced, whether application for registration of this work be made as a book (as the applicant has done) or in Class E as suggested by the examiner. The application must be rejected.

Walter L. Byrd

Frank C. Brady

Write--call attention to provisions of Copyright Act. Any arguments presented will be considered. By order of Register. W. H. Wise, 1-2-42

1-29-42

Upon personal representations made by applicant's attorney on Jan. 29, 1942, the notice of copyright was deemed sufficiently acceptable to permit entry. By order of the Acting Register of Copyrights.