

Remitter: John C. Evans (61088)

Notice MP 1465

Title: Evans Speed Shorthand - New Revised Fourth Edition

Question: Is the copyright notice acceptable for a book where it appears on the sixth page from the title page, the preliminary statement occupying one page of text and the Foreword occupying one page of text intervening between the title page and the page bearing the notice?

The work is a loose leaf instruction book. The notice appears on the sixth page from the title page, the Preliminary Statement Page and the Foreword page intervening. The minority (Mr. Lasica) feels that this notice is not in the statutory position in the work and should not be accepted. The majority bases its acceptance of the notice upon the fact that numerous precedents exist of previous acceptances of similar notices.

Two principles appear to have guided the Office in accepting these notices; (1) that their legality is doubtful and that the doubt should be resolved in favor of the claimant; and (2) that such notices meet the spirit of the Act. Such a notice might meet the spirit of the Act, but it certainly does not conform to the express provisions of the Copyright Act (Sec. 19) and to the judicial pronouncements on the question.

In the case of J. A. Richards, Inc. v. New York Post, Inc. 23 F. Supp. 619, decided in 1938, the court stated in part:

"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."

In the case of Kraft v. Cohen, 32 F. Supp. 821, decided in 1940, the court clearly defined what constitutes the title page and the page immediately following, thus: (quoting syllabus)

"Under statute requiring copyright notice to appear upon title page or the 'page' immediately following, each side of a leaf constitutes a 'page,' and hence copyright notice must appear on left-hand side of a leaf if matter in title page is on the right-hand side, and on right-hand side of leaf immediately following if title page is on left-hand side." (Underscore ours)

And as to the effect of a notice appearing elsewhere, the court in the same case continues: (quoting syllabus)

"A copyright notice printed on any page other than that indicated by the copyright statute is ineffective, no matter how prominent, and courts may not dispense with the statutory requirement."

With respect to the spirit of the Act, attention is invited to the clear declaration of the Register of Copyrights as to the extent to which administrative interpretation should be applied to the statutory provisions, referring specifically to the Copyright Act.

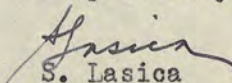
"This Office is bound by the terms of the Act. The words of the statute cannot be superceded by administrative procedure." (See Memorandum from Revisory Board, October 3, 1940).

Section 19 of the Act is clear as to the position of the copyright notice in books. This position has been construed by the decisions cited. The minority is of the opinion that the Office should not depart from these precedents merely to uphold prior action of the Revisory Board which is clearly contrary to the Act and to the court decisions on the subject. This notice should therefore be rejected as recommended by the examiner.

More detailed arguments cannot be presented, owing to the rule restricting dissenting memoranda of the Board to one page in space and twenty-four hours in time.

Minority sustained. I think the notice is invalid because of position, but may be publication has not been very extensive. Write and say if only a few copies have gone out and if they can be recalled the work may be reissued with notice correctly placed and then registered. R. C. De Wolf, 10/30/42.

Respectfully,


S. Lasica

Member, Revisory Board