

Post-IT brand

## Fax Transmittal Memo

7672



No. of Pages

3

Today's Date

11/18/93

Time

10:35

To

JOHN HAY

Company

GREEN TECH

Location

Fax #

581-9824

Comments

Telephone #

From

MERRITT HORN

Company

BOULDER SCHOOL

Location

Dept. Charge

Fax #

Telephone #

665-6829

Original  
Disposition: Destroy Return Call for pickup

Merritt Horn  
1359 Kilkenny St.  
Boulder, CO 80303  
303/665/6829

John Hay  
Green Technologies  
FAX/303/581/9824

Dear John,

I wanted to bring you up to date on my activities so far.

1. A lease proposal is being prepared for our review for the Odell Place location. I will forward a copy to you as soon as I receive it. (I was unable to locate anything better than this site which Carol had already seen. The only other office in the size range we're seeking was in a very poorly maintained building; even though the rent was less, it did not seem to be a viable alternative for us.)

2. I have obtained a P.O. Box for the Boulder School. The address is P.O. Box 19135, Boulder, CO 80308-2308. The box is located in the Valmont station. (There were no spaces available in the Gunbarrel station.)

3. I have begun talking to audio studios re the tapes and to printers re the book, but have nothing to report at this time.

4. Attached is a list of questions I faxed to Joe on Tuesday and which we discussed yesterday morning. Below is an overview of that discussion.

#### 1. Legal opinions and authorized actions

I authorized Joe to review Nimmer's comments on the Burton case in Nimmer's copyright book and if those comments did not indicate a possible problem with our assertions, to contact David Nimmer and Prof. Lionel Sobel to determine their willingness to do opinions, their estimated charge for such opinions and the time required to produce the opinions.

Joe will then report to us and ask for authorization to proceed with obtaining the opinions. Joe did not give me a projection on when he would get back to me, but noted that next week many people are not available (though he will be working all week), so he may not have anything for us until after that. I would expect that by 12/3 we should hear from him.

Depending on the personal schedules of the Nimmer and Sobel, Joe estimated that it should take no more than a couple of weeks to

get the opinions done; thus I would expect to have the opinions in hand (barring any unforeseen delays) by January 1, 1994.

Joe noted that we do not need to have two opinions to proceed, we could rely on only one if we so desire.

## 2. Cleary & Komen's representation of The Boulder School

The only conflict of interest for C&K is between Maaherra and the Boulder School. We would both simply have to sign a form that indicated our acceptance of C&K's representation despite the possible conflict of interest between us.

## 3. Suits of third parties

The Urantia Foundation can sue anybody involved in the production and distribution of materials which they claim are infringing on their rights, however some parties are not likely to be found liable by the courts and some liable parties will not have much exposure.

a. Printers or sound studios -- If such contractors were not aware of the copyright claim by UF, they would likely not be held liable.

b. Distributors and retailers -- they can be held liable, but the damages that any particular one could be held liable for would be fairly small. The Foundation could certainly use the threat of suit to intimidate these people, but most are pretty strong believers in the first amendment and aren't easily dissuaded from carrying even controversial materials (for example, Salmon Rushdie's book).

We can agree to indemnify all such third parties, indeed Joe noted that standard language in various documents routinely used in the industry (invoices, etc) includes indemnification clauses. As we believe the UB to be in the public domain, we need not (should not) raise this issue with third parties before the fact, but if a suit is filed, we can assure all of our intention to indemnify them. Some may not believe we have the resources to protect them and might discontinue carrying the Book, but that shouldn't be a big deal.

Joe said that insurance covering our indemnification of third parties is sometimes available, but with the previous legal history of the UB, it might be difficult for us to obtain. However, standard commercial insurance may cover such costs incurred in the normal course of doing business; we should check our policy to see. (Does the Boulder School have any general liability insurance?)

## 4. Suit prior to actual distribution



The Urantia Foundation could initiate a suit if they believed that we were taking steps that would imminently cause them harm. However there would be no commercial damage at that point so we would claim we hadn't done anything yet. (We would defend our actions in the same way before or after distribution had begun, but since we want to proceed as far as possible with as little interference as possible, it will probably be wise to keep our intentions quiet even though they are quite legal -- just as any smart competitor in the marketplace would.)

#### 5. Inclusion of computer disk

Joe did not view the disk to be a particular problem as it was more of a study aid than a direct threat like the printed book itself is. We would want to avoid collaborating with Kristen in the preparation of such disks however, though we could certainly work with computer materials that we had received through the grapevine at some time in the past.

It would be wise to avoid the use of the circles in order to simplify the case, however, with the proper disclaimers and explanations of the circles' meaning, we could us them.

The use of the term "Urantia" is a similar case except in the title of the book itself. If a book is in the public domain, so is its title. Thus, The Urantia Book is less of a problem than The Urantia Papers.

#### 6. Preliminary Injunction

This was a poorly constructed question as I did not understand how the process worked.

Joe's contention is not that we can avoid having a preliminary injunction imposed, but that we will be in a very strong position to have the suit overturned at the preliminary injunction stage when the time period is strictly limited (10 days plus some limited extensions if we need them). Our goal is to defeat the Foundation's claims at the very outset so that we could get on with our task of distributing the Urantia Book and the Foundation would not be able to engage in the lengthy stalling process they have pursued with Maaherra.

It would appear then that while we want to get the opinions on file ASAP, there is really no reason to delay taking all actions necessary to begin the publishing of the book and tapes.

I'll talk to you soon.

Merritt

