

MEMORANDUM OF LAW
WORLD SERVICE OFFICE, INC.
COPYRIGHT CLAIMS
NARCOTICS ANONYMOUS
INTELLECTUAL PROPERTY TRUST

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- II. LEGAL ISSUES
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Legal Issues

I. Introduction

A. What a copyright is

A copyright involves the legal right to control the use and reproduction of authored materials. The right to control further use of a copyrighted work comes into being the moment the work is created and vests originally and unconditionally in the author(s). 1-7 Note that a "copyright is secured automatically when the work is created and that "only the author and those deriving rights through the author can rightfully claim the copyright." 1-9

Nature of Authorship: If no natural person is identified as the author of the work, then the work is an **anonymous** work. - meaning

B. Registration of a Copyright

Generally, any original author of a work can register a claim to copyright. Note that the copyright office will register a claim to copyright even if there is a reasonable doubt as to whether it is valid. The copyright office may, however, send a letter warning the claimant that reasonable doubt exists. 22-2. Furthermore, note that an author can register his claim to the work even if a copyright claim has been previously registered by another. 6-12. In such a case, the copyright office does not resolve conflicting claims, it simply registers claims to copyrights. - registration doesn't mean ownership
- resolution is vested in fed ct

Although ownership of a copyright vests with the authors the moment the work is created, registration of the copyrights conveys certain advantages. Namely, registrations filed within five years of publication of the work provide prima facie evidence of a copyright's validity. 4-13. However, an application to register a claim to copyright may be filed at any time during the term. Thus, if a registration is not filed within five years of publication it may be valid, but the evidentiary weight to be accorded to it

is left to the discretion of the court.

II. Insufficiency of the WSO's Copyright Claim

A. WSO not an "author" of the Basic Text

The person or entity who actually creates the work is considered the author. An author is one who contributed in some way to the creation of the work, and the only legal requirement is that to be considered an author one's contribution must be more than "de minimus". Picture Music Inc. v. Bourne, 314 F.Supp. 640, 645. An author may be persons, legal entities or a combination of the two. Furthermore, if the author is an entity, such an entity may be informal; e.g. an association or affiliation of persons. 6-2.

A copyright can be owned and registered by an entity if membership of the group is fixed and determined before or at the time the application was submitted. Vague, ambiguous, or open-ended copyright claimant identities are unacceptable.

The WSO was not an original author of the Basic Text, rather, the WSO was a service organization whose function was then and remains today to provide services for the Fellowship of Narcotics Anonymous.

B. Basic Text not a "Work Made for Hire"

Work Made for Hire:

The Copyright Act defines a work made for hire as either (1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned if (a) it is used in one certain types of work, and (b) if the parties expressly agree in a written instrument signed by them that the work is a work made for hire. 18 U.S.C. Section 101.

1. WLC and/or Fellowship not an "employee" of the WSO

The authors of the Basic Text were in no way under the employ or control of either the World Service Office or the World Literature Committee. To the contrary, the later two organizations exist to serve the authors as members of the Fellowship of Narcotics Anonymous.

a. Even if the authors were employees, there exists no employment K or valid, written instrument signifying that the Basic Text is a work made for hire.

C. The legitimate "authors" of the Basic Text never transferred their claim to copyright to the WSO.

Transfer:

"A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer is in writing and signed by the owner of the rights conveyed or by the owner's duly authorized agent." 8-3.

However, an oral assignment can be later ratified or confirmed by a note or memo. Section 204(9). Proof of the written evidence of transfer is not necessary to file an application with the copyright office, but it is necessary to support a copyright infringement claim. 8-4. Note: Dan-Dee Imports v. Well-Maid Toy Mfg., 217 USPQ 1363, 1365.

D. The above as cause for cancellation or supplementation of the current Basic Text copyright registration.

Faulty copyright registrations can be corrected. (Note, however, that intentional errors in copyright registration have invalidated the copyright. 4-23) The Copyright Office considers the first registration of a work to be the "basic registration". It is fundamental and all other applications build on it. A "basic registration", or any thereafter, may be modified, corrected, amplified, supplemented, or cancelled. 24-2.

A copyright registration can be cancelled. This is done by the copyright office not by a federal court. 24-22. Once cause for cancellation is when an application for copyright does not meet the requirements of copyright office regulation. For example, if information essential to rightful registration and copyright claim is omitted entirely from the

copyright application. 24-22.

III. Right of Supplementation

- A. By one or more of the original Basic Text authors as rightful claimants to the copyrights.

Supplemental registration, used to correct or amplify, must be done at any time during the copyright term through the use of Form CA. 24-4. Any author or copyright claimant in the work, owner of exclusive right, or duly authorized agent of the author, can supplement a copyright registration. In effect, a supplemental registration augments, but does not supplant, a "basic registration". 24-6.

The following are some examples of supplemental registrations:

1. Ownership - In cases where someone other than the author is incorrectly identified in the basic registration, the proper author may file another basic registration containing correct identification. Thus, the name of a person or entity incorrectly identified in the "basic registration" as the author can be deleted. In such a case, all that is needed is some supporting evidence identifying the new claimant(s) as a rightful author(s). Also, in this way authors can be added to a copyright registration. 24-8.

2. Supplemental registration can be used to correct erroneous employment for hire statements.

3. Supplemental registration can be used to expose unauthorized earlier registration.

B. Procedures, Requirements, and Effects of Supplementation

If an author who did not appear in the basic registration wishes to supplement a registration or file a renewal claim, he/she or it need only

file and record a document supporting claim of authorship with the copyright office. 24-6. When an application for copyright is received by the copyright offices which conflicts with a claim already filed, the second claimant "will be registered without further question if the applicant reasserts it, and the claim is not patently invalid." 25-19 As noted above, with a conflicting claim the copyright office may simply ask for additional information supporting the second claim. The Copyright Office will then assign a new registration number to a supplementary registration and issue a Certification of Supplementary Registration under that number. 37 C.F.R. sec. 211.5(d)(1)

If an original claim names the author as a work made for hire and a renewal claim names an individual author(s), the copyright office will write to the author(s) requesting information regarding the circumstances under which the work was written. "If the applicant asserts that the work was not a work made for hire, the renewal claim will be registered on behalf of the author...". 25-20

A person having an interest in the copyright of an anonymous work is permitted to record at the Copyright Office, at any time, a statement identifying one or more authors of the work. This can be done through either a registration or a supplemental registration of the work. If one or more of the authors of an anonymous work is identified before the expiration of the copyright term, copyright in the work will then endure for a new term based upon the life of the author or authors whose identity has been revealed. 17 U.S.C. sec. 302

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Copyright Opinion Letter

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cover

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as it is known today

I. HISTORY OF NARCOTICS ANONYMOUS INTELLECTUAL PROPERTY

Narcotics Anonymous^① began in 1953 in southern California. For many years the Fellowship grew very slowly and had little organization. In 1971, a membership business meeting at the first World Convention decided that the Fellowship should open a World Service Office (WSO). This office would publish NA literature, and serve as an information clearing house for new groups. At a similar held at the fourth World Convention in 1974, officers were elected to a Board of Directors for this office; these offices were directed to incorporate the WSO. On January 25, 1977, the Corporate Charter and Bylaws were filed with the State of California. On May 20, 1978, the members of the corporation amended the Articles of Incorporation to provide that the corporation shall be an exempt corporation under federal income tax law, Internal Revenue Code of 1954. (See Appendix A for Articles of Incorporation and Amendments and Appendix B for Bylaws).

During the 1982 meeting of the World Service Conference, participants discussed the office's place in the NA service structure. At that time a motion was passed which directed the WSO to amend its Bylaws by deleting language that made WSO completely independent from NA and incorporating in its place the following language:

"That the WSO, all members, directors and officers shall be and are subject to, and will abide by, motions adopted at each WSC meeting and implement decisions reached by the WSC as they pertain to the operation of the WSO."

At the 1982 World Service Conference participants also

discussed the need to clarify WSO's role in the publication of NA literature.

At the 1983 World Service Conference, the chairperson of the WSO Board of Directors presented participants with revised WSO Bylaws. The Board of Directors reported that the Board approve the proposed revised Bylaws when requested approval by the World Service Conference. Section 15.02 of the 1983 Bylaws provided that the WSO act as a fiduciary in its dealings with the WSC in the Fellowship of Narcotics Anonymous and that net proceeds resulting from the sale and distribution of any literature and/or other material for the WSC be received by the WSO.

On August 15, 1987, the World Service Office Board of Directors adopted new Bylaws. These new Bylaws reflected the intent of the 1983 Section 1502 all providing additional details concerning protection of NA literature and trademarks. See Article II Appendix B - Objectives and Purposes. The 1987 Bylaws were never presented to the World Service Conference for approval, however, continue to remain as the Bylaws that control the day to day operations and businesses of the World Service Office.

During this time period, members of the Fellowship of Narcotics Anonymous, through various literature committees, last known as the World Service Conference Literature Committee, commenced and completed work on extensive literature for the benefit of Narcotics Anonymous. The primary work involves a Narcotics Anonymous book, now know as the Basic Text. On September 15, 1982, the chairman of the World Service Conference Literature Committee executed a document which states:

"As of September 15, 1982, the World Literature Committee of Narcotics Anonymous, 890 Atlanta Road, Marietta, Georgia, 3060, by authorization of the Chairman thereof, release and in full turns over all release forms, copyrights and any and all materials contained in pertinent to the Narcotics Anonymous Book and the stories of the Narcotics Anonymous Members to be included in the Narcotics Anonymous Book to the World Service Office of Narcotics Anonymous to be used as directed by the World Service Conference of Narcotics Anonymous in Session May 5 through May 9, 1992."

This document purports to satisfy the requirement of the United States Copyright Law for transfer of copyright. 17 U.S. Code Section 204(a) and second, creates a charitable trust under California law, (California Probate Code, Section 15200 (b) and/or (e). Where the World Service Office is the trustee and the WSC Literature Committee is the trustor with the members at large of the Fellowship of Narcotics Anonymous being the beneficiaries. This document may also have transferred to the WSC, as the trustee, with the WSO as the agent for the trustee rights to act as the fiduciary for the membership.

The Basic Text has a history of change from the first to the fifth editions. An approval form, Chapters 1 through 10 the Basic Text were released in November of 1981 for Fellowship review. In February of 1982, the approval form of 47 personal stories intended for publication in the Basic Text were released to the Fellowship. At the May, 1982 meeting of Narcotics Anonymous World Service Conference, the entire Basic Text was approved.

First Edition. The First Edition of the Basic Text was officially released on April 27, 1983 by the World Service Office

using the fictitious business name of C.A.R.E.N.A. Publishing Company. (It is unknown who held the rights to this fictitious business name, although it is believed that it was the purported founder, James D. Kinnon, Sr. of Sun Valley, California).