United States Copyright Office
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August 3, 2017

Revisor of Statutes
Attn: Mary Temple
700 State Office Building
100 Rev. Dr. Martin Luther King, Jr. Blvd
St. Paul, MN 55155

Re: Second Request for Reconsideration for Refusal to Register "Minnesota Statutes 2014"; Correspondence ID: 1-1DBMCLS; SR# 1-2553539471

Dear Ms. Temple:

The Review Board of the United States Copyright Office ("Board") has considered your second request for reconsideration of the Registration Program's refusal to register a text claim in the work titled "Minnesota Statutes 2014" ("Work"). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board finds that the Work exhibits copyrightable authorship and thus may be registered.

The Work is a compilation of statutes from the state of Minnesota, with indexes, tables, headnotes, and commentary added by the Office of the Revisor of Statutes ("Revisor"), a nonpartisan office of the Minnesota Legislature which compiles the state's statutes for publication, including exercising editorial powers granted under state law. *See* Letter from Michele L. Timmons to U.S. Copyright Office ("First Request") (March 4, 2016). In its first request for reconsideration, the Revisor explained that it was "not asserting a copyright in the text of the statutes," but claimed it was entitled to registration for "the organization and classification scheme," "the history and editorial notes," and "all of the finding aids such as the headnotes, tables, user guides and indexes that have been created by the office." *Id.*; *see also* Letter from Ryan S. Inman to U.S. Copyright Office ("Second Request") (Dec. 12, 2016) (noting claimed authorship included the "statutory history . . . and other annotations."). The Revisor has been asserting a copyright in versions of the Minnesota Statutes publications since 1980, and has registered each version since that time. *See* First Request at 2. Based on the deposit and administrative record, however, it was not clear to the Board what elements of the Work the Revisor was seeking to register—*i.e.*, what the new, protectable elements were—given that copyright law protects derivative works, but only the additions, changes, or other new material that appear for the first time in the derivative work, and an applicant must make more than "trivial changes" to an older work to be entitled to a new registration for the derivative. COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §§ 311.2; 709 (3d ed. 2014)

("COMPENDIUM (THIRD)"). The Office thus contacted the Revisor, seeking clarification on this point. Email from U.S. Copyright Office to Mary Temple (April 7, 2017).

In its response, the Revisor claimed the following portions of the Work as protectable: a "novel, regularly modified, and in-house created statutory coding scheme"; "chapter, section, and subdivision headers"; "the prefatory material, including the Revisor's certificate, history sections, statutory changes section, user's guide, acknowledgements, and table of chapters"; "all of the included statutory legislative history notes"; "conflict, constitutionality, and other statutory text notes"; and "all of the tables, the index and other finding aids." Email from Ryan Inman to U.S. Copyright Office (June 28, 2017). The Revisor included attachments that it claimed were samples from some of the claimed categories (*i.e.*, notes, tables, indexes, and chapter legislative histories).

As noted, the Office will register new authorship in a derivative work that contains a sufficient amount of original expression, meaning that the derivative work must be independently created and possess more than a modicum of creativity. COMPENDIUM § 311.2; *see Waldman Publishing Corp. v. Landoll, Inc.*, 43 F.3d 775, 782 (2d Cir. 1994). The amount of creativity required for a derivative work is the same as that required for a copyright in any other work: "[a]ll that is needed to satisfy both the Constitution and the statute is that the 'author' contributed something more than a 'merely trivial' variation, something recognizably 'his own.'" *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F.2d 99, 102-03 (2d Cir. 1951) (citing *Chamberlin v. Uris Sales Corp.*, 150 F.2d 512, 513 (2d. Cir.1945)). Thus, "the key inquiry is whether there is sufficient nontrivial expressive variation in the derivative work to make it distinguishable from the [preexisting] work in some meaningful way." *Schrock v. Learning Curve International, Inc.*, 586 F.3d 513, 521 (7th Cir. 2009).

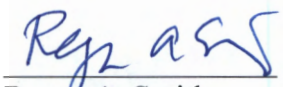
While the quantum of originality required may be modest, courts have recognized that derivative works "[l]acking even a modest degree of originality . . . are not copyrightable." *L. Batlin & Son, Inc. v. Snyder*, 536 F.2d 486, 490 (2d Cir. 1976); *Durham Indus., Inc. v. Tomy Corp.*, 630 F.2d 905, 911(2d Cir. 1980). Very minor variations do not satisfy this requirement, such as merely recasting a work from one medium to another alone. *See L. Batlin & Son*, 536 F.2d at 491. Further, a derivative work that adds only non-copyrightable elements to a prior product is not entitled to copyright registration. *Boyds Collection, Ltd. v. Bearington Collection, Inc.*, 360 F. Supp. 2d 655, 661 (M.D. Pa. 2005). Ultimately, whatever the addition is, it must be independently protectable in order for the derivative work to be registered.

After reviewing the materials the Revisor provided in its correspondence, the Board has concluded that some of the material identified is protectable. For instance, the user's guide consists of five pages of assertedly new text; each of the hundreds of new or amended statutes includes a "notes" section containing several lines of text that include the effective dates of the statute, relationships with other statutes, and legal analysis; and the Revisor asserts that the

decimal coding system and headnotes used to organize the statutes are not mandated by the unprotectable statutes' content. It is the Board's opinion that the Work, an aggregate of these copyrightable components, is registrable, demonstrating at least the "minimal degree of creativity" required by the U.S. Supreme Court in *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). *See also Olivares v. University of Chicago*, 213 F. Supp. 3d 757 (M.D.N.C. 2016) (denying defendant's summary judgment motion, finding genuine issue of material fact as to copyrightability where author merely corrected original work by changing paragraph breaks and punctuation).

The Board notes, however, that any copyright registration will not protect uncreative compilation—*e.g.*, the alphabetical or numerical ordering of statutes in Table II, to the extent that such ordering is dictated by the subject matter or predetermined numbering of the statutes; or factual information about the statutes that may be phrased in only one way. *See, e.g., Feist Publ'ns*, 499 U.S. 340 at 345. A disclaimer to this effect should be added to the registration for the Work, and with that addition, registration is warranted.

For the reasons stated herein, the Review Board of the United States Copyright Office reverses the refusal to register the copyright claim in the Work. Accordingly, the Board's decision will be referred to the Office's Registration Program for registration of the Work, provided that all other application requirements are satisfied.

BY: 

Regan A. Smith
Copyright Office Review Board