
IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 99-15732

URANTIA FOUNDATION,

Plaintiff-Appellee.

v.

KRISTEN MAAHERRA,

Defendant-Appellant.

On Appeal From
The United States District Court
for the District of Arizona

BRIEF OF DEFENDANT-APPELLANT, KRISTEN MAAHERRA

Before: SCHROEDER, FERNANDEZ and W. FLETCHER, Circuit Judges

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Defendant-Appellant *pro se*

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I. STATEMENT OF JURISDICTION

The district court possesses subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1338, which confers upon the federal district courts exclusive subject matter jurisdiction over copyright cases. The district court's February 11, 1999, (R-395) judgment is appealable. Defendant Maaherra filed a notice of appeal on March 15, 1999, (R-398) within the 30 day period established by Rule 4(a), Fed. R. App. P.

II. STATEMENT OF ISSUES

1. Whether the *Declaratory Judgment* left some of my defenses undecided: most notably, the “**unclean hands,**” “**copyright misuse,**” and “**public interest**” defenses.
2. Whether plaintiff Foundation is entitled to “relief” at all because it came into court with unclean hands.
3. Whether plaintiff Foundation's “unclean hands” is **a defense to infringement itself** and not just a defense to damages or an injunction.
4. Whether plaintiff Foundation has misused its copyright by refusing to sell books to people and by delisting the book with distributors.
5. Whether plaintiff Foundation fraudulently obtained and maintained its copyright.
6. Whether plaintiff Foundation pirated pages 1 through 2097 from another source.
7. Whether plaintiff Foundation misrepresents to the defendant and the court the scope of its copyright.
8. Whether plaintiff Foundation utilizes its copyrighted material in some sharp practice, such as deceptive advertising.

9. Whether plaintiff Foundation's misconduct is of serious proportions and relates directly to the subject matter of the action.
10. Whether plaintiff Foundation is in violation of the antitrust laws when it refused to publish an index – but sued me for publishing one.
11. Whether plaintiff Foundation's enforcement of exclusivity against some infringers but not against others (such as J.J. Benetiz) is a violation of the antitrust laws.
12. Whether plaintiff Foundation uses their copyright monopoly to eliminate competition against religionists who publish a truly "inviolable text" or give away the revelation.
13. Whether plaintiff Foundation misuses their copyright monopoly by trying to extend it into **all** derivative works.
14. Whether plaintiff Foundation's policy of "slow growth" is copyright misuse.
15. Whether "public interest" favors having an excellent and free index for an epochal revelation of over a million words.
16. Whether a *Declaratory Judgment*, in the absence of an injunction or damages, is too much of an advisory opinion.
17. Whether the *Declaratory Judgment* settled the original controversy, clarified the rights of the parties, settled the legal relations at issue, or afforded relief from the uncertainty and controversy giving rise to the legal proceedings in the first place.
18. Whether I can be found liable before all my defenses have been tried and ruled upon.
19. Whether the *Declaratory Judgment* ignores the facts and should not be allowed to stand on record as the final statement of this case.

III. STATEMENT OF THE CASE

Over 8 years ago, plaintiff Foundation sued me for giving away an index of the URANTIA papers. I believe the URANTIA papers are an epochal revelation.¹ – and therefore not copyrightable. The Foundation claimed that my index was doing them “irreparable harm,”² and I was put under an injunction not to give away my index.

The Foundation lost their copyright on the URANTIA papers on summary judgment. Then they appealed, (using a whole new set of “facts”) and were given back their copyright by the Ninth Circuit, who also ruled that I “infringed” that copyright.³ The case was sent back to the lower court for a determination of damages.

At this point, the Foundation asked for damages and a permanent injunction – again claiming I was doing them “irreparable harm.” I asked for a hearing on damages, and they dropped the damages claim. I asked for a hearing on the injunction, and they dropped the request for an injunction – if Judge Urbom would give them a *Declaratory Judgment*. Which he did.

I am appealing from this *Declaratory Judgment* for a number of reasons.

¹ Revelation: (n). Something revealed, especially a dramatic disclosure of something not previously known or realized. *Theology*. A manifestation of divine will or truth. Middle English *revelacion*, from Old French epochal revelation, from Latin *revelatio*, epochal revelation-, from *revelatus*, past participle of *revelare*, to reveal: **to make known by supernatural or divine means.**

² "...if the Foundation's appeal is successful and the relief that it presently seeks is not granted, then the Foundation will suffer **irreparable harm. At a minimum, it faces permanent injury** from the loss of control over the text of and the reproduction of The URANTIA Book." Plaintiff Foundation's *Emergency Motion to Stay Declaratory Judgment and Reinstate Preliminary Injunction Pending Appeal*, November 3, 1995, p.23.

³ The Ninth Circuit's *Opinion* was based on facts still in dispute: 1. The court decided – against evidence in the record – that “both sides believe” the “epochal revelation” was “created” and “edited” and “compiled” by humans. 2. The court decided plaintiff Foundation's *Declaration of Trust* constitutes their entire chain of title. 3. The court decided – against evidence in the record – that the contact commission was plaintiff Foundation's predecessor organization. 4. The court decided, “No questions – no papers.”

IV. SUMMARY OF ARGUMENT

I am appealing from the Court's *Declaratory Judgment* because my defenses have not been decided – most notably, plaintiff Foundation's "unclean hands" and "copyright misuse." "Public interest" is also an issue still left undecided by the Court. Because of "unclean hands," plaintiff Foundation is not entitled to a declaration that I am "liable to the plaintiff for copyright infringement."⁴ I cannot be found "liable" before all of my defenses have been tried and ruled upon by the court. Since plaintiff Foundation came into court with "unclean hands," plaintiff Foundation does not deserve the protection offered by copyright law.

A *Declaratory Judgment* does not settle the original controversy, clarify the rights of the parties, settle the legal relations at issue, or afford relief from the uncertainty and controversy giving rise to the legal proceedings in the first place.⁵

The original controversy was not actually over copyright, but over whether or not I could give away an index. The original controversy was more about religious freedom than anything else, and the *Declaratory Judgment* certainly did not settle that.

The *Declaratory Judgment* also deprives me of right to jury trial and is too much of an advisory opinion. The *Declaratory Judgment* ignores the facts and should not be allowed to stand on record as the final statement of this case.

⁴ See, Foundation's Motion for *Declaratory Judgment* at 1.

⁵ The fact that plaintiff Foundation sought only a declaration of infringement does not change the character of plaintiff Foundation's **original claim** – which included hysterical accusations of "irreparable damage" done to plaintiff Foundation accompanied by demands of a permanent injunction and monetary awards as punishment for my giving away an index of what plaintiff Foundation itself had always claimed was an epochal revelation.

V. ARGUMENT

A. THE DECLARATORY JUDGMENT LEFT DEFENSES UNDECIDED

1. I copied and indexed the revelation – not plaintiff Foundation’s Book.

Regarding “all other defenses to copyright infringement not addressed in its [the Ninth Circuit’s] decision,” Judge Urbom wrote in granting the Declaratory Judgment:

“If Maaherra wished to raise such a defense, then she should have contested her verbatim copying the URANTIA Book onto computer diskette from the beginning.”

I have done exactly that, from the beginning. From the beginning (actually, from before the beginning – from before the lawsuit even started), I have said I copied *only the epochal revelation*, the URANTIA papers, the text on pages 1 through 2097, of the URANTIA Book – I did *not* copy the entire book verbatim, and I have never “admitted” that I copied the whole book, either. I have said *from the beginning* that I decided not to use what I was told by plaintiff Foundation was William Sadler, Jr.’s contribution of pages v through lxvi. That this distinction – between the URANTIA Book and the URANTIA papers – is important to me is not a word game, or an “argument,” or semantics. It is the religious difference between epochal revelation (something from God) and human authorship.⁶ I’m on record (like a broken record) saying that I never wanted to index any part of the URANTIA Book that wasn’t epochal revelation. I’ve put on record that I’d heard that pages v through lxvi (about 60 pages of the URANTIA Book) were authored by Bill Sadler, Jr., and that’s why I didn’t want them in the index I created.

When I made *Requests for Admissions* to the Foundation, I included two (2) **Definitions**

⁶ “Authorship is an entirely human endeavor.” 1 *William F. Patry, Copyright Law and Practice*, 141 n.80 (1994). Also see, Compendium II of Copyright Office Practices § 202.02 (b).

at the top. Number one (1) reads:

“As used herein, the ‘URANTIA papers’ shall mean the portion of The URANTIA Book that is denoted as the foreword and the papers which are numbered 1-196, and which is printed at pages 1-2097 of The URANTIA Book.”

I indexed (formatted onto computer disks and distributed) only the URANTIA papers, the epochal revelation itself, the text of my religion, authored exclusively by superhumans. The epochal revelation, the text of the URANTIA papers, has no human authorship. It’s the religion of Jesus, and it’s the fifth epochal revelation to this planet, URANTIA.

In other words, from **before** this lawsuit even began, I have said I didn’t copy the entire text of the URANTIA Book, verbatim or otherwise. For the last 8 years, whenever the subject has come up, I have always made a clear distinction between the URANTIA Book (published by the Foundation) and the URANTIA papers (the epochal revelation.) I carefully and purposely copied only that part which had been portrayed to me **by plaintiff Foundation itself** as the epochal revelation.

I did not copy – and I have certainly never admitted copying – the entire URANTIA Book. For my index I only used the part of the URANTIA Book that plaintiff Foundation has told me – for over 40 years – is entirely revelation. In over 40 years of advertising, marketing, and selling the URANTIA Book to the public, plaintiff Foundation has consistently claimed there was to be “no human name” associated with the revelation.⁷

⁷ Even the unsubstantiated *History* submitted by plaintiff Foundation says: “...the Celestial Revelators do not want any human being – any human name – ever to be associated with The URANTIA Book.” (Page 000306). The human “contact personality” whose Thought Adjuster was used in materializing the papers is not named.

2. Plaintiff Foundation’s “unclean hands” is a defense to infringement itself and not just to damages or an injunction.

For over 40 years, Plaintiff Foundation has told the public that superhuman revelators created the epochal revelation and first fixed it in tangible form⁸ through an unknown technique that somehow involved secondary midways. I believed I was not “infringing” on anything created by plaintiff Foundation. For over 40 years, plaintiff Foundation has portrayed the URANTIA Book as an epochal revelation, the fifth epochal revelation to our planet. (Jesus, claimed plaintiff Foundation, was the fourth revelation of epochal significance).⁹ Over the last 40 years, the “fact” that the URANTIA papers are an epochal revelation was repeatedly confirmed in many different ways: by statements from fundraising letters,¹⁰ mailing inserts, and pamphlets sent out by the Foundation; statements in the “*Origin of the URANTIA Book*,”¹¹ written for the Foundation by Dr. Meredith Sprunger and extensively mailed out by the Foundation in response to inquiries about the origin and authorship of the papers; statements

⁸ HOUSE REPORT NO. 94-1476. Original Works of Authorship says: “The two fundamental criteria of copyright protection – **originality and fixation in tangible form** – are restated in the first sentence of this cornerstone provision.” Title 17, U.S.C., Sec. 101: 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.

⁹ “What a transcendent service if, **through this revelation**, the Son of Man should be recovered from the tomb of traditional theology and be presented as the living Jesus to the church that bears his name, and to all other religions!” (Paper 196, § 1, ¶ 2).

¹⁰ Fundraising letters from plaintiff Foundation have never included statements they put in court records. They don’t say, for example, “Donate money to us because we are a commercial publisher trying to make a profit on this “literary work” created by Bill Sadler, Jr. and the members of the contact commission.”

¹¹ “In response to your request for information about the origin of the book, we are enclosing a copy of a paper entitled, ‘*The URANTIA Book: The Question of Origin.*’ This is the only publication of the subject of origin available from our offices. We are aware of no other publication of the subject.” (R-357) Scott Forsythe, F-3 and -4.

made to me **personally** by Dr. Sprunger; statements on the *Dust Jacket*¹² of the URANTIA Book published by the Foundation; statements in Foundation *Newsletters*; statements in letters written to individuals by contact commissioners,¹³ by the Foundation staff, and by Foundation trustees; statements in William Sadler, Jr.'s *Titles of the Papers and Contents of the Book* section (pages v through lxvi) regarding authorship; statements all through the epochal revelation itself;¹⁴ statements made to me **personally** by contact commissioner “Christy” (Emma L. Christensen); statements made to me **personally** by various members of the forum – including Marian Rowley, Mary Lou and Bill Hales, Virginia Melloncamp, Barrie Bedell, and Nola Smith (who is also an “Ordained Teacher” – *i.e.*, graduate of the *Brotherhood School* – for the URANTIA papers); and statements made in talks and speeches by contact commissioners (Bill Sadler on audiotape, Christy in person), Foundation trustees and staff at “*Summer Study Sessions*” (in Chicago when Christy was alive), Local and International Conferences, Worship Services, and Study Groups. (The *Excerpts of Record* lists what I was told.)

¹² The *Dust Jacket* of The URANTIA Book as published by plaintiff Foundation, references pages 1, 17, 16, 1109, 215, 865, 1258, 1008, 32, and 1007 “*Concerning . . . the Nature, Origin, and Organization of The URANTIA Book.*” (Emphasis added).

¹³ For example: “The **authors are all listed in the book itself**, and you will find papers describing them in detail, as **this is the only information we have regarding the origin, nature, and organization** of The URANTIA Book.” E.L. Christensen, Ex. C-1. (Emphasis added).

¹⁴ The URANTIA papers themselves say that it is the secondary midwayers (superhumans) who induced the planetary celestial supervisors (superhumans) to initiate those petitions which resulted in the granting of the mandates (from the Ancients of Days) making possible the fifth epochal revelation to this planet. The URANTIA papers are clear that they were not created at the instance of the contact commission, the Sadlers, the forum, the Foundation, the human contact personality, or any other human agency or person: “It was the work of this secondary group, ably seconded by certain of the primary corps, that brought about the co-ordination of personalities and circumstances on URANTIA which finally induced the planetary celestial supervisors to initiate those petitions that resulted in the granting of the mandates making possible the series of epochal revelations of which this presentation is a part.” (Page 865, Paper 77, § 8, last ¶).

Nimmer reports: “The Fifth Circuit has summed up the matter as follows:

‘The maxim of unclean hands is not applied where plaintiff’s misconduct is not directly related to the merits of the controversy between the parties, but only where the wrongful acts ‘in some measure affect the equitable relations between the parties in respect of something brought before the court for adjudication.’ **The alleged wrongdoing of the plaintiff does not bar relief unless the defendant can show that he has personally been injured by the plaintiff’s conduct.**”¹⁵ (Emphasis added).

“In order to be entitled to the equitable defense of unclean hands, plaintiff’s misconduct must be of serious proportions and relate directly to the subject matter of the action.”¹⁶

I have based my life on the URANTIA papers being the fifth epochal revelation to this planet. Not until plaintiff Foundation’s *Appeal Brief* did they ever say the URANTIA papers were “created” at the “instance and expense” of the contact commission. On the one hand – to believers – plaintiff Foundation claims that superhumans created and materialized (first fixed in tangible form) the epochal revelation; on the other hand – to the Court in this lawsuit – they claim that the humans of the contact commission had the power to induce, direct, supervise, oversee, edit, select, compile, and control the actual production of an epochal revelation! I have been personally injured for half my life by plaintiff Foundation’s deceit. If plaintiff Foundation had told me when I was in my 20's that the URANTIA papers were “created” at the “instance and expense” of the contact commission, I certainly would not have donated and tithed as I did to plaintiff Foundation, much less have based my life on the truth of the papers, or named each of my children from the papers. If humans collaborated in the creation of the text of the

¹⁵ Nimmer on Copyright, § 13.09 *The Defense of Misuse of Copyright or Unclean Hands*, [B] – The General Defense of Unclean Hands. [13-295, 13-296].

¹⁶ 18 Am Jur 2nd *Copyright and Literary Property* § 220.

URANTIA papers, it would not be an epochal revelation at all, but a giant fraud that the Foundation is directing.

As I understand it, “unclean hands” is a doctrine stating that a decision should not be made in favor of a plaintiff who, himself, has not conducted himself honestly. In other words, plaintiff Foundation has come into court with “unclean hands.” If a plaintiff comes into court with unclean hands, that plaintiff is not entitled to protection. The doctrine of unclean hands applies mainly to matters of equity. Equity, as I understand it, is a method of obtaining justice through evaluation of the merits of an issue, rather than through reliance upon existing laws and statutes. However, the doctrine of unclean hands is not limited to suits in equity; the general principle it expresses is equally suited to damage actions.¹⁷

In granting plaintiff Foundation’s *Declaratory Judgment*, Judge Urbom wrote:

“Since alleged **violations of copyright infringement are legal, rather than equitable in nature**, defendants, such as Maaherra, are generally entitled to a jury trial... With respect to the essential elements of a copyright infringement claim, then, I find that **no issue of fact remains to be tried.**”¹⁸ (Emphasis added).

However, Nimmer¹⁹ writes that the defense of unclean hands “has been held available in a copyright infringement action **regardless of whether the action is one at law or in equity.**”²⁰

Nimmer also states that the unclean hands defense:

¹⁷ Kuehnert v. Textar Corp., 412 F.2d [29] 700 (5th Cir. 1969).

¹⁸ Judge Urbom’s *Memorandum and Order on Motion for Declaratory Judgment*, p.4.

¹⁹ Nimmer on Copyright, § 13.09 The Defense of Misuse of Copyright or Unclean Hands, [B] – “*The General Defense of Unclean Hands.*” [13-293]. (Citations omitted and emphasis added).

²⁰ *Tempo Music, Inc. v. Myers*, 407 F.2d 503 (4th Cir. 1969); *F.E.L. Publications, Ltd. v. Catholic Bishop of Chicago*, 506 F. Supp. 1127 (N.D. Ill. 1981), *rev’d on other grounds*, 214 U.S.P.Q. 409 (7th Cir. 1982). Cf. *Mitchell Bros. Film Group v. Cinema Adult Theater*, 604 F.2d 852 (5th Cir. 1979) (issue left undecided).

“has been recognized when the plaintiff misused the process of the courts by falsifying a court order, by falsifying evidence, or by **misrepresenting the scope of his copyright to the court and opposing party**. Moreover, the doctrine of fraud on the Copyright Office, as a basis for denying relief, is an offshoot of the general theory of unclean hands.”²¹

Plaintiff Foundation has certainly been “**misrepresenting the scope of [their] copyright**” to **someone!** Misrepresenting the scope of their copyright **to the court** by telling the court that the epochal revelation was “created” at the “instance and expense” of the contact commission. Misrepresenting the scope of their copyright **to me** by telling me that the URANTIA papers are an epochal revelation created and materialized with NO HUMAN AUTHORSHIP – thereby leading me to believe the papers are in public domain.²²

Besides the harm plaintiff Foundation has done to me **personally**, plaintiff Foundation has “unclean hands” because:

1. Plaintiff Foundation has misused its copyright. Plaintiff Foundation has attempted to suppress distribution of the URANTIA Book. For example, the Foundation has refused to sell books to willing buyers the Foundation did not like. After soliciting funds from the general

²¹ Nimmer on Copyright, § 13.09 *The Defense of Misuse of Copyright or Unclean Hands*, [B] – The General Defense of Unclean Hands. [13-293, 13-294].

²² From the Deposition of Bernard C. Dietz (Head of the Renewal Section of the Copyright Office), October 17, 1991: MR. BRYLAWSKI: Q. If someone had responded that what they were seeking to copyright in 1956 was not created by them but came to them by divine epochal revelation what would you have done? THE WITNESS: A. It was not unusual during that period to receive claims to copyright for works for which the individuals asserted that this was revealed to them in a dream by an alien from outer space or a divine being and these claims were routinely rejected. Q. On what basis? A. That they were not works — in the second instance that they were not works of human authorship, and in the first instance, that the author of the work did not have — was not a member of a governmental body that had copyright relations with the United States, Mars, for example, or the moon. Q. Would it be fair to analogize that with the 10 commandments in the sense that Moses was not the author of the 10 commandments? A. Exactly. Q. He merely had received them and written them down? A. Yes. Q. So as I understand it the mere writing down of someone else’s statements or expressions does not constitute the person writing it down as an author? A. No. The authorship has to emanate from an individual. There has to be something that could be attributable to that individual.”

public with the promise of wide distribution of their book, the Foundation delisted their book from major book distributors. (Also see monopoly and antitrust violations, below).

2. Plaintiff Foundation fraudulently obtained its copyright. Plaintiff Foundation has lied to the copyright office and the courts.

Failure properly to inform the Copyright Office of facts relevant to the question of copyrightability has been held to constitute unclean hands.²³ Plaintiff Foundation has never informed the Copyright Office that the authors of the URANTIA papers are spiritual beings and no human being wrote any portion of the text of the papers. Plaintiff Foundation has never listed the authors of the URANTIA papers with the Copyright Office: Divine Counselor, *et. al.*

Or – **alternately** – Plaintiff Foundation has never listed the members of the contact commission – Dr. William S. Sadler, Sr. (“Doc”), Dr. Lena Sadler (“Dr. Lena”), William S. Sadler, Jr. (“Bill”), Emma L. Christensen (“Christy”), and the rest of the members of the contact commission²⁴ with the Copyright Office as authors, either.

3. Plaintiff Foundation pirated pages 1 through 2097 from another source – the revelators.

4. Plaintiff Foundation misrepresents to the defendant and the court the scope of its copyright by claiming to “own” the words of the revelators and the words of the historic Jesus, instead of owning only William Sadler, Jr.’s contribution of pages v through lxvi.

5. Plaintiff Foundation utilizes its copyrighted material in some sharp practice, such as deceptive advertising. Plaintiff Foundation markets, advertises, and sells the URANTIA Book

²³ Russ Berrie & Co. v. Jerry Elsner Co. (SD NY) 482 F Supp 980, 205 USPQ 320.

²⁴ Whoever the members of the contact commission are – under oath, plaintiff Foundation was not quite sure of the members.

to the public as “epochal revelation” with all that is known about origin, arrangement, and authorship found in the URANTIA Book itself – but tells the court that the URANTIA Book was “created” at the “instance and expense” of the humans of the contact commission. I believed plaintiff Foundation when it claimed that the only information regarding the origin, nature, and organization of the book is in the book itself – and based my life on that belief.

As my (former) lawyer, Joe Lewis, said in the *Appeal Hearing* on January 14, 1997:

“One who puts out a book as factual²⁵ cannot — for expediency in litigation — change their story on that.”

6. Plaintiff Foundation’s misconduct is of serious proportions and relates directly to the subject matter of the action. Plaintiff Foundation has defrauded me for half my life in order to get donations and tithes. Because plaintiff Foundation apparently misrepresented, deceived, deluded, misled, fooled, tricked, duped, and betrayed me into believing that the only part of the URANTIA Book which is not revelation is pages v through lxvi, I indexed what I had been told by plaintiff Foundation was the revelation, only to be sued by plaintiff Foundation for indexing a book plaintiff Foundation (in Court) claimed was “created” at the “instance and expense” of the contact commission.

3. Plaintiff Foundation’s misuse through violation of the antitrust laws is a defense to copyright infringement that has not been ruled on.

A copyright is a form of monopoly. To misuse a monopoly is a violation of the antitrust laws. Nimmer states:

²⁵ “Throughout history, copyright law has ‘recognize[d] a greater need to disseminate factual works than works of fiction or fantasy.’” (Citation omitted). From the *Opinion* of the United States Court of Appeals for the Tenth Circuit, No. 89-1909, March 27, 1991, in *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*

“The Copyright Act accords to each copyright owner a limited form of monopoly. **An attempt to extend the scope of this monopoly results, under certain circumstances, in violation of the antitrust laws.**”²⁶

Plaintiff Foundation has misused its monopoly in the following ways: to refuse to sell books, to delist the book with distributors, and to refuse believers to distribute derivative works. For example, plaintiff Foundation won’t let songwriters and painters use *even one name* from the URANTIA papers. Plaintiff Foundation is in violation of the antitrust laws when they refused to publish an index – but wouldn’t let me publish one, either. Plaintiff Foundation’s enforcement of exclusivity against some infringers but not against others (such as J.J. Benetiz) is also a violation of the antitrust laws.

Not only does plaintiff Foundation use their copyright monopoly to eliminate competition (against religionists who want to publish a truly “inviolable text,” and against religionists who want to **give away** the epochal revelation instead of sell it), but they misuse their monopoly by trying to extend it into all derivative works. And plaintiff Foundation has maintained their monopoly through fraud. Nimmer states:

“In fact, it has been held that an antitrust violation is a sufficient, but not necessary, component of the defense; even absent use of a copyright to violate the antitrust laws, **‘an equitable defense to an infringement action [might lie if] the copyright is being used in a manner violative of the public policy embodied in the grant of a copyright.’**”²⁷ (Footnotes omitted and emphasis added).

By upholding plaintiff’s claims to copyright monopoly, the Court has decided who is

²⁶ Nimmer on Copyright, § 13.09, The Defense of Misuse of Copyright or Unclean Hands, [A] – Misuse Through Violation of the Antitrust Laws [13-284].

²⁷ Nimmer on Copyright, § 13.09 *The Defense of Misuse of Copyright or Unclean Hands*, [A] – Misuse Through Violation of the Antitrust Laws [13-284].

permitted to use the fundamental text of my religion, and who is not.²⁸ By calling my publication of an epochal revelation “infringement,” the Court has allowed itself to be used as a tool in plaintiff Foundation’s attempted censorship of my First Amendment freedoms.

There is no dispute as to the significance of the URANTIA revelation. The issue in this case is whether an epochal revelation can be monopolized by plaintiff Foundation. The revelation is in essence the “Bible” of the URANTIA community. The issues raised in this case are analogous to the question of whether a court could find that the Bible could be monopolized by a particular sect of Christianity. Plaintiff Foundation wrongfully extends its monopoly to my religion.

4. Plaintiff Foundation’s “copyright misuse” is an issue that needs to be decided as a defense against infringement.

Plaintiff Foundation has removed from the Foundation’s mailing lists:

“the names of persons who we feel are strongly opposed to our policies, or strongly opposed to our ownership of the copyright and marks or both.”²⁹

Plaintiff Foundation believes in the principle of “slow growth”³⁰ for the epochal revelation. This puts the Court in the position of determining ecclesiastical questions and interpreting policy. Plaintiff Foundation has a policy of “slow growth;” I do not – I intend to make the epochal revelation more available to the general public. Plaintiff Foundation “allows”

²⁸ “...intrud[ing] for the benefit on one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 119, 73 S.Ct. 143, 156 (1952).

²⁹ Richard Keeler deposition, November 17, 1994, page 41.

³⁰ Plaintiff Foundation’s *Special Report*, “Principle of slow growth,” page 3.

only word of mouth advertising by believers. This problem of ideology is central to this dispute.

This policy of “slow growth” extends to Plaintiff Foundation’s delisting the URANTIA Book with all book distributors – making the revelation even more difficult to find. Plaintiff Foundation has engaged in inequitable conduct (such as their refusal to sell books to certain individuals, groups, and bookstores who were opposed to Foundation policies), conduct which does not entitle it to a *Declaratory Judgment*.

5. “Public interest” is an issue that needs to be decided as a defense against infringement.

The first printing (on page lxvi at the end of the “*Contents of the Book*” section and on the dust jacket) claimed an index was available. This was not true. Forty years later, when I began giving away the index plaintiff Foundation sued me for, plaintiff Foundation still published no index. Public interest favors having an index – especially an easy to use, excellent, and no-cost index – for an epochal revelation of over a million words.

Public interest favors maintaining the accessibility of the Urantia revelation. Plaintiff Foundation has, throughout its history, used its asserted copyright to intimidate Urantians from utilizing the basic text of their religion. The Foundation has extended its claim of copyright far beyond that to which it reasonably is entitled under the law in an attempt to control the activities of Urantians.

Public interest favors free use of the “facts,” the revelation, the “preexisting material.” Public interest is usually best served by the author, because the author is the one most likely to disseminate the work to the public. However, in this case, we have a Foundation who is NOT

the author — according to the URANTIA Book, the authors of the URANTIA revelation are all superhuman beings — yet plaintiff Foundation insists on controlling the fifth epochal revelation to the planet, and tries to control every person who believes in this epochal revelation.³¹ Public interest favors maintaining the accessibility of the Urantia revelation. Plaintiff Foundation has, throughout its history, used its asserted copyright to browbeat and control Urantians. Plaintiff Foundation has extended its claim of copyright far beyond that to which it reasonably is entitled under the law in an attempt to slow down the activities of Urantians. Plaintiff Foundation’s “*Copyright Use Guidelines*,” have been far more restrictive than “fair use” in Copyright Law.

B. DECLARATORY JUDGMENT IS TOO MUCH OF AN ADVISORY OPINION

A *Declaratory Judgment*, in the absence of an injunction or damages, is too much of an advisory opinion. The law is supposed to be interpreted by the courts; the facts are supposed to be determined by juries. In the *Declaratory Judgment*, the court is supposed to be declaring its interpretation of the law – not the facts.

Judge Urbom states:

“Maaherra is **not entitled to an advisory opinion** detailing her legal rights for acts short of complete verbatim copying of the entire Book, including the selection and arrangement of the epochal revelations into the papers that comprise the Book, and subsequent distribution.”

In the case of this *Declaratory Judgment*, the court – in spite of saying I don’t deserve an advisory opinion – is giving one.

³¹ In the Foundation trustees’ *Special Report*, page 2. “There had not in 1900 years been anything about which there could be so much competition for control as *The URANTIA Book*.”

C. THE DECLARATORY JUDGMENT DID NOT SETTLE THE ORIGINAL CONTROVERSY

Plaintiff Foundation's original *Complaint* in this lawsuit seeks an injunction against my use of "all **or part** of the text of The URANTIA Book **or unauthorized derivative works**"³² based thereon."³³ (Emphasis added).

The *Federal Rules of Civil Procedure*, Rule 57, under *Declaratory Judgments* says:

"The procedure for obtaining a *Declaratory Judgment* pursuant to Title 28, U.S.C., Sec. 2201,³⁴ shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38³⁵ and 39.³⁶ The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a *Declaratory Judgment* and may advance it on the calendar."

³² "Title 17, U.S.C., Sec. 101: A 'derivative work' is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a 'derivative work.'"

³³ "Plaintiff URANTIA Foundation has filed this action to stop defendants from creating, distributing and encouraging others to create and distribute unauthorized copies of plaintiff's copyrighted work, The URANTIA Book, and derivative works based thereon..." *Memorandum in Support of Motion for Prelim. Injunction*, p.1.

³⁴ Title 28, U.S.C., Sec. 2201: Title 28 – Judiciary and Judicial procedure; Part VI – Particular Proceedings; Chapter 151 – *Declaratory Judgments*: "...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such." (01/26/98).

³⁵ "Rule 38. Jury Trial of Right. (a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate." *Federal Rules of Civil Procedure*.

³⁶ Rule 39. Trial by Jury or by the Court. (a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States." *Fed. Rules of Civil Procedure*.

A checklist of the elements necessary for an award of declaratory relief include:

1. Standing. (Yes).

2. Actual controversy. (The case definitely includes actual controversy. I claim that the URANTIA papers have NO HUMAN AUTHORSHIP, that the URANTIA papers are an epochal revelation, and the URANTIA papers form the basis for my religion – I am a “believer.” Plaintiff Foundation claims that humans “created” a “literary work” and everyone’s a “reader.”)

3. Liability for infringement . (No, I am not liable. How can I be “liable” if all my defenses haven’t been heard? How can I have “infringed” if I only used the part of the URANTIA Book that is epochal revelation? **The detailed factual evidence that must be presented regarding the origin and creation of the epochal revelation is critical to a determination of liability.** The *Declaratory Judgment* did not determine the nature and extent of plaintiff Foundation’s own claimed contribution and distinguish it from the epochal revelation which is in public domain.

Many of my exhibits relate to the issue of showing that plaintiff Foundation’s involvement to be even less than that of the copyright holder, for example, in *West Publishing*:³⁷ **(public domain judicial opinions contained in validly copyrighted compilation could be copied without infringing copyright in the compiled volume.)**

4. A declaration will clarify rights of parties. (No, it doesn’t.) Plaintiff Foundation’s original *Complaint* in this case seeks an injunction against my use of:

³⁷ *Matthew Bender & Co. v. West Publishing Co.*, No. 97-7910 (2nd Cir. Slip op. November 3, 1998) **(public domain judicial opinions contained in validly copyrighted compilation could be copied without infringing copyright in the compiled volume.)**

“all **or part** of the text of The URANTIA Book **or unauthorized derivative works** based thereon.” (Emphasis added).

How does the *Declaratory Judgment* resolve plaintiff Foundation’s original *Complaint*?

What may I index? What may I give away?

The *Declaratory Judgment* neither “settled the legal relations at issue,” nor “afforded relief from uncertainty and controversy that gave rise to the legal proceedings.” The appeal decision of the Ninth Circuit held that while there was some valid copyright in the book, the revelation that is reprinted in the book is in the public domain. As the Ninth Circuit noted in its *Opinion*, copyright has nothing to do with epochal revelation. The Copyright Office “routinely rejects” applications claiming non-human authorship. Text authored by superhumans is in public domain from the moment it is materialized. How can I be “liable” to plaintiff Foundation if I indexed only **what plaintiff Foundation told me** was the epochal revelation?

In his *Memorandum and Order on Plaintiff URANTIA Foundation’s Motion for Declaratory Judgment*, Judge Urbom quotes the *Declaratory Judgment Act*, Section 2202,

Further relief:

Further necessary or proper relief based on a *Declaratory Judgment* or decree may be granted, after reasonable notice and hearing, against any adverse party **whose rights have been determined by such judgment.**” (Emphasis added).

My rights have not been determined by the *Declaratory Judgment*. I believe I am not liable to plaintiff Foundation for infringement at all, because of plaintiff Foundation’s “unclean hands,” and other reasons listed above. My defenses to damages or an injunction are also defenses to infringement in the first place. Unless the Court rules on the disputed facts in this lawsuit, the *Declaratory Judgment* does nothing to clarify the issues.

D. THE DECLARATORY JUDGMENT IGNORED FACTS STILL IN DISPUTE

A *Declaratory Judgment* – just as a *Summary Judgment* – cannot be given if there are facts in dispute. In granting plaintiff Foundation’s *Declaratory Judgment*, Judge Urbom wrote:

“With respect to the essential elements of a copyright infringement claim, then, I find that **no issue of fact remains to be tried.**”³⁸ (Emphasis added).

However, there are a number of facts in dispute. Plaintiff Foundation testified to – and, ultimately, the Ninth Circuit Appeal Court relied upon – certain undocumented “evidence” – none of which is actual evidence.³⁹ I call these self-serving whoppers plaintiff Foundation’s “*Hunting of the Snark*” approach: “*I have said it thrice: What I tell you three times is true.*”⁴⁰

1. A “*History*” introduced by Carolyn Kendall at her deposition (*i.e.*, not even given in discovery by plaintiff Foundation).

2. Plaintiff’s own self-serving *Admissions* and *Interrogatories* answers (with no documents or actual “evidence” to back up their claims).

3. The *Depositions* of Hoite Caston and Patricia Mundelius – both heresay descriptions of the origin of the URANTIA papers.

4. Plaintiff’s “*Declaration of Trust*” – a human document that never mentions copyright, the original manuscript⁴¹ of the URANTIA papers, the forum, or the contact commission.

³⁸ Judge Urbom’s *Memorandum and Order on Motion for Declaratory Judgment*, p.4.

³⁹ See URANTIA believers’ (“the Fellowship”) *Amicus Brief* for an excellent (accurate and complete) discussion of each of these points.

⁴⁰ From “*Hunting of the Snark*,” by Lewis Carroll.

⁴¹ The Foundation wrote that it has “produced evidence that it possessed the unpublished manuscript.” (plaintiff Foundation’s Appeal Brief, page 7). But the Foundation has produced no such evidence. Plaintiff Foundation’s *Reply to Def’s Second Set Interrogs*, #14, September 25, 1991: “...plaintiff states that both the

1. Fact in Dispute: the URANTIA papers have no human authorship.

The Ninth Circuit Appeal Court recognized that:

“...the use of a single ‘epochal revelation’ outside the context of the Book” would “for purposes of this case”... “be analogous to a ‘fact,’ and which of course would not be copyrightable.”

The Appeal Court has ruled that anything that is “revelation” is in public domain; therefore, plaintiff Foundation doesn’t have a copyright on the revelatory parts – *i.e.* the parts of the URANTIA papers that have superhuman authorship. These parts are clearly defined by early Urantian leaders⁴² and by the epochal revelation itself.⁴³ According to these two sources, I believe the epochal revelation consists of pages 1 through 2097 of plaintiff’s URANTIA Book. However, until there is an evidentiary hearing as to the nature and scope of plaintiff Foundation’s claimed “human contribution” to the book, the court cannot determine the scope of the Foundation’s copyright or my permissible conduct.

The facts still in dispute need to be decided by a jury. The *Declaratory Judgment* robbed me of my right to a jury trial. Judge Urbom mentioned, “the advanced stage of this litigation;” however, **not once in these 8 years** have I been given a chance for a hearing on the evidence I have collected.

manuscript copies of the URANTIA Book and the original nickelplated stereotype plates for the printing of the URANTIA Book received by URANTIA Foundation have been destroyed...” (The *Declaration of Trust* mentions only the plates, not the manuscript; plaintiff Foundation has presented **no evidence** it ever possessed the manuscript.) In fact, the Foundation’s First President, William Hales, testified in his Deposition, “To my knowledge, the plates were the only tangible evidence of the Urantia Book delivered to the Foundation.” (P.35).

⁴² See the *Record Excerpts* for these quotations.

⁴³ See the *Record Excerpts* for these quotations.

2. Fact in Dispute: Plaintiff Foundation has no predecessor organization.

William Hales,⁴⁴ in his Deposition, identified plaintiff Foundation's *Application for Tax Exempt Status* where he personally had marked the box as claiming the URANTIA Foundation had, "NO PREDECESSOR ORGANIZATION."⁴⁵ The contact commission was not plaintiff Foundation's predecessor – the Foundation had no predecessor. (Plus, the two groups overlapped by some years and were not composed of the same people.)

The *Federal Rules of Civil Procedure*. Rule 56. Summary Judgment. (e) says:

"...an adverse party may not rest upon the **mere allegations or denials** of the adverse party's pleading..."

I have documents – William Hales' deposition and plaintiff Foundation's own tax application – to show that the contact commission was **not the predecessor** of the Foundation. The Ninth Circuit simply took plaintiff Foundation's word for it that the contact commission was "predecessor" to plaintiff Foundation – probably because plaintiff Foundation just kept repeating it over and over in its usual "*Hunting of the Snark*" approach to truth: "*I have said it thrice: What I tell you three times is true.*"⁴⁶ Facts and actual evidence to the contrary need to be ruled on by a jury. The *Declaratory Judgment* is based on facts that are in dispute.

⁴⁴ URANTIA Foundation's First President of the *Board of Trustees*.

⁴⁵ In answer to the question, "Is this organization the outgrowth or continuation of any form of predecessor?" plaintiff Foundation marked, "NO." Bill Hales, first President of plaintiff Foundation, confirmed this in his deposition: "Q. Box 4E says 'Date of Organization,' and the response there is 'January 11, 1950.' Is that a correct answer to that question? A. Uh-huh. Yes. Q. The next box, box 5A asks 'Is the organization the outgrowth or continuation of any form of predecessor? A. No. Q. Okay. And you said 'no' on that, and the box is checked 'no.' So I guess my question is was the response check 'no' here an accurate answer? A. (Nodding.) Yes." (Discovery Deposition of William M. Hales, taken October 21, 1994, page 29, lines 15-24, and page 30, lines 1-3).

⁴⁶ From "*Hunting of the Snark*," by Lewis Carroll.

3. Fact in Dispute: Plaintiff Foundation’s “*Declaration of Trust*” does not determine or substitute for chain of title.

That would be re-writing copyright law. The *Declaration of Trust* creating plaintiff Foundation never mentions the contact commission, the forum, or the contact personality. The *Declaration of Trust* does mandate the trustees to “keep the text inviolate.”⁴⁷

I was personally told (by the current Foundation president) that Bill Sadler wrote only the “*The Titles of the Papers*” and “*The Contents of the Book*,” (pages v through lxvi), and that it was Bill’s plan to copyright the URANTIA Book **because** of his work on those pages.⁴⁸ And plaintiff Foundation’s president reiterated that the rest of the book was revelation and that they hadn’t lied to the Court because Bill Sadler’s part gave them a valid “compilation” copyright. At that same meeting, another trustee called it a standard, “middle-of-the-road” copyright.

I had been told before that Bill wrote pages v through lxvi of plaintiff Foundation’s book – which is why I purposely left those pages out of my index.

Judge Urbom correctly stated:

“The plaintiff does not allege, nor does the defendant admit, a copying of the introductory portions of the URANTIA Book. Both parties agree that these portions, entitled ‘*The Titles of the Papers*’ and ‘*Contents of the Book*,’ were

⁴⁷ “In closing, the policies, programs, and plans of URANTIA Foundation and of IUA have not been based on the copyright in *The URANTIA Book* but instead, on the *contents* of the book. Therefore, with or without the copyright, the Foundation will carry on. Nonetheless, the copyright has been an important mechanism for URANTIA Foundation. With it, the Trustees are empowered to discharge what *The Declaration of Trust* calls their “primary duty,” and that is “to perpetually preserve inviolate the text of *The URANTIA Book*.” We shall make every effort to retain the copyright.” “*Copyright Update*,” May, 1995, from the Foundation’s “*Urantian News*” newsletter, p.3.

⁴⁸ Plaintiff Foundation’s current president has (this summer) been quoting from documents allegedly written by Bill Sadler and Thomas Kendall to “prove” that plaintiff Foundation was supposed to copyright the revelation. These documents were never given to me in discovery – and **that in itself is grounds to re-open the whole case.**

written William S. Sadler, Jr.”⁴⁹

I did not copy or index the Bill Sadler material. 17 U.S.C. Sec. 103. Subject matter of copyright. Compilations and derivative works (b) says:

“The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, **and does not imply any exclusive right in the preexisting material.**” (Emphasis added).

The “preexisting material,” I was told by plaintiff Foundation for over 40 years, was the epochal revelation, the URANTIA papers themselves, authored and materialized exclusively by superhumans. Bill Sadler wrote only introductory materials. According to the “facts” plaintiff Foundation told me, Bill Sadler gives the Foundation their “compilation” copyright.

“First, to make clear that compilations were not copyrightable *per se*, Congress provided a definition of the term “compilation.” Second, to make clear that the copyright in a compilation did not extend to the facts themselves, Congress enacted § 103.” ... “The revisions explain with painstaking clarity that copyright requires originality, 102(a); that facts are never original, 102(b); that **the copyright in a compilation does not extend to the facts it contains**, 103(b); and that a compilation is copyrightable only to the extent that it features an original selection, coordination, or arrangement, 101.”⁵⁰ (Emphasis added).

The Ninth Circuit Court of Appeals clarified that:

“This case does not concern the use of a single ‘epochal revelation’ outside the context of the Book, which for purposes of this case would be analogous to a ‘fact,’ and which of course would not be copyrightable.”⁵¹

⁴⁹ February 17, 1995, ORDER by Judge Warren K. Urbom Sr. granting motion for partial summary judgment on Count I of the complaint for copyright infringement. (R-288).

⁵⁰ From the *Opinion* of the United States Court of Appeals for the Tenth Circuit, No. 89-1909, March 27, 1991, in *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*

⁵¹ Judge Urbom’s “*Memorandum and Order*,” p.3, quoting the Ninth Circuit’s ruling.

The 1976 Copyright Act § 101 defines a “compilation” as a work:

“formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term ‘compilation’ includes collective works.”⁵²

The 1976 Copyright Act § 101 defines a “collective work” as one in which:

“a number of contributions constituting separate and independent works in themselves, are assembled into a collective whole.”⁵³

Plaintiff Foundation attorney Lloyd C. Root filed an *Affidavit* with the Copyright Office on behalf of plaintiff Foundation swearing that the URANTIA Book was:

“**not a collective work**, since the material therein was not in existence before the arrangement of it was placed in tangible form, and it was in existence prior to publication thereof only in manuscript form.”⁵⁴ (Emphasis added).

Dr. William S. Sadler, Sr. (of the contact commission) stated that: “No living person fully understands just how the URANTIA papers got translated into the English manuscript which was authorized for publication.” However, on an audiotape on origin, William (Bill) Sadler, Jr. (also of the contact commission) described his idea of the process.

Bill Sadler said that the manuscript of the URANTIA papers was first fixed in tangible form by secondary midwayers (superhumans). He said a primary midwayer (superhuman) would be taking information from the sleeping subject’s (human “contact personality” mentioned in the Urantia papers) Thought Adjuster (indwelling spark of God) and relaying it to a secondary

⁵² The 1976 Copyright Act § 101 definition.

⁵³ The 1976 Copyright Act § 101 definition.

⁵⁴ *Affidavit* of Lloyd C. Root, February 11, 1980.

midwayer, who physically wrote the papers.

Then each paper was typed from the secondary midwayer's manuscript by E.L. Christensen ("Christy"). As soon as the manuscript was typed and checked, it was destroyed. All this happened in the 1930's, long before plaintiff Foundation was formed. (Plaintiff Foundation was created January 11, 1950).

The "*Declaration of Trust*" says plaintiff Foundation was created to receive the printing plates (long after the manuscripts were destroyed). Plaintiff Foundation was formed by the acceptance of this anonymous gift of "2200 nickel-plated plates for reproducing" the text of the URANTIA papers. These printing plates constitute plaintiff Foundation's "substantive estate."

§ 202 (1976 Copyright Act) states that:

"Ownership of a copyright is distinct from ownership of any material object in which the work is embodied. **Transfer of ownership of any material object ... in which the work is fixed** does not of itself convey any rights in the copyrighted work ..."⁵⁵

Plaintiff Foundation's "*Declaration of Trust*" does not give plaintiff Foundation "absolute control" over anything but the printing plates – **plaintiff Foundation's formatting of the epochal revelation** – not control of the underlying text, the epochal revelation itself.

E. THE DECLARATORY JUDGMENT DEPRIVES ME OF MY RIGHT TO A JURY TRIAL

The issuance of a *Declaratory Judgment* also deprives me of my right to a jury trial.

The *Federal Rules of Civil Procedure*⁵⁶ expressly provide that *Declaratory Judgments*

⁵⁵ "Transfer of ownership" of the 2,200 printing plates which plaintiff Foundation was formed to receive.

⁵⁶ *Federal Rules of Civil Procedure*, Rule 57.

are subject to “the right to trial by jury....”⁵⁷ “A litigant is not deprived of a jury trial merely because an action in which it is a party is one for *Declaratory Judgment*.”⁵⁸ “If there would have been a right to a jury trial on the issue if it had arisen in an action other than for *Declaratory Judgment*, it must be tried to a jury in the declaratory action.”⁵⁹ “Whether declaratory relief is ultimately justified must, however, await determination of issues not yet resolved by the district court...”⁶⁰

CONCLUSION

Because the *Declaratory Judgment* did not resolve the issues that brought the parties to Court in the first place, I appeal the court’s order granting plaintiff Foundation’s *Declaratory Judgment*. I urge the Court to remand this case back to Judge Urbom’s Court for a trial on the issues not yet resolved – i.e., my remaining defenses of unclean hands, copyright misuse, and public interest.

Respectfully submitted,

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Defendant-Appellant *pro se*

September 22, 1999

⁵⁷ Claims for copyright infringement are “legal” claims that entitle a defendant to a jury trial.

⁵⁸ 9 Wright and Miller, *Federal Practice and Procedure*, § 2313 at p.108 (1995).

⁵⁹ 9 Wright and Miller, *Federal Practice and Procedure*, § 2313 at p.110 (1995).

⁶⁰ Greater Los Angeles Council v. Zolin, 8 1 2 F.2d 11 03, 1113 (9th Cir. 1987).