

IS JESUS ENTITLED TO A COPYRIGHT?

*Judge Robert Mahealani M. Seto**

I. INTRODUCTION

Since the horrific and unprovoked September 11th attacks on New York's twin towers and the Pentagon, killing more innocent Americans than Japan's attack on Pearl Harbor, many Americans have turned to God with prayers for revival. However, the revival that these Americans pray for is different from past revivals.¹ Chancellor Pat Robertson summarized the situation as follows: "The revival we pray for transforms lives, empowers pastors, electrifies churches, and brings the reality of God to the entire population."²

Such a revival involves not just prayers *to* God, but revelations *from* God.³ This Article addresses the issues that arise when someone receives

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¹ PAT ROBERTSON, STEPS TO REVIVAL 2-3 (2001).

During the past century in the United States, the term "revival" has normally meant a church-sponsored evangelistic meeting during which a visiting pastor or traveling evangelist will speak at special services for a week or two, and those in attendance are asked either to make a first-time decision for Christ or to rededicate their lives to Him. Although this type of meeting can indeed bring on a true Holy Spirit revival that can serve to transform society, usually its measure is very simply the number (few or many) of people whose lives are changed by responding to the evangelist's appeals.

Id.

² *Id.* at 3.

³ *Id.* at 7.

God wants us to enter into a new relation with Him. Not just like a little child, full of requests for things from his father, but as a mature son or daughter who knows the Father, is in tune with the Father's will, begins

a revelation⁴ directly from Jesus.⁵ Specifically, this Article discusses whether this revelation, when “fixed in a tangible medium,”⁶ is copyrightable;⁷ who the “author”⁸ of the copyrightable material is; and if

to think and act like the Father, and can take responsibility in the Father's kingdom.

God wants us to move beyond the petition stage, to a time when the ultimate good – in fact the only good – is being in communion with God.

Id.

⁴ THE NEW BIBLE DICTIONARY 1090 (J.D. Douglas et al. eds., Wm. B. Eerdmans Publ'g Co. 1973), in defining “revelation,” explains that the word itself came from the English word ‘reveal,’ from [the Latin] *revelo* and is the regular AV [Authorized Version] rendering of the [Hebrew word] *gala* and the [Greek] word *apokalypto* [and that] *gala*, *apokalypto*, and *revelo*, all express the same idea – that of unveiling something hidden, so that it may be seen and known for what it is. Accordingly, when the Bible speaks of revelation, the thought intended is of God the Creator actively disclosing to his men His power and glory, His nature and character, His will, ways, and plans – in short, Himself – in order that men may know Him. The revelation vocabulary in both Testaments is a wide one, covering the ideas of making obscure things clear, bringing hidden things to light, showing signs, speaking words, and causing the persons addressed to see, hear, perceive, understand, and know.

Id.

⁵ St. Augustine, for example, acknowledged that many of the ideas for his writings came through revelation from God:

Syllable by syllable, through the transitory moments of time, God spoke with the sounds of human speech. In his own nature he speaks, not materially but spiritually, not sensibly but intelligibly, not temporally but . . . eternally. He does not begin to speak, nor does cease speaking. The servants and messengers in his presence, fully enjoying his unchanging truth in eternal happiness, hear purely, not by the ear of the body but of the mind. They hear in indescribable ways what must be done and what must be brought about in this visible and sensible world, and they accomplish it instantly and easily.

AUGUSTINE, POLITICAL WRITINGS 76-77 (E.L. Fortin ed., Hackett Publ'g Co. 1994).

⁶ “Copyright protection subsists, in accordance with [Title 17 of the United States Code], in the original works of [an author when] fixed in a tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” 17 U.S.C. § 102 (2002).

⁷ *Id.* § 102(a) (“[C]opyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression . . .”); see *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991) (explaining that the threshold for originality is a low one because “[o]riginal, as the term is used in copyright, means only that the work was independently created by the author (as opposed to being copied from other works), and that it possesses at least some minimal degree of creativity”); see also *Reader's Digest Ass'n v. Conservative Digest, Inc.*, 821 F.2d 800, 806 (D.C. Cir. 1987) (“[O]riginality” means “only that the work ‘owes its origin to the author’ – i.e., that the work is independently created, rather than copied from other works.”).

⁸ Section 101 of the Copyright Code, entitled “Definitions,” does not include a definition for “author.” Section 104, however, addresses “authors” with the assumption that the reader already knows what an “author” is. It states in relevant part:

copyrightable, whether Jesus is entitled to a copyright⁹ or whether only the compiler of Jesus' revelation is entitled to a copyright. Part II discusses a recent district court case from New York that held that Jesus was not entitled to a copyright.¹⁰ Part III addresses who is eligible to be the author¹¹ of copyrightable material. Part IV addresses whether the compiler¹² of Jesus' revelation, who actually writes His ideas in the

The works specified by sections 102 and 103, while unpublished, are subject to protection under this title without regard to the nationality or domicile of the author The works specified by section 102 and 103 when published, are subject to protection under this title if . . . on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty party, or is a stateless person, wherever that person may be domiciled.

Id. § 104(a)-(b) (2002). See also *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989) (“[T]he author is the party who actually creates the work, this is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection.”).

⁹ Congress's power to provide copyright protection to authors of original works is derived from the Constitution, which states in pertinent part: “The Congress shall have the Power . . . to Promote the progress of science and useful arts, by securing, for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” U.S. CONST. art. I, § 8, cl. 8. See MELVILLE B. NIMMER ET AL., *CASES AND MATERIALS ON COPYRIGHT AND OTHER ASPECTS OF ENTERTAINMENT LITIGATION* 391 (2000) (“As a general rule, the author is the party who actually creates the work, that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection.”); CRAIG JOYCE ET. AL., *COPYRIGHT LAW* 2 (5th ed. 2000) (asserting that the first Copyright Act in English history was “Statute of Anne in 1710” that “protected the exclusive right of authors to reproduce copies of their books and, by extension, other writings”); THOMAS HOBBS, *LEVIATHAN* 109-110, 124-125 (Cambridge Univ. Press 1996) (1651) (writing a half century before the first copyright statute [the Statute of Anne], the author refers to those who originate books as “Writers” rather than “Authors”); THE FEDERALIST NO. 43, at 222 (James Madison) (Libertyfund, Inc. 2001) (supporting the need to include copyright protection in the United States Constitution, Madison stated that Congress must be given the power to “[p]romote the progress of science and useful arts, by securing for a limited time, to authors and inventors, the exclusive right, to their respective writings and discoveries”).

¹⁰ See *Urantia Found. v. Maaherra*, 114 F.3d 955 (9th Cir. 1997) (holding that a copyrighted work must be created by a human being); *Penguin Books U.S.A. Inc. v. New Christian Church of Full Endeavor, Ltd.*, 55 U.S.P.Q.2d 1680, 1686 (S.D.N.Y. 2000) (holding that a copyright could not be granted to a spiritual being such as Jesus, but only to a human being). See generally *Thou Shalt Not Post Disputed Material On Web Site, Church Is Told*, 2 ANDREWS INTELL. PROP. LITIG. REP. 5 (2000) (discussing the attack on a copyrighted work because the real author was Jesus, who was a spiritual being, rather than a human being).

¹¹ See Peter Jaszi, *Toward a Theory of Copyright: The Metamorphoses of 'Authorship'*, 1991 DUKE L.J. 455, 455 (1991) (“[A]uthorship . . . is arguably the most central, and certainly the most resonant, of the foundational concepts associated with [our] Anglo-American copyright doctrine. . . . The ‘author’ has been the main character in a drama played out on the parallel stages of literary and legal culture.”).

¹² See *Feist Publ'ns, Inc.*, 499 U.S. at 356 (“The definition of ‘compilation’ is found in § 101 of the 1976 [Copyright] Act. It defines a ‘compilation’ in the copyright sense as ‘a work formed by the collection and assembling of preexisting materials or of data that are

compiler's own language, nevertheless qualifies as the author. Part V argues that Jesus Himself may be entitled to the copyright because He is the original author of the ideas that form the copyrighted material and because Jesus still lives¹³ and remains fully human.¹⁴ Part VI concludes,

selected, coordinated, or arranged [by the compiler] *in such a way that* the resulting work as a whole constitutes an original work of authorship.”); *Kregos v. Associated Press*, 937 F.2d 700 (2d Cir. 1991) (explaining that a compilation consists of work formed by the collection and assembling of preexisting materials or data, and may be protected by copyright).

¹³ See, e.g., *Matthew* 28:1-7.

He is not here: for he is risen, as he said. Come, see the place where the Lord lay. And go quickly, and tell his disciples that he is risen from the dead; and, behold, he goeth before you into Galilee; there shall ye see him: lo, I have told you.

Id. 28:6-7 (emphasis added). All citations to the Bible in this Article are to the King James Version unless otherwise stated.

See also *Acts* 1:9-11.

And when he had spoken these things, while they beheld, he was taken up; and a cloud received him out of their sight. And while they looked steadfastly toward heaven as he went up, behold, two men stood by them in white apparel; Which also said, Ye men of Galilee, why stand ye gazing up into heaven? This same Jesus, which is taken up from you into heaven, shall so come in like manner as ye have seen him go into heaven.

Id. Commenting on the ascension of Jesus, Ron Rhodes states,

‘This same Jesus, who has been taken from you into heaven . . .’ will come back in the same way you have seen him go into heaven. The angels – as messengers of God – indicated to the disciples that just as Jesus had visibly and physically ascended into heaven, so also would He visibly and physically come again at the Second coming.

RON RHODES, *ANGELS AMONG US* 159 (1994).

¹⁴ See *Luke* 24:36-43.

And as they thus spake, Jesus himself stood in the midst of them, and saith unto them, Peace be unto you. But they were terrified and affrighted, and supposed that they had seen a spirit. And he said unto them, Why are ye troubled? And why do thoughts arise in your hearts? *Behold my hands and my feet, that it is I myself: handle me and see; for a spirit hath not flesh and bones*, as ye see me have. And when he had thus spoken, he shewed them his hands and his feet. And while they yet believed not for joy, and wondered, he said unto them, Have ye here any meat? And they gave him a piece of broiled fish, and of an honeycomb. And he took it, and did eat before them.

Id. (emphasis added).

It is obvious to this author, that a person who has flesh and bones, a person who can be felt, and a person who hungers and can enjoy a good meal, is not solely a “spirit,” but rather still partakes of substantial human attributes. Rodman Williams states,

The resurrection of Jesus Christ was *corporeal or bodily*. He did not appear as a spectral or disembodied form. In Jesus' first appearance to the disciples ‘He showed them His hands and His side’ (*John* 20:20). Later He told Thomas to touch His body: ‘Put your finger here, and see my hands; and put out your hand, and place it in my side’ (*John* 20:27). Unmistakably, *Jesus' appearance was in bodily form*. According to Luke's account, not only did Jesus make the same offer but *He also strongly disclaimed being [just] a spirit, and He ate a*

regarding who should have the copyright, assuming that both Jesus or the transcriber are eligible to own the copyright.

II. THE SEMINAL CASE: *PENGUIN BOOKS U.S.A., INC. v. NEW CHRISTIAN CHURCH OF FULL ENDEAVOR, LTD.*

This Article first examines the seminal district court case, *Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.*, which concluded that Jesus was ineligible to own a copyright in His own revelations because He is a spiritual being.¹⁵

The copyrighted work underlying this dispute was a work of over a thousand pages entitled *A Course in Miracles (Course)* that Dr. Helen Schucman, then an Associate Professor of Medical Psychology at Columbia University, claimed was essentially dictated to her by Jesus.¹⁶ The dictation was over one thousand pages long, filled nearly thirty stenographic notebooks, and took over seven years to compile.¹⁷ The manuscript for the *Course* went through three drafts and, with the help of another professor, Dr. William Thetford, the manuscript "was split into chapters and sections, to which titles and headings were added."¹⁸ The *Course* was divided into three sections: first, the text itself; second, the workbook for students; and third, the manual for teachers.¹⁹ In 1973, another psychologist, Dr. Kenneth Wapnick, also reviewed the

fish in their presence. At first when Jesus appeared, they were 'startled and frightened, and supposed that they saw a spirit.' Then after seeking to calm them, He said, 'See my hands and my feet, that it is I myself; handle me, and see; for a spirit has not flesh and bones as you see that I have. And while they still disbelieved for joy, and wondered, he said to them, 'Have you anything here to eat?' They gave him a piece of broiled fish, and He took it and ate before them' (Luke 24:37, 39-43).

J. RODMAN WILLIAMS, *RENEWAL THEOLOGY* 386 (1988) (emphasis added). Philip Yancey discusses Jesus' human attributes after He ascended and returned to earth to prove that He had defeated death and Satan:

When the two rush back to Jerusalem, they find the Eleven meeting behind locked doors. They spill out their incredible story, which corroborates what Peter has already learned: Jesus is out there somewhere, alive. Without warning, even as the doubters argue the point, Jesus himself shows up in their midst. *I am no ghost*, he declares. *Touch my scars. It is I myself!* Even then the doubts persist, until Jesus volunteers to eat a piece of broiled fish. Ghosts don't eat fish; a mirage cannot cause food to disappear.

PHILIP YANCEY, *THE JESUS I NEVER KNEW* 215 (1995).

¹⁵ *Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.*, 55 U.S.P.Q.2d 1680, 1686 (S.D.N.Y. 2000).

¹⁶ *Id.* at 1683-84.

¹⁷ *Id.*

¹⁸ *Id.* at 1684.

¹⁹ *Id.*

manuscript and made further suggestions that were needed to “place the book in final form.”²⁰

The first application for copyright registration of the *Course* listed the author as “[Anonymous] (Helen Schucman)” and was not disputed.²¹ The application was duly notarized and stamped as received by the Copyright Office on December 4, 1975, and received registration number A 693944.²² Beginning in June 1976, the plaintiffs, Penguin Books, published the *Course* in a hardcover, three-volume set, and in 1992, the plaintiffs published the second edition of the *Course*.²³ All editions published by the plaintiffs contained the required copyright notice affixed in the appropriate manner.²⁴

In early 1995, the defendants, New Christian Church, began to infringe the plaintiffs’ copyrighted material. The district court explained, Defendants began to copy and print materials containing substantial verbatim quotations from the *Course*, which Defendants have distributed^[25] without charge, including the entire 488-page Workbook^[26] and a series of pamphlets containing significant portions of the Text arranged without commentary in a different order than appears in the Text. Defendants have also translated the *Course* into foreign languages.^[27] None of these activities were done with the authorization or consent of Plaintiffs.²⁸

²⁰ *Id.*

²¹ *Id.* at 1686.

²² *Id.* It is also interesting to note that the copyright of the *Course* was obtained at the insistence of Jesus. The district court quotes the plaintiffs as stating that “it was not until the early 1980’s that we began to appreciate the wisdom behind Jesus’ insistence on obtaining a copyright.” *Id.* at 1687.

²³ *Id.* at 1686.

²⁴ *Id.*

²⁵ The Copyright Code lists six exclusive rights that are vested in copyright owners, among these six is the right of “distribution.” 17 U.S.C. § 106(3) (2002). The Code describes these distribution rights as the right “to distribute copies [of copyrighted written works] or phonorecords [material objects in which sounds are fixed] . . . to the public by sale or other transfer of ownership, or by rental, lease, or lending.” *Id.* Another right the copyright owner is given is the right to make “derivative” works of the original copyrighted work. The Code describes this “derivative right” as the right “to prepare derivative works [such as translations] based upon the copyrighted work.” *Id.* § 106(2). Section 101 of the Code provides the basic definitions for the unique terms that are subsumed under Law, such as the terms “fixed,” “derivative works,” and “compilations.” *Id.* § 107.

²⁶ One of the four elements of “fair use,” which can protect one from what may otherwise be deemed an infringement of the copyrighted material, is the fact that only a small portion of the work was copied. *Id.* § 107. Here, in contrast, we see that the entire 488-page workbook was copied. Accordingly, this would be a strong indication that the defense of “fair use” would not be available to the copyright infringer. *Id.* § 107(3).

²⁷ See *supra* note 23 and accompanying text. The Copyright Code gives only the owner of the copyright the privilege of distributing translations of his or her copyrighted work. This right of “translation” is derived from the copyright owner’s right “to prepare

The copyright owner sought to prevent the unlawful distribution²⁹ of any substantial portion of the *Course* by the defendants, who, without authorization, distributed the copyrighted material to their students and “posted, or . . . permitted the posting of, substantial portions of the *Course* . . . on the internet, usually without any commentary or copyright legend.”³⁰ Thus, the plaintiffs asked the defendants to stop infringing their copyright, to no avail, and eventually “sent Defendants a cease-and-desist letter.”³¹ Nevertheless, “Defendants continued to copy and distribute substantial portions of the *Course* . . .”³² In perhaps one of the most obvious examples of arrogance and disdain, the defendants “indicated in a sworn deposition testimony that they intended to continue to copy and distribute materials copied directly from the *Course* even in the face of an order from this Court prohibiting such conduct.”³³ Under the Copyright Code, however, only the owner of the copyright has the right “to distribute copies . . . to the public.”³⁴

The defendants launched a vigorous defense against the plaintiffs’ charge of infringement, which included the following: (1) fraud on the Copyright Office;³⁵ (2) improper chain of title;³⁶ (3) estoppel;³⁷ (4) fair

derivative works based upon the copyrighted work.” 17 U.S.C. § 106(2) (2002). Section 101 defines a “derivative work” as, *inter alia*, encompassing a “translation.” *Id.* § 101.

²⁸ *New Christian Church*, 55 U.S.P.Q.2d at 1688.

²⁹ See *supra* note 25.

³⁰ *New Christian Church*, 55 U.S.P.Q.2d at 1688.

A copyright legend refers to the required copyright notice that, until March 1, 1989, the effective date of the Berne Implementation Act, all authors had to attach to their writings, or their writings would fall into the public domain. The required notice usually takes the form of a “c” enclosed in a circle or the word “copyright” spelled out followed by the relevant date and the author’s name (e.g., © 2003, for Judge Robert M. M. Seto or copyright, 2003, for Judge Robert M. M. Seto). Together, this information comprises the copyright legend. See PAUL GOLDSTEIN, COPYRIGHT, PATENT, TRADEMARK, AND RELATED STATE DOCTRINES 570 (2002); MELHVEILLE B. NIMMER ET AL., CASES AND MATERIALS ON COPYRIGHT AND OTHER ASPECTS OF ENTERTAINMENT LITIGATION INCLUDING UNFAIR COMPETITION, DEFAMATION, AND PRIVACY 178 (2000).

³¹ *Id.* The court explained, “There are two elements to a copyright infringement claim: (1) ownership of a valid copyright; and (2) copying of constituent elements of the work that are original.” *Id.*

³² *Id.*

³³ *Id.*

³⁴ 17 U.S.C. § 106(3) (2002).

³⁵ *New Christian Church*, 55 U.S.P.Q.2d at 1692 (“Defendants . . . assert that Plaintiffs, by deliberately withholding the name of Jesus as the author of the *Course* after hearing from the Copyright Office that it would reject an application with Jesus listed as author, perpetrated a fraud upon the Copyright Office which would have resulted in rejection of the application for registration.”).

³⁶ *Id.* at 1693 (rejecting the defendant’s assertion of improper chain of title and stating in relevant part that one plaintiff’s “certificate of registration of the *Course* constitutes prima facie evidence that it possesses a proper chain of title . . . [and that

use;³⁸ (5) copyright misuse and unclean hands;³⁹ (6) freedom of religion;⁴⁰ (7) merger;⁴¹ (8) public domain;⁴² and (9) “the related defenses of abandonment, acquiescence, waiver, and laches.”⁴³ The district court, addressing in detail each of the defenses raised, eventually held that none were persuasive.⁴⁴

Particularly interesting was the district court’s discussion of the “fair use” section of the Copyright Code, which this author helped to write.⁴⁵ Section 107 of the Copyright Code, entitled “Limitations on exclusive rights: Fair use,” contains four factors that must be considered by any court before an assessment can be made on whether or not “fair use” may be embraced by the asserted infringer. These four factors are as follows: (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational

under the 1909 Copyright Act, in contrast to the current statute, an assignment of a copyright ‘did not have to be in writing to be enforceable’”).

³⁷ *Id.* at 1694 (“Defendants may prevail on their estoppel defense only if they can prove a reasonable and justifiable belief that plaintiffs gave them permission to copy. There are no facts to suggest that Plaintiffs were aware of Defendants’ allegedly infringing use of the Course and permitted the infringement.”).

³⁸ *Id.* at 1695.

³⁹ *Id.* The court rejected the charge, stating, “Defendants contend that Plaintiffs’ fraud on the Copyright Office demonstrates their unclean hands. Yet, as set forth above, Plaintiffs have not committed a fraud upon the Copyright Office. Nor have Defendants indicated any serious transgression which Plaintiffs might have committed.” *Id.*

⁴⁰ *Id.* (rejecting the defendants’ assertion that the enforcement of the plaintiffs’ copyright would prevent its students from engaging in the practice of their religion, in violation of the First Amendment, stating that “[a] valid copyright in a religious work ‘reflects nothing more than the governmental obligations of neutrality in the face of religious differences,’ and does not represent government activity that violates the First Amendment”).

⁴¹ *Id.* The court explains why it rejects the defendants’ defense of “merger”:

Defendants maintain that the ideas in the Course could only have been stated in the form in which they are stated in the Course. To conclude thus requires adhering to the belief that because the words of the course are allegedly the words of Jesus, they could not have been phrased in any other way. In fact, a brief glance through the course reveals that the same or remarkably similar ideas are restated continually in a myriad of ways. Doubtless these ideas could be further restated in an endless variety of forms.

Id.

⁴² See *Bell v. Combined Registry Co.*, 397 F. Supp. 1241, 1248 (N.D. Ill. 1975) (“The copyright notice is required on material sought to be protected by the [1909] Copyright Act, see 17 U.S.C. § 10. A publication authorized on the copyright proprietor which fails to include the correct notice of copyright forfeits the copyright protection and places the material into the public domain.”).

⁴³ *New Christian Church*, 55 U.S.P.Q.2d at 1693.

⁴⁴ *Id.* at 1689-97.

⁴⁵ This author, while a Republican Counsel on the Senate Subcommittee of Patents, Trademarks, and Copyrights, helped to draft the Copyright Code, particularly § 107, entitled “Limitations on exclusive rights: Fair use.” See 17 U.S.C. § 107 (2002).

purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.⁴⁶

The defendants' copied the entire 488 pages of the copyright owner's "Workbook."⁴⁷ Accordingly, when the district court addressed the "fair use" issue and the amount copied by the alleged infringer, it held that "[t]his factor also weighs against Defendants. Defendants have copied the entire Workbook, which comprises nearly [forty percent] of the Course."⁴⁸ Not surprisingly, the district court found that defendants were not entitled to the defense of "fair use," explaining that "[b]ecause all four factors in the fair use analysis weigh against Defendants, this affirmative defense is not a bar to [granting] the summary judgment [motion] for Plaintiffs."⁴⁹

Consequently, after discussing each of the Defendants' defenses and denying each, the court granted the plaintiffs' motion for a preliminary injunction.⁵⁰

III. WHO IS ELIGIBLE TO BE THE AUTHOR OF COPYRIGHTED MATERIAL?

The Supreme Court has stated that "as a general rule, the author is the party who actually creates the work, that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection."⁵¹ The Copyright Act defines a work as "fixed in a tangible medium of expression when its embodiment in a copy . . . by or under authority of the author, is sufficiently permanent . . . to permit it to be . . . reproduced."⁵² The Act also provides that copyright ownership "vests initially in the author or authors of the work."⁵³

However, the Ninth Circuit Court of Appeals has held that to be guilty of copyright infringement, the alleged infringer "must have copied something created by another worldly entity [a human being]."⁵⁴ In other

⁴⁶ *Id.*

⁴⁷ See *supra* note 26 and accompanying text.

⁴⁸ *New Christian Church*, 55 U.S.P.Q.2d at 1695.

⁴⁹ *Id.* at 1696.

⁵⁰ *Id.* at 1698.

⁵¹ See *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989).

⁵² 17 U.S.C. § 101 (2002).

⁵³ *Id.* § 201(a).

⁵⁴ See *Urantia Found. v. Maaherra*, 114 F.3d 955, 958 (9th Cir. 1997).

We agree with Maaherra . . . that it is not creations of divine beings that the copyright laws were intended to protect, and that in this case some element of human creativity must have occurred in order for the Book to be copyrightable. At the very least, for a worldly entity to be guilty of infringing a copyright, that entity must have copied something created by another worldly entity.

words, the “author” of the copyrighted work must be human and not a spiritual being. In *Urantia Foundation v. Maaherra*, the court found that “both parties believe[d] that the words in the Book [the copyrighted *Urantia Papers*] were ‘authored’ by non-human spiritual beings described in terms such as the Divine Counselor, the Chief of the Corps of Superuniverse Personalities, and the Chief of the Archangels of Nebadon.”⁵⁵ The defendant, who was facing charges of infringement because she had illegally distributed a computerized version of the plaintiff’s book, argued that the copyright was invalid because the “author” of the book was not human.⁵⁶

While the district court found the defendant’s argument persuasive, the Ninth Circuit did not. It held that the “copyright laws, of course, do not expressly require ‘human’ authorship For copyright purposes . . . a work is copyrightable if copyrightability is [simply] claimed by the first human beings who compiled, selected, coordinated, and arranged the [Book].”⁵⁷ Moreover, the Ninth Circuit explained that “[t]hose who were responsible for the creation of the tangible literary form that could have been read by others, [could claim] copyright for themselves as ‘authors,’ because they were responsible for the revelations appearing ‘in such a way as to render the work as a whole original.”⁵⁸

In *New Christian Church*, the district court held that the plaintiffs were entitled to a copyright because of their selection, rearrangement, and editing of the divine revelation from Jesus, justifying its decision, in part, based on the Ninth Circuit *Urantia Foundation* decision.⁵⁹ Again, the proposition of law espoused was that, if the hearer or hearers of the divine revelation “compiled, selected, coordinated, and arranged” the revelation, this was sufficient originality and human touch to qualify the human hearers for an original work of authorship under the copyright laws.⁶⁰

In *Oliver v. Saint Germain Foundation*, the district court was faced with a motion asserting the invalidity of the copyright on a book entitled *A Dweller on Two Planets*.⁶¹ There, the author admitted to the court that

Id.

⁵⁵ *Id.* at 957.

⁵⁶ *Id.* at 958. The defendant argued that “there can be no valid copyright in the Book because it lacks the requisite ingredient of human creativity, and that therefore the Book is not a ‘work of authorship’ within the meaning of the Copyright Act.” *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.*, 55 U.S.P.Q.2d 1680, 1689 (S.D.N.Y. 2000).

⁶⁰ *Id.*

⁶¹ See *Oliver v. Saint Germain Foundation*, 41 F. Supp. 296, 299 (S.D. Cal. 1941). In *Oliver*, the court held a copyright valid because the human being did the unique arrangement of the revelation from a spiritual being. *Id.* The court noted that the spiritual

he was not the author, but simply an amanuensis,⁶² because the real author was the “spirit of a previously deceased person.”⁶³ The court ultimately found, however, that this particular human amanuensis did, in fact, create enough originality to be called the author of the copyrighted work. It stated, “One who narrates matters of fact may be protected by copyright [because of] his arrangement, manner and style”⁶⁴

Thus, the relevant cases stand for the proposition that a spiritual being, such as Jesus, cannot qualify for a copyright because He is not a human being. The human being who is the amanuensis for Jesus, however, can qualify for a copyright if that person selects, arranges, or edits the revelation so that a small modicum of originality is created, thereby meeting the human authorship requirement.⁶⁵ The test is met notwithstanding the fact that the author did not create these ideas or

being could not be the author under our copyright laws: “The law deals with realities and does not recognize communication with and the conveyances of legal rights by the spiritual world as the basis for its judgment.” *Id.*

⁶² Amanuensis means “[o]ne who is employed to take dictation or copy manuscripts.” AMERICAN HERITAGE COLLEGE DICTIONARY 41 (3d ed. 1993).

⁶³ *Id.* at 297 (“[I]t appears from the record in this case that Frederick Spencer Oliver did not claim to be the author of the book as ideas and thoughts of his own, but he describes himself as the ‘amanuensis’ to whom it was dictated by Phyllos, the Thibetan, [who was] a spirit.”).

⁶⁴ *Id.* at 299.

⁶⁵ See *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). *Feist Publications* explained that the very low threshold of originality needed for a copyright is “to be sure, the requisite level of creativity is extremely low; even a slight amount will suffice. The vast majority of works make the grade quite easily, as they possess some creative spark, ‘no matter how crude, humble or obvious’ it might be.” *Id.* See also *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F.2d 99, 102-03 (2d Cir. 1951). Commenting on the traditional *de minimus* standard of creativity needed to obtain a copyright, the court in *Catalda Fine Arts* stated that “all 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.’” *Id.* See also David L. Cohen, *Copyrighting the Dead Sea Scrolls: Qimron v. Shanks*, 52 ME. L. REV. 379, 386 (2000). Cohen explains that Israel also subscribes to the same low level of creativity required by the United States copyright laws, stating,

Israel, like the United States . . . has an originality requirement copyright. Under Israeli law, originality, at a minimum, requires that the work come from the author and is not the result of copying another’s work. To be an original compilation, not being a copy of an earlier work is sufficient, provided there is a minimum level of creativity. Confidential writings are accorded copyright protection, too. Israel shares with the United States the common law doctrines of work for hire and joint works. There are no formalities regarding registration of copyright, and publication requires the consent of the author.

Id.

truths, and in this particular sense, he was not the author of these ideas or truths.⁶⁶

It is clear that courts have refused to ascribe copyright protection to spiritual beings, notwithstanding the fact that revelations, particularly those from Jesus, are believed to be authored, conceived, and created solely by Jesus.⁶⁷

IV. CAN THE COMPILER OF A REVELATION QUALIFY AS THE AUTHOR OF THE REVELATION?

Because the author of a copyrighted work need only demonstrate an “extremely low” amount of creativity, it is not surprising to learn that courts have found that mere compilers⁶⁸ of information, whether from already existing works of other human beings or from revelations of spiritual beings, are also eligible for “authorship” and, thus, the protection of a copyright. Perhaps the touchstone case on this question is *Feist Publications, Inc. v. Rural Telephone Service Co.*, where the Supreme Court explained,

Factual compilations . . . may possess the requisite originality. The compilation author typically chooses which facts to include, in what order to place them, and how to arrange the collected data so that they may be used effectively by readers. These choices as to selection and arrangement, so long as they are made independently by the compiler and entail a minimal degree of creativity, are sufficiently original that Congress may protect such compilations through the copyright laws. Thus, even a directory that contains absolutely no protectible written expression, only facts, meets the constitutional minimum for copyright protection if it features an original selection or arrangement.⁶⁹

In explaining the selection and arrangement needed, the Second Circuit explained that “[i]n sum, creativity in selection and arrangement . . . is a function of (i) the total number of options available, (ii) external factors that limit the viability of certain options and render others non-creative, and (iii) prior uses that render certain selections ‘garden variety.’”⁷⁰

It is therefore clear, beyond equivocation, that mere compilers may also avail themselves of federal copyright protection by simply using some originality in the arrangement of facts or information supplied by another person. Accordingly, in *New Christian Church*, the compilers of

⁶⁶ See generally Alan L. Durham, *Speaking of the World: Fact, Opinion and the Originality Standard of Copyright*, 33 ARIZ. ST. L.J. 791 (2001).

⁶⁷ See generally Roger Syn, *Copyright God: Enforcement of Copyright in the Bible and Religious Works*, 14 REGENT U. L. REV. 1, 35 (2001).

⁶⁸ See *supra* note 12.

⁶⁹ *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 348 (1991) (citations omitted).

⁷⁰ *Matthew Bender & Co. v. West Publ'g Co.*, 158 F.3d 674, 676 (2d Cir. 1998).

Jesus' revelation were entitled to federal copyright protection because they "compiled, selected, coordinated, and arranged" Jesus' revelation "in such a way that the resulting work as a whole constitute[d] an original work of authorship."⁷¹ As the district court found,

[I]t is undisputed that the dictated material [from Jesus] was subsequently edited: personal references were removed, punctuation was added, chapter and section headings were created, and other work was done to shape the material into the final form it took in the published Course. Even if all of these editorial changes and additions were 'approved of' by Jesus, it is undisputed that many of them were *initiated* by Schucman, Thetford, or Wapnick – i.e., many changes were not simply dictated, but were initially the impulse of Schucman and those others, with Schucman then 'checking' to see if the changes would pass muster with Jesus . . .⁷²

V. JESUS HIMSELF SHOULD BE ENTITLED TO THE COPYRIGHT

As discussed, Jesus is clearly the author of this revelation, and even more importantly, is still alive in human form.⁷³

A. *Jesus Is the "Author" of the Revelation*

As the district court explained in *New Christian Church*, it was clear to Dr. Helen Schucman that the "Voice" she heard, was that of Jesus:

For . . . three months, she [Dr. Schucman] experienced a series of particularly vivid dreams. Soon thereafter, she began to hear a "Voice" which would speak to her whenever she was prepared to listen. In October, 1965, the Voice told her: "*This is a course in miracles. Please take notes.*" Schucman then began to write down what the Voice said, a process she later described as a kind of soundless "rapid inner dictation." Over the next seven years, until 1972, she filled nearly thirty stenographic notebooks with words she believed were dictated to her by the Voice.

At some point, *Schucman identified the Voice as "Jesus," and she thereafter apparently thought of herself as a scribe taking down the words of Jesus.*⁷⁴

Pursuant to the Copyright Act, Jesus – as the true author – was entitled to a copyright when His revelation was fixed in a tangible medium of expression in Dr. Schucman's written notes.⁷⁵ As seen above

⁷¹ *Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.*, 55 U.S.P.Q.2d 1680, 1689 (S.D.N.Y. 2000) (quoting *Urantia Found. v. Maaherra*, 114 F.3d 955, 958 (9th Cir. 1997)).

⁷² *Id.* at 1690 (emphasis added).

⁷³ See *supra* notes 13-14.

⁷⁴ *New Christian Church*, 55 U.S.P.Q.2d at 1683-84 (emphasis added).

⁷⁵ The "Definitions" section of Title 17 states,

in the quotation from the district court, Jesus clearly authorized Dr. Schucman to write down His revelations, which He dictated to her. Accordingly, by virtue of His being the author of the revelations and authorizing Dr. Schucman to fix His revelations in a "tangible medium of expression," Jesus is entitled to the copyright under the copyright law.

B. Jesus Is Human and Should Qualify for a Copyright

In general, a spiritual being is not eligible to become a copyright owner. Furthermore, the original works of any spiritual being are not entitled to a copyright without some element of human creativity added to them.⁷⁶ The Bible states that Jesus was made man,⁷⁷ that he died,⁷⁸ that he rose from the dead after three days,⁷⁹ that he ascended into heaven,⁸⁰ and that he also returned back to earth to his friends and disciples in substantially human form, still retaining his physical

A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is "fixed" for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

17 U.S.C. § 101 (2002).

⁷⁶ See, e.g., *Urantia Found. v. Maaherra*, 114 F.3d 955, 957 (9th Cir. 1997) (stating that "it is not the creations of divine beings that the copyright laws were intended to protect, and that in this case some element of human creativity must have occurred in order for the Book to be copyrightable"); *New Christian Church*, 55 U.S.P.Q.2d at 1686 (explaining that the plaintiffs "were informed that a copyright could not be granted to a non-physical author such as Jesus"); *Oliver v. Saint Germain Found.*, 41 F. Supp 296, 299 (S.D. Cal. 1941) ("The law deals with realities and does not recognize communications with and the conveyances of legal rights by the spiritual world . . .").

⁷⁷ *Luke* 2:7, 11-12.

And she brought forth her firstborn son, and wrapped him in swaddling clothes, and laid him in a manger; because there was no room for them in the inn. For unto you is born this day in the city of David a Saviour, which is Christ the Lord. And this shall be a sign unto you; Ye shall find the babe wrapped in swaddling clothes, lying in a manger.

Id.

⁷⁸ *Matthew* 27:50 ("Jesus, when he had cried again with a loud voice, yielded up the ghost.").

⁷⁹ *Matthew* 28:6 ("He is not here: for he is risen, as he said. Come, see the place where the Lord lay.").

⁸⁰ *Luke* 24:50-51 ("And he led them out as far as to Bethany, and he lifted up his hands, and blessed them. And it came to pass, while he blessed them, he was parted from them, and carried up into heaven."); *Mark* 16:19 ("So then after the Lord had spoken unto them, he was received up into heaven, and sat on the right hand of God.").

attributes of “flesh and bones.”⁸¹ Indeed, Jesus was seen by at least 500 friends and by His twelve disciples.⁸²

Therefore, we know that when Jesus rose from the dead and appeared to prove that He had conquered death He still retained his human attributes. In describing the form of Jesus’ resurrected person, author and highly respected theologian J. Rodman Williams states, “The resurrection of Jesus Christ was *corporeal or bodily*. He did not appear as a Spectral or disembodied [spirit] form.”⁸³ Jesus Himself emphatically denied being merely a spirit when He said to his disciples, “[B]ehold my hands and my feet, that it is I myself: handle me, and see; for a spirit hath not flesh and bones as ye see me have.”⁸⁴ In order to further confirm his humanity, Jesus stated that He was hungry, and ate with them.⁸⁵ Accordingly, Jesus, in his resurrected body, after He had arisen and defeated death, still retained flesh and bones, had an appetite, and could eat food. All of these characteristics are essential attributes of human beings and are never present in mere spirits.

Moreover, when Jesus returns in His Second Coming, He will come back in the same dual divine-human form that He had when He ascended from the Mount of Olives.⁸⁶ Professor Rodman Williams unequivocally attests to this fact, stating,

We need also to stress that the return of Christ will be corporeal: He will come in the body. On the day of His ascension the disciples saw Him leave in the body, and so He will return. It will be in “the body of His glory” (Phil. 3:21 NASB) – hence beyond usual earthly limitations. Nonetheless, He will return in the body.

The return of Christ, therefore, *will not be a spiritual coming*. Truly, He came in the Holy Spirit at Pentecost, and so comes again and again. But the coming in the *Paraclete*^[87] is quite different from

⁸¹ See *supra* note 14 and accompanying text.

⁸² 1 *Corinthians* 15:4-6 (“And that he was buried, and that he rose again the third day according to the scriptures. And that he was seen of Cephas [Peter], then of the twelve. After that, he was seen of above five hundred brethren at once.”).

⁸³ 1 WILLIAMS, *supra* note 14, at 386.

⁸⁴ *Luke* 24:36-43.

⁸⁵ *Id.*

⁸⁶ *Acts* 1:11-12.

Ye men of Galilee, why stand ye gazing up into heaven? This same Jesus which is taken up from you into heaven, shall so come in like manner as ye have seen him go into heaven. Then returned they unto Jerusalem from the mount called Olivet [Olives], which is from Jerusalem a sabbath day’s journey.

Id.

⁸⁷ See THE NEW BIBLE DICTIONARY, *supra* note 4, at 16.

The word *parakletos* in the Johannine writings, derived from the verb *parakaleo*, literally ‘to call beside’, has been interpreted both actively and passively; actively as meaning one who stands by and exhorts or encourages, whence the AV ‘comforter’ in J[oh]n 14:16, 26, 15:26, J[oh]n

His coming in the *Parousia*.^[88] Through the Holy Spirit Christ is with His people in presence and power, but this is a spiritual presence. The coming at the end of history is of a different order; it will be the coming of Christ Himself in His glorious body.⁸⁹

Therefore, the rule of copyright law holding that spirits cannot be copyright owners is inapplicable to Jesus because, even after His death and resurrection, He still retains His essential human attributes of "flesh and bones,"⁹⁰ as well as the ability to hunger and eat.⁹¹ Jesus is clearly a unique person in the universe, because for all eternity He will continue to possess the dual aspects of humanity, retaining the essential aspects of a human being, as well as those of a divine God.⁹² Therefore, this author postulates that because Jesus still retains His essential human attributes after conquering death, He possesses sufficient human elements to entitle Him to a copyright on His own, if He so chooses.

VI. WHO SHOULD HAVE THE COPYRIGHT ASSUMING BOTH JESUS AND THE TRANSCRIBER ARE ELIGIBLE?

Since both Jesus and the transcribers are eligible to hold the copyright, the question becomes a practical one of enforcement of the

16:7; passively as one called to stand by someone, particularly in a court of law (though as a friend of the accused rather than as a professional pleader), whence the AV 'advocate' in I John 2:1.

Id.

⁸⁸ 1 WILLIAMS, *supra* note 14, at 405.

This brings us to the high point of recognizing the kingship of Jesus Christ. For in so winning the victory over sin and evil, the kingdom of darkness, Christ thereby established His own kingdom. It is a kingship and kingdom supreme over all the forces of evil. As Jesus declared to Pontius Pilate: 'My kingship [or kingdom] is not of this world' (John 18:36). To Christ now belongs the kingship, the royal rule, the kingdom. As such, according to the Book of Revelation, Christ is now 'the ruler of the kings of the earth.' ([John] 1:5 NASB) They may not know it, indeed usually do not. Nonetheless He rules over them, and His kingdom is supreme above every earthly kingdom.

This, of course, does not mean that the kingdoms of earth are willingly subject to Christ. During the present era of His reign they are constantly in rebellion and waywardness, and it will only be at the *Parousia* that all their power will be abolished and their authority totally subjugated.

Id.

⁸⁹ 3 WILLIAMS, *supra* note 14, at 393 (emphasis added).

⁹⁰ See 1 WILLIAMS, *supra* note 14, at 386 and accompanying text.

⁹¹ *Id.*

⁹² See 3 WILLIAMS, *supra* note 89, at 385.

The return of Christ will have no counterpart in anything in ordinary experience; hence no precise conceptualization is possible. It will not be a movement from cosmic space to earthly space (like the return of an astronaut) but *from heaven to earth*; thus whether on, in, or with one cloud or many clouds makes no difference, since this is a movement between heaven and earth of *Him who is both God and man*.

Id. (emphasis added).

copyright if it is infringed.⁹³ There can be no question that it would be easier for another human being to bring an action for copyright infringement rather than for Jesus Himself to bring the copyright action. Notwithstanding that Jesus could request a human agent to bring a copyright infringement action, such an action before a district court could unnecessarily cause a reassessment, once more, of whether Jesus had a right to a copyright in the first place.

In order to avoid this potential pitfall, it is clear that the more pragmatic course would be to have the transcriber, compiler, and arranger of Jesus' revelations be the owner of the copyright so that that person could enforce the copyright of Jesus' revelations during the life of the copyright.⁹⁴

VII. CONCLUSION

It is clear to this author that if Jesus wished to claim copyright protection for Himself for all His revelations, He would legally be entitled to copyright protection in His name alone. Jesus retains sufficient human attributes to entitle Him to His own copyright for His revelations.⁹⁵ Nevertheless, because many judges in our federal courts may not be open to the fact that Jesus indeed lives in a dual divine-human form, pragmatism dictates that the compilers and arrangers of His revelations be given the copyright and the responsibility of pursuing all necessary copyright infringement actions.⁹⁶

⁹³ See 17 U.S.C. § 501(b) (2002).

The legal or beneficial owner of an exclusive right under a copyright is entitled . . . to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown . . . to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case.

Id.

⁹⁴ *Id.*

⁹⁵ See *supra* note 14 and accompanying text.

⁹⁶ See 17 U.S.C. § 501(b) (2002).