

Copyright Office Sued for Registering a Claim

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Five decades ago, the Copyright Office was involved in a lengthy court case involving the definition of a work of the U.S. government. *Public Affairs Associates Inc. v. Rickover* dragged through the courts for nine years and resulted in the Copyright Office being sued for registering a claim.

Why sue the Copyright Office for registering a claim to copyright?

Section 8 of the 1909 copyright law stated that “no copyright shall subsist in ... any publication of the United States Government.” But a definition of a “publication of the United States Government” was not included in the statute.

Public Affairs, an educational publishing company, wanted to publish speeches written between 1955 and 1959 by Admiral Hyman Rickover, the powerful and strongly opinionated “Father of the Nuclear Navy.” Rickover said no,

Rear Admiral Hyman G. Rickover inspecting USS Nautilus (SSN-571) (circa 1954).



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and Public Affairs sued, saying that the speeches were in the public domain because they had been prepared as part of Rickover’s official duties and in his capacity as a government employee. All speeches were distributed as press releases. No copyright notice appeared on speeches made before December 1, 1958, but it did appear on two later speeches, the claims for which were examined by Abraham Kaminstein, then chief of the Examining Division. Public Affairs wanted the copyrights declared invalid.

In 1959, the District Court ruled the copyrights valid, saying that Rickover had prepared the speeches in his private capacity and held “a literary property right in them.” The plaintiff appealed.

The Circuit Court of Appeals for the District of Columbia in 1961 held that government employees can copyright works written on their own time, but that Rickover’s copyright was lost by distributing copies of all but two speeches without notice and without limitations.

The case, which had become the most publicized copyright case of the year in 1961, went to the Supreme Court on the question of fair use of the two speeches that displayed a copyright notice. But the Supreme Court sent the case back to the District Court in 1962, saying that it provided a record insufficiently “full-bodied.”

The plaintiff then amended its complaint by adding as defendants the Register and the Librarian, who were responsible for registering the claims, and the Secretary of Defense, the Secretary of the Navy, and the Atomic Energy commissioners, who were supposed to be supervising Admiral Rickover.

Rickover abandoned his claim to copyright in the first 22 speeches.

Following lengthy interrogatories, the District Court judge dismissed the complaint, saying that the remaining two speeches were not a publication of the U.S. government within the terms of the 1909 Copyright Act because they were not written as part of the Admiral’s official duties, and the copyrights on the two speeches were declared valid. An appeal was in the works, but the case was dismissed on January 29, 1968, because the brief was not timely filed. ©