

INTRODUCTION

Owning the Sacred

In 1975, at the behest of a Voice claiming to be Jesus, the book *A Course in Miracles* was copyrighted. This book – soon to become a best-selling course of spiritual self-study – had been channeled by psychologist Helen Schucman, whose inner voice emerged one day to tell her, “This is a course in miracles, please take notes.” Despite the assertion by many followers that “*A Course in Miracles* hardly need[s] the mundane protection of copyright,” Schucman and her publishers nonetheless felt that legal ownership of the text could play an important role in the management and circulation of this new sacred work.¹ For them, copyright was not just a matter of secular law; it was the product of divine mandate.

The legal rights vested in *A Course in Miracles* were tested in 1996 in a case – *Penguin Books USA v. New Christian Church* – that involved, in the words of the presiding judge, “extraordinary materials and deep-seated convictions which have transformed a copyright action into issues of faith and commitment.”² The defendants – the New

¹ Joseph Jesseph, “Publishing History: A Short History of the Editing and Publishing of *A Course in Miracles*” (July 2006), <http://acim-archives.org/Publishing/index.html> (accessed March 22, 2018). Regarding the original copyright in *A Course in Miracles*, Jesseph quotes one of the cofounders of the Foundation for Inner Peace, Judith Skutch who wrote, “In 1975, when Helen Schucman turned *A Course in Miracles* over to the Foundation for Inner Peace, she also explicitly instructed the Foundation to have the *Course* copyrighted. When Judith Skutch at the time asked why *A Course in Miracles* – a spiritual document – had to be copyrighted, Helen replied: ‘Because he says so.’ ‘He’ meant Jesus, who Helen earlier had identified as the inner voice that dictated *A Course in Miracles* to her.”

² *Penguin Books USA Inc., Foundation for “A Course in Miracles, Inc.,” and Foundation for Inner Peace, Inc. v. New Christian Church of Full Endeavor, LTD., and Endeavor Academy*, 288 F. Supp.2d 544 (2003). At the time of the lawsuit, the Foundation for Inner Peace – the organization that originally copyrighted and published *A Course in Miracles* – had entered

Christian Church of Full Endeavor – were a religious order that modeled its religious practice on the teachings of Jesus as expressed in both the New Testament and *A Course in Miracles*. In this respect, they were fully committed believers and part of a shared emergent network of readers. The circumstances of this case involving a channeled work, the religious imperative to copyright, and competing spiritual litigants gave rise to a number of interrelated questions: Why did the publishers choose to sue fellow supporters of the revelation? If Jesus was claimed as the ultimate author of the work, was it on his authority that the copyright owners brought the litigation? Finally, how did the owners, responsible as they were for the distribution and management of *A Course in Miracles*, frame their actions both legally and theologically such that they could explain these legal maneuvers to readers?

Rather than being an isolated incident, the lawsuit involving *A Course in Miracles* is in fact one of many similar cases involving copyright in sacred, prophetic, and channeled texts occurring over the past 150 years. During the twentieth and twenty-first centuries, many religious organizations in the United States and elsewhere have turned to intellectual property law to assert control over sacred texts and other religious media. The Church of Scientology; Mormon Church; Church of Christ, Scientist; and Bikram Yoga exemplify this trend, all having found themselves in disputes in which the nature, logic, and ethics of ownership rights in religious media have become subject to increasing legal as well as public scrutiny.³ Elsewhere, religious branding for evangelical megachurches in the United States (which are in turn linked to the merchandising and publicity rights of celebrity pastors) are beginning to generate scholarly attention, as is the emergence of businesses such as proprietary Bible software developer Logos and worship licensing services such as Christian Copyright Licensing International: providers of critical information infrastructure for the contemporary religious service all grounded in modern

a five-year licensing agreement with Penguin. Thus, Penguin initiated the lawsuit with the Foundation joining as plaintiffs shortly afterward.

³ Hugh Urban, “Fair Game: Secrecy, Security, and the Church of Scientology in Cold War America,” *Journal of the American Academy of Religion* 74, no. 2 (2006): 352–389; Allison Fish, “The Commodification and Exchange of Knowledge in the Case of Transnational Commercial Yoga,” *International Journal of Cultural Property* 13 (2006): 189–206.

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intellectual property rights.⁴ Even pastors across denominations have engaged in debates about sermon-stealing, a growing problem linked to the accessibility of sermon texts online.⁵ Countervailing edicts to spread religion as gospel or to freely disseminate the work of divine Word have done little to brake efforts by various religious actors to claim their proprietary entitlements.

This book analyzes a number of key disputes involving the use of intellectual property law by American religious organizations across the late nineteenth and twentieth centuries. Rather than looking at case law in isolation, it investigates the broader historical context leading up to these legal actions as well as the events that followed this engagement with the law. It does so to highlight the centrality of media ownership and control in the life of modern spiritual communities. For many emerging religious organizations, their coherence no longer lies in a centralized institution like the church but in a shared dedication to sacred texts and other religious media.⁶ By strategically deploying their property rights, these institutions successfully construct and police new religious communities within the contemporary spiritual marketplace but also venture into juridical terrain that has few tools with which to adjudicate religious conflict. In this analysis I demonstrate that,

⁴ Mara Einstein, *Brands of Faith: Marketing Religion in a Commercial Age* (New York, NY: Routledge, 2008); Heather Hendershot, *Shaking the World for Jesus: Media and Conservative Evangelical Culture* (Chicago, IL: University of Chicago Press, 2004).

⁵ Scott Gibson, *Should We Use Someone Else's Sermon? Preaching in a Cut-and-Paste World* (Grand Rapids, MI: Zondervan, 2008); Johnson McKay, "And Finally . . . No Copyright on Sermons?" *The Expository Times* 115 (2003): 108; David Bollier, "Art, God and Copyright," *On the Commons* (2009), <http://onthecommons.org/art-god-and-copyright> (accessed March 22, 2018).

⁶ A key text foregrounding the importance of media in religion is Jeremy Stolow, "Religion and/as Media," *Theory, Culture, and Society* 22, no. 4 (2005): 119–145. Since then, an increasing number of scholars have participated in this media turn in religious studies. For instance, see Patrick Eisenlohr, "Media and Religious Diversity," *Annual Review of Anthropology* 41 (2012): 37–55; Stig Hjarvard, "The Mediatization of Religion: Theorizing Religion, Media, and Social Change," *Culture and Religion* 12, no. 2 (2011): 119–135; Birgit Meyer, *Religious Sensations: Why Media, Aesthetics, and Power Matter in the Study of Contemporary Religion*, Professorial Inaugural Address (Amsterdam: Faculty of Social Sciences, Free University, 2006); Birgit Meyer and Annelies Moors, eds., *Religion, Media and the Public Sphere* (Bloomington, IN: Indiana University Press, 2006); David Morgan ed., *Key Words in Religion, Media, and Culture* (New York, NY: Routledge, 2008); Hent de Vries and Samuel Weber, eds., *Religion and Media* (Stanford, CA: Stanford University Press, 2001). In addition, *Media Culture and Society* (38, no. 1), and *Critical Inquiry* (Summer 2016) have recently devoted special issues to the topic.

through these processes of adjudication, religious organizations often came to a quite nuanced and complex understandings of the legal system as a resource for – or obstacle to – their unique spiritual objectives. Further, their encounter with the American legal system often changed their own theological orientations, their relationships with followers, and their broader understanding of their position in secular society and the public sphere.

This book is designed to provide the historical detail to complicate the conventional interpretation that legal actions like those related to *A Course in Miracles* are simply motivated by economic concerns, rendering the book's religious status irrelevant to understanding subsequent legal proceedings. To be sure, the economic interpretation is appealing, particularly for new religious movements whose novelty often leads to skeptics' charge that they are deceitful attempts to steal profits from gullible followers.⁷ For instance, this narrative would draw attention to the fact that *A Course in Miracles'* publisher, the Foundation for Inner Peace, witnessed an incredible surge in book sales in the early 1990s, following the book's unexpected promotion by New Age celebrity Marianne Williamson on *The Oprah Winfrey Show*.⁸ Harnessing this momentum, the Foundation enacted a translation program in 1992, registered the phrase "A Course in Miracles" as a trademark in 1993, and established an accredited teaching institute in 1995.⁹ Thus, the lawsuit might simply have been an attempt to ensure that competing organizations were not siphoning off the robust revenue stream generated by the text and its related properties. However, as this book seeks to make clear, careful attention to the

⁷ Most emblematic would be the oft-repeated anecdote that L. Ron Hubbard created Scientology to make money tax free. The most frequently circulated version of this story is the one told by science fiction author Harlan Ellison and quoted, among other places, in Michael Shermer, "The Real Science behind Scientology," *Scientific American* (November 1, 2011).

⁸ After Williamson's appearance on *Oprah*, 750,000 units were sold in a few weeks. D. Patrick Miller, *Understanding A Course in Miracles: The History, Message, and Legacy of a Spiritual Path for Today* (Berkeley, CA: Celestial Arts, 1997), 64–65. For Oprah's influence on contemporary consumer-oriented spirituality, see Kathryn Lofton, *Oprah: Gospel of an Icon* (Berkeley, CA: University of California Press, 2011).

⁹ Foundation for Inner Peace, "Foundation for Inner Peace Timeline, History, & Purpose," www.acim.org/AboutFIP/history.html (accessed March 22, 2018). The "A Course in Miracles" mark is registration number 1807235, registered November 30, 1993.

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nature and function of religious organizations' ownership claims suggests otherwise.

By the time of the lawsuit, roughly twenty years after the book's first publication, *A Course in Miracles* had stabilized into a recognizable, canonical text in the broader New Age community. The official hard-cover version was bound in solid blue jacket with gold lettering and gold trim. Advertised as the "Only edition . . . its Scribe authorized to be printed," this work included the main text plus an extended workbook and teachers manual, all carefully designed to guide readers toward a spiritual understanding of the illusory nature of reality and the foundational unity of humanity with God.¹⁰ Its cover listed no author, no compilers, no editors – only the publisher the Foundation for Inner Peace. The austerity of its design – echoing that of prophetic texts like *The Book of Mormon* – hinted at its quasi-Biblical status as revelation, its heft (totaling more than 1,200 pages combined) promised spiritual wisdom.

However, alongside the official version, *A Course in Miracles* had already circulated in other forms. It first manifested as "rapid inner dictation" scrawled by psychologist and Scribe Helen Schucman into nearly thirty stenographic notebooks.¹¹ In addition to these notebooks, there were still other versions: a "ürtext" consisting mostly of unedited transcriptions of the original divine messages; a version given to the son of noted mystic and New Age leader Edgar Cayce; and a curious edition typed and bound in six black binders that was photocopied and circulated the same year that the official text was published.¹² Describing this latter version, one of the cofounders of the Foundation wrote that she permitted the Xeroxing, "and it seemed

¹⁰ *A Course in Miracles: Combined Volume*, 3rd edn. (Foundation for Inner Peace: Mill Valley, CA, 2007). For more on the authorship and distribution of this work, see Ann Taves, *Revelatory Events: Three Case Studies of the Emergence of New Spiritual Paths* (Princeton, NJ: Princeton University Press, 2016), 151–221; "A Course in Miracles," *Encyclopedia of Occultism and Parapsychology*, 5th edn. (Farmington Hills, MI: Gale Publishing, 2001), 346–347. See also my "A Course in Miracles" entry for the Social Science Research Council funded digital project *Frequencies: A Collaborative Genealogy of Spirituality*, <http://frequencies.ssrc.org/2011/12/15/a-course-in-miracles> (accessed March 22, 2018).

¹¹ *Penguin Books v. New Christian Church of Full Endeavor* (2003).

¹² Joseph Jesseph, "Publishing History"; Kenneth Wapnick, "The History of the Manuscripts of *A Course in Miracles*," http://acim-archives.org/Publishing/editing_history.html (accessed March 22, 2018).

very right that people would pass it along, copy it over and copy it over, until finally people's copies were getting so light that they couldn't see them anymore."¹³ Prior to the book's publication, these alternate versions had already made their way out to key figures in the New Age community and were being shared among a number of like-minded spiritual seekers. This sharing continued to such a degree that – as the Foundation cofounder indicated – the ink of each subsequent photocopied text began to fade, its increasing illegibility a material sign of its replication and, by extension, its effectiveness spiritually guiding new readers. The figures who received early versions of the book acted as relay points in an expanding network of practitioners; people who helped turn *A Course in Miracles* from a tentative experiment in channeled authorship into a canonical text of contemporary spirituality.

These versions represent a very different embodiment of divine message, one that starkly contrasts with the authoritative appearance of the authorized version yet could in fact be considered more properly aligned with the content of the book's early chapters. In "Invitation to the Holy Spirit," the text encourages readers to experience the plenary nature of existence by giving in the name of the Holy Spirit: "To spirit getting is meaningless and giving is all." Echoing the oft-quoted passage by Thomas Jefferson that "He who receives an idea from me receives instruction himself without lessening mine," *A Course in Miracles* reads, "If you share a physical possession, you do divide its ownership. If you share an idea, however, you do not lessen it. All of it is still yours although all of it has been given away."¹⁴ So too with the giving of divine knowledge: "Spirit holds everything by giving it, and thus creates as the Father created."¹⁵ In this spirit, the earlier versions of the text generated an organic community by circulating freely among a noncentralized and informal network of readers, their movement constituting the very relationships that made up the emergent, interconnected spiritual community. By contrast, the later version

¹³ *Penguin Books v. New Christian Church of Full Endeavor* (2003).

¹⁴ Jefferson quote from, "Thomas Jefferson to Isaac McPherson," August 13, 1813, Volume 3, Article 1, Section 8, Clause 8, Document 12, *The Founder's Constitution* (Chicago, IL: University of Chicago Press, 1987), http://press-pubs.uchicago.edu/founders/documents/a1_8_8s12.html (accessed March 22, 2018). The *A Course in Miracles* quote is from "Chapter 5-I: The Invitation to the Holy Spirit," 73.

¹⁵ *Ibid.*

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vouchsafed its religious legitimacy through rigorously controlled and highly centralized publication practices, grounded in the secure and legally binding ownership of *A Course in Miracles* as a spiritual work. The tension between these earlier versions and the latter reflects a broader tension in religious practice, one between *dissemination* and *control*, as complementary yet countervailing media practices necessary for constituting textual communities.

What is most striking, however, is that the complexities of this religious tension, when mapped onto the legal arguments and rationales of the courtroom, determined the lawsuit's outcome in unpredictable ways. The defendants, the New Christian Church of Full Endeavor, that had produced the infringing version of *A Course in Miracles* asserted that the Foundation for Inner Peace's copyright was invalid and the text was therefore unprotected by intellectual property law. While it argued that the work was ineligible for copyright protection due to its divine authorship (a matter to which we will return in future chapters), the book's copyright was actually deemed invalid for another reason: namely, prior publication.¹⁶ Endeavor successfully determined that uncopyrighted manuscripts – the various versions described earlier – had been generally distributed before publication, thus nullifying its copyright. Had the Foundation for Inner Peace demonstrated that it distributed the book to a *limited and select* group of people, then its distribution would not have qualified as prior publication and the copyright would still have been valid. Instead, the ruling claimed: “The Court is unable to see in this picture any definitely selected individuals or any limited, ascertained group or class to whom the communication was restricted . . . An interest in spiritual experience fails to define a class adequately.”¹⁷

In this ruling, the court struggled to account for a religious organization structured around the strategic ownership and distribution of a new spiritual text. Rather than the litigation revolving around the

¹⁶ Under the Copyright Act of 1976, copyright owners were first required to register their copyright, and a notice of copyright had to be placed on all “publically distributed copies.” The omission of the copyright notice on publically distributed work would invalidate the copyright. This requirement was eliminated for any works published after the United States passed the Berne Convention Implementation Act of 1988.

¹⁷ *Penguin Books v. New Christian Church of Full Endeavor* (2003).

simple matter of recognizing and allocating ownership rights in *A Course in Miracles*, the case raised a number of implicit questions that were subtly but inescapably determinative of its result, even as they eluded legal articulation. If a sacred text is central to or constitutive of a range of spiritual practices, should access be guaranteed to all followers regardless of the property holder's interests? For the many Americans who might claim to be spiritual but not religious, how do they imagine their relationship to religious media and to what degree do they feel a sense of ownership over the sacred texts that become constitutive of their spiritual identity?¹⁸ At what point does a distributed network of individuals linked by the shared consumption of a text cohere into an apprehensible group of religious followers, a united community of believers? The issue with *A Course in Miracles* was that the early version of the text was not distributed to a predetermined group precisely because its circulation in the early stages of its existence served to constitute the group itself. The movement of the text acted as the very mechanism by which a network of individuals could be linked together and, in the process, become visible to themselves as a unified community of followers.

For those who inhabit nontraditional, unchurched types of spiritual community – whose coherence lies not in a centralized location or system of membership but instead in the realm of literary works and other shared religious media – intellectual property law can provide a uniquely effective means to reestablish a measure of control. While legal outcomes are uncertain and the risks of litigating matters of religious dispute quite significant, intellectual property law nonetheless offers a unique resource for administering the texts by which intrinsically ephemeral beliefs and practices are mediated. Copyright law promises a state-sanctioned means by which to establish official works and stabilize their religiously approved meaning. It can also

¹⁸ For the category of “spiritual but not religious,” see Wade Clark Roof, *A Generation of Seekers: The Spiritual Journeys of the Baby Boom Generation* (New York, NY: HarperCollins, 1993); Wade Clark Roof *Spiritual Marketplace: Baby Boomers and the Making and Remaking of American Religion* (Princeton, NJ: Princeton University Press, 1999); Robert Wuthnow, *The Restructuring of American Religion* (Princeton, NJ: Princeton University Press, 1988); Nancy Ammerman, “Spiritual but Not Religious? Beyond Binary Choices in the Study of Religion,” *Journal for the Scientific Study of Religion* 52, no. 2 (2013): 258–278.

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provide the authority with which to patrol the channels of distribution through which sacred texts move, thereby also providing the means through which to patrol the relationships between readers networked by the circulation of these texts. For these organizations that are invested in the production of spiritual practice but distance themselves from traditional forms of religion, these legal mechanisms grant them the capacity to assert a measure of authority and control over emergent networks of believers. As the physical sacred property of the church becomes less central to these forms of contemporary practice, so the intangible and ephemeral, yet equally sacred intellectual property moves to take its place.

The overarching aim of the book is to interrogate the complex interaction between law and religion in the United States. It does so in two ways. First, it attends to the significant, if underappreciated, role of copyright in religious organization, and religious publishing in particular. The intersection of intellectual property and religious publishing has been considerably underexplored despite the centrality of media – from sacred texts to religious iconography to spiritual music – in religious life. Understanding the role of intellectual property in religion requires a careful analysis of how the logics of copyright law account for religious principles that seek to preserve authenticity and fidelity in texts while at the same time allowing other texts – hymns, sermons, tracts, prayer books – to circulate freely.¹⁹ The tensions between religious and legal logics emerge particularly in specific disputes, during which many of these latent differences are made visible.²⁰ During these moments of conflict, religious property owners find themselves having to articulate the reasons and rationales motivating their actions, explain the systems of authority and control within their community, and grapple with the nature of the texts under dispute.

¹⁹ Meredith McGill, “Copyright and Intellectual Property: The State of the Discipline,” *Book History* 16 (2013): 387–427.

²⁰ One could consider these court cases as Foucauldian moments of “problematization” for the religious disputants. As such, these cases force the “transformation of the difficulties and obstacles of a practice into a general problem for which one proposes diverse practical solutions.” The legal system and the rules of intellectual property law that are brought to bear on the disputes set “the conditions in which possible responses can be given [and] define . . . the elements that will constitute what the different solutions attempt to respond to.” Michel Foucault, *Ethics, Subjectivity and Truth* (New York, NY: The New Press, 1994), 118.

By attending to the details of these cases – the historical conditions of their emergence, the manner in which the litigation unfolded, the aftermath of the rulings – we can better understand religious disputants’ engagement with law as a complex effort to harmonize legal arguments and theological rationales and to utilize intellectual property as a tool not only for the allocation of economic value but also for the regulation of social forms.

The second way that this book explores the intersection of religion and law is by tracking how religion influenced the law, particularly in terms of the role it played testing the strength and scope of contemporary intellectual property regimes. Just as religious organizations frequently acted as early adopters and innovators of mass media technologies – including print, radio, and television – they also effectively mobilized legal tools to protect their media interests.²¹ When intellectual property law, and copyright in particular, underwent a series of revisions throughout the twentieth century, it was often religious organizations that – by virtue of the unconventional nature of their lawsuits – tested the range, applicability, and underlying logic of new statutory principles. In doing so, they have consistently been among the first legal actors to harness and deploy the sociocultural power of intellectual property law to manage the lives of their constituents. Those religious organizations that asserted their property rights also crafted innovative theological arguments justifying the ownership of sacred media. These institutions generated hybrid rationales for religious intellectual property that were grounded simultaneously in theology and law. They also utilized often-overlooked dimensions of intellectual property rights (for instance, the right *not* to publish or the use of copyright as a tool for censorship) that resonated with historical traditions of media control in the religious domain. These religious communities were capable of justifying ownership in religious goods through an ethics of care, stewardship, and control while simultaneously highlighting incongruities between theories of authorship, originality, and ownership within spiritual communities and those embedded in the law. Although these religio-legal rationales sometimes failed to establish clear religious rights in the text during litigation, they

²¹ David Paul Nord, *Faith in Reading: Religious Publishing and the Birth of Mass Media in America* (New York, NY: Oxford University Press, 2004).