

## MEMORANDUM

TYPEWRITTEN COPIES  
(See "Publication")

8-25-41

Remitter: Manke, Albert A. (46547)

Title: "Table for Calculating Gallonage of Partly Filled  
Horizontal Cylindrical Tanks ..."

Question: Whether the existence of six typewritten copies of a work (subsequently printed and admittedly published with notice of copyright), two of which were given away and three of which were sold, constitutes a published edition within the meaning of the copyright law.

The typing of six copies and the sale of three under the circumstances of this case not believed to be publication. Register printed copies using form Al. W.H.Wise 8/26/41



## MINORITY MEMORANDUM

825-41

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Title: "Table for Calculating Gallonage of Partly Filled Horizontal Cylindrical Tanks..."

Question: Whether the existence of six typewritten copies of a work (subsequently printed and admittedly published with notice of copyright), two of which were given away and three of which were sold, constitutes a published edition within the meaning of the copyright law.

The applicant states that "The work was never published. I only had 6 typed copies, one of which I used myself, two I gave away, and sold three." In further support of the unpublished status of his work in typewritten form, the applicant pronounces that he cannot see and one would not conclude that from the six typed copies publication in that form had been effected. The distribution of five copies in typed form, he states, was "merely a beginning of the idea I had conceived".

In the view of Mr. Smith and Mr. Pforzheimer the sale of three typewritten copies and the gift of two others constituted publication within the statutory meaning of that term. Mr. MacCarteney holds otherwise. It is his contention that a bona fide publication is a publication commensurate with the uses to which the article published is expected to fill with respect to the normal requirements of the public. The running off of six copies of a work such as this on the typewriter and the happenstance of the sale and gift of five of them would not in any way be meeting the fundamental requirements of publication, which is the public availability of copies. That this is so is evidenced by the fact that the tables were later printed by means of a printing press, and it is these printed copies which the applicant offered for sale on June 28, 1941, with a notice of copyright inscribed on the printed copies that constitute the bona fide authorized and published edition. It is now the practice of the Office always to question typewritten copies as representative of a published edition, and only to accept such copies under protest. Why then in this instance should the Office reverse its policy and insist that the unadvertised sale and gift of six existing typewritten copies does constitute statutory publication in the face of the applicant's vehement denial of his intention to publish at that time?

Mr. MacCarteney believes that the distribution of the printed copies initiated on June 28, 1941, marks the bona fide publication in this case, and he is for entry accordingly.



Respectfully,

*R. S. MacCartney*  
R. S. MacCartney  
Member of the Board

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