COPYRIGHT
OFFICE

October 30, 1995

Weiss, Dawid, Fross, Zelnick & Lehrman
Attn: James D. Silberstein
633 Third Avenue
New York, New York 10017-6754

Re: Americana In Four Colors

Dear Mr. Silberstein:

LIBRARY
OF
CONGRESS

We are responding to your letter of April 18, 1995 requesting a second reconsideration of our previous refusal to register the work entitled AMERICANA IN FOUR COLORS submitted on behalf of John Goldwater. We apologize for the delay in getting back to you.

We have again reviewed this work in light of the points raised in your letter. However, we still believe that the law in effect when your client's work was published, i.e., the 1909 Copyright Act, leaves us no alternative but to refuse registration because the name given as the copyright owner on the application does not agree with the name appearing in the only copyright notice in the published work.

Washington
D.C.
20559

Copyright registration for your client's work, which was published on October 1, 1974, is governed by the formalities of the 1909 Copyright Act. Under this law, copyright protection for a published work was secured by publication in the name given in the copyright notice.

Section 202.2(a)(1) of the Copyright Office's present regulations which governs the copyright notice requirements states:

(1) With respect to a work published before January 1, 1978, copyright was secured, or the right to secure it was lost, except for works seeking ad interim copyright, at the date of publication, i.e., the date on which copies are first placed on sale, sold, or publicly distributed, depending upon the adequacy of the notice of copyright on the work at that time. The adequacy of the copyright notice for such a work is determined by the copyright statute as it existed on the date of first publication.
37 C.F.R. 202.2(a)(1) (emphasis added).

Section 19 of the 1909 statute provided that the notice of copyright required by Section 10 of the statute on all copies published or offered for sale

in the United States must consist of the word "Copyright," the abbreviation "Copr.," or the symbol©, accompanied by the name of the copyright proprietor, and... the year in which the copyright was secured by publication.

Because of this mandate in the 1909 statute, the Copyright Office requires that registration be made only in the name given in the copyright notice on the published copies.

Chapter 4.2.3 I(e) of Compendium I, Compendium of Copyright Office Practices (1973), which reflects Copyright Office practices for works published prior to January 1, 1978, addresses the situation when the wrong claimant is named in the copyright notice. The practice states:

Wrong Claimant:

When the Office is advised that the wrong person is named in the notice (e.g. the printer's name inserted by mistake), an application in the name given in the notice may be accepted with a cautionary letter, if there is some indication that use of the name in the notice was a good faith error, or if tacit authorization may be implied. An application in the name of the rightful claimant not given in the notice will not be accepted.

Notwithstanding the Copyright Act of 1976, the preface of Compendium II, Compendium of Copyright Practices (1984) which reflects the Copyright Office practices under the current Copyright Act of 1976 as amended, specifies that Compendium I is still to be used to reflect Copyright Office practices for works published under the 1909 Copyright Act. This means that works such as your client's which were published prior to January 1, 1978, continue to be governed by the 1909 Act.

Even with the adherence of the United States to the Berne Convention of 1988, it was made clear that the change in the notice requirements was not retroactive. See sections 405, 406 of current Title 17. In this case, the notice requirements for works published prior to March 1, 1989, are determined by the law on the date of first publication of the work.

It follows, therefore, that the copyright notice requirements are governed by 37 C.F.R. 202.2(a),(b) and not by current regulation 37 C.F.R. 202.3(b)(8)(ii) as you indicated in your letter.

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New York, New York 10017-6754

The Goodis case which you cited [Goodis v. United Artists Television, Inc., 425 F.2d 397 (2d Cir. 1970)] supports the constructive trust theory under which a periodical publisher who holds "first publication rights" is said to secure the copyright and held it in trust for the beneficial owner, the author of the contribution. Although the case was decided on the trust theory, the only copyright notice on the work was in the name of the periodical publisher, and copyright registration could only be made in that name. The decision was not necessarily inconsistent with Copyright Office regulations authorizing registration only in the name of the proprietor given in the copyright notice, and with our practices for works published under the 1909 Act which do not permit a separate registration for a contribution unless there is a separate notice for it.

Simply stated, it is necessary to draw a distinction between protection and registration. A contribution to a collective work published under the 1909 Act may be protected by a general notice of copyright appearing on the collective work, thereby preventing the particular contribution from falling into the public domain. In order to be separately registered, however, that contribution must bear a separate notice of copyright in the name of the owner of copyright in the contribution.

Under the circumstances, we cannot register a copyright claim in your client's name for this work unless a copyright notice appeared in his name. Furthermore, in order to secure statutory copyright protection for this work, registration must be made in the name of the publisher, i.e., in the name appearing in the notice on the published copies.

Therefore, if your client still wishes to pursue registration for this work, he may submit a new application giving "Comics Magazine Association of America, Inc." as the copyright claimant at space 4. Following the registration, case law suggests that your client might obtain an assignment of the copyright from the publisher. This assignment, if you wish, may be recorded in the Copyright Office.

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New York, New York 10017-6754

This decision represents final agency action in this case.

Sincerely yours,

Nanette Petruzzelli

Nanette Petruzzelli
Chief, Examining Division

writing for the Appeals Board:
Marybeth Peters, Register,
Marilyn Kretsinger, Acting General Counsel,
and myself

Encls: Chapter 4.2.3 I(e),
Compendium I