

Non Illegitimi Carborundum Est

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This Legal Memorandum memorializes a personal experience of mine. Stan Tenen and his organization, the Meru Foundation, have alleged that some specific content published in my book is derived from Dan Winter's alleged plagiarism of their work. This Memorandum was written in response to their allegations. Bottom line is that their claims have no merit. My work is not derived from their work or any alleged plagiarism of that work. My right to publish the specific content in my book that they find objectionable is clearly supported by prevailing law. In addition, strong legal precedents from higher courts assure that (1) the injunction obtained against Dan Winter does not apply to me or my publisher, and (2) their stipulated judgment if reopened and reconsidered would be thrown out because it is constitutionally invalid and statutorily unenforceable.

Though I am not an attorney, I have over 20 years experience as a litigation paralegal and was certified by the American Bar Association. I have represented myself at the trial level in court and prevailed -- once on a matter involving censorship issues. I have written similar documents for several prestigious law firms in the southwest, and trained new attorneys fresh out of law school because ordinarily they have no understanding of legal procedure or how the court system works. In order to determine if my understanding of the law was correct, I asked a nationally renowned specialist in First Amendment, intellectual property rights, and appellate law to review the Memorandum. This attorney has successfully argued before the United States Supreme Court on such matters. He assured me that the Memorandum was well-researched and analyzed, exceptionally well-written, and right on point.

Therefore, in order to provide support to other authors undergoing similar experiences -- particularly those who may also be victims of Tenen's witch hunt -- I've posted this Memorandum for their information. All pertinent statutory and case law is fully cited for reference purposes in the event they want to look up the law for themselves. Although the Memorandum is written in legal format and lingo, I've tried to define uncommon terms for the benefit of the layperson. If anyone has a question on how to read the specific citations, please feel free to contact me. It is standard to include them in legal documents of this type. However, the layperson need not know exactly how to interpret them for comprehending the Memorandum content. In addition, the exhibits to the Memorandum are not included as they were primarily for the benefit of my publisher. If anyone wants to

know where they can find copies of the exhibits, please contact me and I will provide them with the corresponding reference.

The law is not static -- it can and does change from time to time. Therefore, I recommend that anyone with a serious legal problem involving these issues seek the advice of a competent attorney.

The first part of the Memorandum explains why the specific material published in my book that is objectionable to the Tenens is not derived from their work or any alleged plagiarism of that work. It also offers proof that Tenen's claim that there is no "prior art" for the concept behind his "flame letters" is false. The second half of the Memorandum includes an analysis of the pertinent ruling case and statutory law. Enjoy!

please see
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regarding
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outcome
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case

LEGAL MEMORANDUM

by Judy Kennedy

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LEGAL MEMORANDUM

by Judy Kennedy © 2005

I. ISSUE

Does the injunction against Dan Winter obtained by the Tenens and the Meru Foundation (hereinafter “Tenen”) in *Tenen v. Winter*, 15 F.Supp. 2d.270 (1998) pursuant to Fed. R. Civ. P. 65(d) extend to me and my actions regarding the publication of specific material in my book?

II. BACKGROUND

While researching for my book, *Beyond the Rainbow: Renewing the Cosmic Connection Regarding Spirituality, Extraterrestrials, and Occult Conspiracy*, I came across an interesting and highly relevant article by Stan Tenen in *The Noetic Journal* entitled “How to Talk To An Extra-terrestrial” published on the Internet. I printed out a copy and decided to quote the abstract in Chapter 8 of my book entitled “Awakening the Dragon: The Physiology of Awareness” under the subheading about DNA. Tenen’s article discussed his research regarding the possible biological and geometric components of the impact of Hebrew letters as one of the original mystical alphabets. While doing research online, I came across many other researchers in this same field, among them, Dan Winter. I decided to use Tenen as a reference instead of Winter, however, because of the legal controversy between the two over an issue of copyright infringement that resulted in an injunction against Winter.

Following standard literary protocol, I requested in writing permission to quote from and reference Tenen’s article from the publisher of *The Noetic Journal*, Richard Amoroso, Director of the Noetic Advanced Studies Institute. Accordingly, Dr. Amoroso signed a release granting permission to reprint the copyrighted excerpt on behalf of the journal and Tenen. The excerpt was published in positive context, Tenen was given due credit and the article fully cited on the page of the excerpt, in the endnotes, with an additional listing in my bibliography as a recommended source. (See Exhibit 1.)

After my book was published, I sent “thank you” notes to all authors who had graciously granted me permission to reprint their copyrighted material. When Tenen received his note, he called my publisher claiming that he never gave me permission to reference his work. My publisher sent Tenen a courtesy copy of my book so that he could see the positive context in which I quoted him, along with a copy of the signed release. Tenen said that his publisher never contacted him about the request, and if he had done so, he would not have granted permission because he did not want to be included in a book that contained references to some researchers whose

work he considered substandard. He actually went through my book over the phone with my publisher putting everyone I referenced into two categories: acceptable and nonacceptable, nonacceptable meaning “New Age flake.” To me, this sounded surprisingly strange and presumptuous coming from an author who regularly interviews with Art Bell and George Noory on a nightly radio program entitled “Coast to Coast” that deals mainly with New Age topics – from UFOs, ghosts, and Big Foot to mystical alphabets, remote viewing, and the latest advances in modern physics as they might apply to interdimensional travel. One would think that most authors would wholeheartedly welcome unsolicited positive commentary and free publicity about their work. Nevertheless, Tenen admitted he was overly-sensitive and cautious about the use of his material due to his problems with Winter and therefore demanded that we completely delete any and all references to him and his work. Out of courtesy to Tenen and in order to avoid a legal hassle, an agreement was reached. My publisher would delete the quotation from Tenen’s article and all references to him and his work in exchange for publishing substitute text at no cost to me.

My publisher sent Tenen a courtesy copy of the final proof of my book. Even though we had completely complied with his request, he was not satisfied. He informed us that the text that I had substituted created “a more serious problem” than what was there previously. Therefore he demanded that I delete it including a reference to another author’s work (Paul White) that was similar to his own. He had not previously mentioned his objection to my referencing White’s work to my publisher, therefore that paragraph remained untouched in the revised edition. Tenen is now threatening litigation in the event that we do not comply with these new demands based on an allegation that I am subject to the same injunction he obtained against Winter.

III. FACTS

Prior to discussing the specific law pertinent to this matter, this section will directly address specific issues raised by Tenen in his letter dated March 14, 2005, which he claims support his allegations.

First of all, Tenen asserts that his article entitled “The Shape of Information: How to Talk to An Extraterrestrial” was a “technical paper, published in a peer-reviewed journal, and was not written or intended for a general audience.” This is a complete mischaracterization. *The Noetic Journal* calls itself “an international forum on the cosmology of consciousness” and strives to be an eclectic publication reaching a diversity of subscribers, not confined to the constraints of scientific technology. It is admittedly interdisciplinary in nature and therefore appropriate for readers in a broad range of disciplines. From its Statement of Purpose published at <http://www.mindspring.com/~noeticj>:

Welcome to The Noetic Journal website. For the first time in human history there is hope for understanding the nature of consciousness;

this has created a new field of study. Several journals have already appeared to address the spectrum of developing issues. However the scope has not been broad enough to allow unbridled development of the advancing field. Some cling rigidly to neobehaviorism or have not grasped the fact that there is more to the nature of consciousness than reduction to brain or algorithm. The noetic journal seeks to fill this gap by boldly addressing a complete epistemology that is not just confined to current myopic limits of scientific phenomenology. Science is inadequate to complete the task of explaining consciousness without being drastically reformulated.

The article in question is published on the Internet – indeed a general audience. The publisher of the Journal, Dr. Amoroso, reviewed the section of my book where I intended to insert the excerpt, approved it, and signed the release. Besides, a child could run a search on any popular search engine with the key words “how to talk to an extraterrestrial” and this article would appear among the first three listed! (See Exhibit 2.) Even in the unlikely event that the Journal was intended for review among “peers” only – this suggests that Tenen does not consider me one. After five years of undergraduate college resulting in a Bachelor’s degree, three years of graduate school resulting in a Master’s degree in Interdisciplinary Studies, additional postgraduate doctoral coursework, research and two years of law school resulting in paralegal certification (notwithstanding extended research and experience in the field and workplace outside academia), it is likely that I’ve accrued more educational hours and experience in consciousness studies than he has. Now that all references to this article from the book are gone, however, the issue is moot. I’m only referring to it to illustrate the beginning of a pattern of mischaracterizations in Tenen’s letter.

The next issue raised in Tenen’s letter is their objection to the paragraphs that reference Paul White. The paragraphs read as follows:

Some esoteric literature references a lost mother tongue or the “language of light” otherwise known as Hiburū.⁵⁰ A primal seed language, this ancient form of Hebrew is supposed to be a natural language, the forms of the letters emerging from phosphene flare patterns in the brain. These alphabetic shapes begin in a spinning vortex, translating into light, embodied neurologically into our biological being.

Author Paul White reports that many contemporary scientists see DNA as a “shimmering waveform configuration” resembling the Qabalistic Tree of Life. It’s a live vibrating process – not a static structure, easily modified by light, radiation, magnetic fields or sonic pulses. He suggests this “language of light” might well be the legacy of Thoth/Enoch.⁵¹ This description of DNA merges well with the experiences related by the subjects who participated in Dr. Strassman’s DMT studies referenced earlier. Many subjects perceived a connection between DNA and alphabetic and numerical characters.

(Exhibit 3 is a copy of page 461 and 462 from the book containing these paragraphs and the added text. Exhibit 4 is a copy of the actual Paul White article “The Secrets of Thoth” where I obtained this information and which was fully cited in my book in the endnotes and bibliography.)

Tenen claims that the court concluded there was no “prior art” for the concept of generating alphabetic forms from spinning vortices, and its origins could only come from two sources: Tenen’s work or Winter’s plagiarism of that work. He alleges that the primary links to this article are from Winter’s website, so that this information must be treated as “fruit of the poisoned tree” meaning that usage of this information in any form is illegal because it was originally tainted by Winter’s plagiarism. First of all, the URL that I cited as the source of this article in the book was inaccurate to begin with, basically a misprint, and no longer exists. The article was actually downloaded on March 2, 2002 from the URL listed at the bottom of the page: <http://www.newage.com/au/library/thoth.html>. (See Exhibit 4.) This web site was not published by Dan Winter. If Tenen feels that Paul White copied his work (which is highly unlikely for reasons soon stated,) then his issue is with Paul White – not me. As a freelance author/journalist, I had every right to reference and cite that article according to law which will be reviewed shortly.

An article in the New Age magazine *Atlantis Rising* by Cynthia Gage about an interview with Tenen and his work entitled “Secrets of the Hebrew Letters” contradicts Tenen’s assertion. In describing how Tenen came up with the idea for his sculptures, Gage writes, “Though the realization was an instantaneous Aha!, it took him years to mathematically perfect the shape of the hand model, which incorporates fourteen explicit features representing aspects of western philosophies and is based on a *spiral used in art throughout the ancient world*, most notably under the Egyptian Eye of Horus.” (Emphasis added.) (See Exhibit 5.) A “spiral used in art throughout the ancient world” qualifies as “prior art.” It is far reaching for Tenen to assume he has sole authority and jurisdiction over how others interpret this ancient art. Generating all forms from spirals and vortices, including alphabetical figures, is a natural concept that has been explored in esoteric art and science throughout the ages, as will be shown.

Next, Tenen asserts that the text that took the place of his excerpt is “problematic in several ways.” The new excerpt is as follows and can viewed for purpose of context in Exhibit 3:

DNA is the matrix of biological being – the juncture between force and form. The double helix emerges from a spiraling vortex that spawned all the alphabets of our sacred languages according to researchers in sacred geometry. There is really no such thing as “sacred” geometry any more than there is “sacred” anything. Once we make something “sacred” we separate it from the rest, exclusionary thinking sets in, and intellectual elitism rears its ugly head(s). A search on the Internet regarding DNA, Hebrew letters, and hands will show you some. Mathematical systems for decoding religious texts written in Hebrew or any other “sacred” alphabet are quote common. But these systems are not the best way or only way to make sense of these texts. The oldest and most reliable method, as always, is meditation. And no one can “own” the ideas that emerge from that because they are expressions of spiritual principle.

The Hermetic Axiom – as above, so below – teaches that all geometry is divine. The basis of the logarithmic spiral is the Golden

Section seen in nature and in Euclid's 5 by 8 rectangle demonstrating that the lesser part is to the greater part as is the greater part to the whole. This also reveals the spiritual significance of the Perfect 5th and the octave in music. The lines of the pentagram, a five-pointed star representing the human being, are divided in exact extreme and mean proportion to the Golden Section. Five is also the number of mediation. We are children of the stars, or in Biblical terms, man is the mediator between God and nature. We have five senses and five fingers on each hand. We use our hands to "sense" reality, integrating inner perceptions with externals. Hands are primary communication through gesture. That the hands can be visualized as spiraling geometric shapes or letters of the alphabet is nothing new. This premise underlies sign language and the art of mudra – gestures of power.

Mudra is a Sanskrit word meaning "sign" or "seal." The root "mud" means to please or delight. "Dru" means to draw forth. Therefore, the performance of mudras gives pleasure to the object of reference, which in turn rebounds on the practitioner. It is a visual alphabet that obtains results that go beyond ordinary speech, much like music. But instead of playing a musical instrument, the hands are playing with prana or Qi – cosmic energy.⁵²

Almost all iconographic representations of spiritual leaders and saints show them exhibiting some kind of mudra or symbolic gesture. Mudras are common to both Eastern and Western traditions, and each one has a specific effect. Many forms of Qigong bodywork such as Tai Chi and Yoga incorporate the use of mudras into their practices. So you see, there are many turns, twists, and levels in the cosmic spiral of energy awareness of which DNA is only one.

First, Tenen alleges that "the Internet search you suggest will immediately turn up Mr. Winter's "defense" of his plagiary of our materials." It does not. On the contrary, using those exact key words in that order (DNA, hebrew letters, hands) on the three most popular search engines (Webcrawler, Google, and Yahoo) immediately brings up Tenen's own websites – www.meru.org and www.meetingtent.com! (See Exhibit 6.) Seems like he would be delighted with this. The meeting tent website is where Tenen's products and books are sold. Gage's article previously mentioned also appears in the first few links. In addition, the first words of the article on the www.halexandria link give tribute to Tenen and his organization, the Meru Foundation. No law forbids suggesting an Internet search. In fact, in the interests of free inquiry such research is typically encouraged in a democracy. Freedom of information, expression and of the press is what the First Amendment of our United States Constitution is all about. And why is it First? Because it's most important – that's why! To enjoin someone from free inquiry and in particular, to enjoin them from even *suggesting and encouraging* free inquiry, is tantamount to censorship. Specific case law on point will be discussed in the Law section of this Memorandum.

Tenen makes several threats in his letter. Take for instance, this paragraph:

Now that you know that this material by Mr. Winter is disparagement, damaging, and as such is prohibited by the Court, you have a responsibility to refrain from referring others to it. Since Federal Judge Charles J. Siragusa has retained jurisdiction in all

matters pertaining to this case, he would be the presiding judge in any action that follows from Mr. Winter's refusal to obey the Court Orders – such as Mr. Winter's posting his "defense" of his plagiarist and disparagement illegally on the Internet, *and your subsequent finding it, reading it, and referring others to it.* Meru Foundation's Board of Directors is taking the matter of the spread of Mr. Winter's disparagement, both by this agents and by third parties, with increasing seriousness, as it is affecting our ability to gain support for this work. (Emphasis added.)

While I have read much of what Winter has published online, never have I "found" nor "read" a defense of his plagiarist, and Tenen would be hard-pressed to prove otherwise. Even if I had, the last thing I would do is refer people to it, although such action would be protected under the First Amendment. No reasonable person in reading the new excerpt from my book would come close to inferring any such motivation or intention, let alone attribute such statements to any particular persons. To do so suggests delusions of reference and paranoia.

Further, Tenen alleges that this new text "...has the effect of renewing, and spreading, the disparagement that Mr. Winter now once again is encouraging." This is quite a reach – especially when the text makes no reference to Tenen, Winter or their work. Tenen continues:

It is Mr. Winter who originated the idea that we are trying to "own sacred concepts" or "own the Hebrew alphabet." This is exactly the kind of language that the Court said he could not repeat... Readers who follow your advice and perform this Internet search will understand that when you refer to "intellectual elitism," "owning" the ideas, and remark that "hands being visualized as spiraling geometric shapes or letter of the alphabet" are "nothing new" (for example), you are referring in derogatory terms to Meru Foundation and the Tenens, to our research, and to our effort to protect its integrity from ill-intended people such as Mr. Winter and his followers. As such, you are repeating Mr. Winter's arguments, which are prohibited by the Court.

Such an impossible leap in logic is a clear nonsequitur. First, Tenen wrongly assumes that I am talking about them and projects meanings into my words that just aren't there. My statement about intellectual elitism is a general, rhetorical assertion and an expression of my opinion about the current state of much of this kind of research. I have been campaigning against all forms of intellectual elitism since graduate school and have written on this topic in the past, long before I became familiar with this research and Tenen's work in particular. In fact, I was so concerned about the damaging effects of intellectual elitism upon graduate students in our academic institutions that in 1982 I founded the "Anti-Ivory Tower League" – an organization dedicated to protecting and defending the civil liberties of students who were discriminated against for expressing unorthodox ideas and spiritual sentiments. (See Exhibit 7.) Similar thinking is published all over the Internet. (See Exhibit 8, the article entitled "Spirituality and Intellectual Property Rights" and the editorial opinion entitled "Dan Winter's Work Again Available Online" by Christine Hall.) All opinion is protected speech as long it is not slanderous or libelous. Hall's two articles are published online at

AlternativeApproaches.com, an alternative, holistic-based magazine that often features articles by high profile authors in related genres. That they address the Tenen and Winter conflict directly is even more to the point. The fact that someone may take a stand against what they perceive as “intellectual elitism” does not mean that they automatically side with Dan Winter in this conflict. That is purely paranoid conjecture. Dan Winter, myself, and anyone could all be guilty of intellectual elitism from time to time. I was pointing fingers at a phenomenon – not a person. Remember, originally I wanted to promote Tenen as an authority on this subject yet he declined the honor and privilege.

To allege that my opinion about a phenomenon is the same as spreading Winter’s arguments is ludicrous. Similarly, to suggest that Winter “originated” the idea about “owning” sacred concepts is also absurd. This idea has been shared and debated by great minds for centuries. Common ideas are often shared and circulated by colleagues in the same discipline seeking to make a name for themselves and this often leads to conflict, unfortunately. If Winter asserted such an idea or opinion, then his expression of that idea or opinion is certainly his own, but not necessarily the idea or opinion itself. If other people share similar thoughts, ideas, and opinions, that does not mean that they got them from Dan Winter! My opinions are my own and no one can prove otherwise. Likewise, when I write “Once we make something “sacred” we separate it from the rest, exclusionary thinking sets in...” I first formed that opinion at the ripe old age of 18 when I heard Bonewits during a lecture called “A Psychic Exploration of Music” at the Gnostic Aquarian Festival in 1974. Her language is highly similar, and I reference a tape-recording of this lecture in my bibliography. (See Exhibit 9.) Therefore, if I was influenced by anyone with regard to that line of thinking, it was by Bonewits in 1974, not Winter.

Winter was ordered to refrain from expressing his opinions in a manner or context directly disparaging to Tenen, which would necessitate identifying him by name. Tenen’s name no longer appears anywhere in my book. In addition, the Court did not order Winter – or others by extension – to refrain from having ideas and opinions, however similar to Winter’s they might be. The Order specifically states that Winter shall refrain from “making or publishing any oral or written disparaging or unsubstantiated statement, or any statement inconsistent with these findings of act, to any person or entity about the quality, originality, competence, motives or religious status of plaintiffs or about their published or unpublished works.” (See Exhibit 10.) According to the Federal Rules of Civil Procedure, this injunction only applies to others if they acted directly in concert with Winter in 1998. I have never met Winter, nor spoken or corresponded with him. I do not support many of his ideas, and I certainly do not defend any act of plagiarism, libel, or defamation. My conduct is nothing like Winter’s. The Law section of this Memorandum will clearly establish that any and all of my speech with regard to this research is protected by the Copyright Act and the First Amendment of the United

States Constitution.

If anyone has broached the topic of the impossibility of “owning” ideas and concepts, it is Tenen himself. In Gage’s article, she says that Tenen “...puts it this way: Like each of the letters of the alphabet, each culture has a vital contribution to make to the ecology and survival of the planet. The model found in the Hebrew text of Genesis is intrinsic to human consciousness like pi, *not owned by anybody.*” (Emphasis added.)^[i] Therefore he is in agreement with Dan Winter on that issue. Winter’s allegation that Tenen may be trying to “own” anything is another matter altogether and irrelevant. In one of Tenen’s own missives on an Internet message board forum, he states, “Meru Foundation’s original work includes the *rediscovery* of sacred geometries previously lost.” (Emphasis added.) (See Exhibit 11.) Interestingly, in the same message, we see the pot calling the kettle black. Tenen writes, “In my personal opinion, Mr. Winter does not belong in any professional or polite company. In all the years I have been doing this work, and having met thousands of persons, I can state unhesitatingly that, in my opinion, Mr. Winter is among the most incompetent and is certainly the most cold-blooded person I have ever met.” (*Id.*)

Tenen mistakenly believes that just because the Court ordered Winter not to propagate ideas or research that could be connected to his work, that precludes other folks from publishing similar research or commenting upon it, including critical analysis. Tenen’s copyright applies to hand sculptures representing his understanding of the Hebrew flame letters – not the Hebrew letters themselves and their possible correlations with images of fire, flames, hands and vortices. In fact, the Order says his copyright pertains to a “philosophically meaningful three-dimensional vortex *sculpture* of flame letters.” (Emphasis added.) Copyright law plainly states that only *expressions* of ideas may be owned – not the ideas themselves. There is no reference to Tenen in my book. However, Christine Hall in her editorial applies this sentiment directly to the Winter/Tenen controversy. While acknowledging Winter’s use of Tenen’s graphic designs, she also states “...visualization of Hebrew letters surrounded by flames is a concept that goes back to ancient times and is nothing invented or discovered by Tenen.” (See Exhibit 8.) In the present case, Tenen states, “...references to hands, alphabets, and spirals, together, clearly refer back to our work and to some degree the abstract you removed.” They do not “clearly” refer back to their work in particular. They refer to the work, ideas, and discoveries of many researchers in this area and to the exploration of age-old spiritual practices.

Gage writes, “Tenen feels there are principles of law and order in the relationship between humans and the cosmos that, up till now, only Pythagoreans and Kabbalists have suspected. What I’ve found, says Tenen, is that these principles correspond to the numerical patterns of some of the basic geometrical forms found in the physical world, for example, the double helix, which is the form of the DNA molecule.”^[ii] This is partially

incorrect. These “principles of law and order in the relationship between humans and the cosmos” have been addressed by spiritual sages in many cultures throughout millennia – not just the Greek and Hebrew. That is partly what my book is all about, and the fact that all epistemology regarding these cosmic laws is extraterrestrial in origin. The esoteric scholar, David Allen Hulse, has written an extensive two volume compendium on this subject called *The Key of It All: An Encyclopedic Guide to the Sacred Languages and Magickal Systems of the World*, Book I devoted to the Eastern Mysteries, and Book II to the Western. Each of these language systems includes an understanding of these principles based on numerical patterns and geometry. In addition to the Hebrew and Greek mentioned by Tenen are Cuneiform, Arabic, Sanskrit, Tibetan, Chinese, Coptic, Runes, Latin, Enochian, English, and the Tarot.^[iii] Remember that in my book the research is discussed in the context of what we know about DNA. Only briefly does Tenen relate his ideas to DNA in the Gate article quoted above.

In the paper from which I originally quoted, Tenen states “The vortex form is a suitable geometric *metaphor* for flame, fire or “Light.””^[iv] (Emphasis added.) As I write in my book, it is more than a metaphor to occultists – it is an actuality on several planes of existence, the discussion of which, has been fundamental in all esoteric literature published throughout the ages. In 1923 and 1924 Dion Fortune wrote *The Cosmic Doctrine* explaining that all manifestation, not just that limited to the physical plane, begins with tangential movements of lines of force crossing one another, setting up opposing influences subsequently interlocking and creating a vortex. In discussing the interplay of vortices in relation to the organizing tendency of the universe, she states,

For instance, supposing a prime movement of an atom to be a three-sided tangential – A to B, B to C and C back to A, whatever secondary movements may arise (and remember this, that movement in a straight line is never so maintained after the original impulse dies away), conflicting forces reduce it to a modification of the primal circular, so that the atom, which in its movement originally pursued a triangular course, will finally arrive at a movement consisting of three spirals arranged in a triangle.

Each spiral movement will be executed under the conditions governing the A to B segment, then the B to C segment, then the C to A segment. Therefore, if you knew what the influences of the A to B segment were, you would know the nature of the primary movement underlying the spiral which alone appears to the superficial observer. This is a principle underlying astrology, and this is the reason why the Science of Numbers plays an important part in all practical applications of Cosmic principles.^[v]

In her book, *The Esoteric Philosophy of Love and Marriage*, she discusses the vortex in relation to the processes of birth and conception:

When the act of sexual union takes place and the subtle forces of the two natures rush together, and, as in the case of two currents of water in collision, a whirlpool or vortex is set up; this vortex extends up the planes as far as the mating of the corresponding bodies takes place... It is by means of the vortex of ingress that souls are enabled to pass

down the planes and make contact with a molecule of dense matter and so gain a foothold upon the plane of manifestation, for it is with this vitalised molecule as a nucleus that the body of dense matter is built up around them.[\[vi\]](#)

Vortices produce form. Form is perceived as an extension or condensation of force on a denser plane. That the great perennial wisdom of the world has recognized this in relationship to the emergence of all things – including alphabets – is “nothing new” as previously stated. Barbara G. Walker in *The Woman’s Dictionary of Symbols and Sacred Objects* writes,

The universe begins with roundness; so say the myths. The great circle, the cosmic egg, the bubble, the spiral, the moon, the zero, the wheel of time, the infinite womb: such are the symbols that try to express a human sense of the wholeness of things. *Everything* and *everywhere* are circular in most pictographic and **alphabetic** systems. Birth is roundness; the pregnant belly, the full breast. Death brings life full circle: back to the beginning again. Vessels are round. The house is round, containing all stages of life. The temple is round, making wholeness visible. The sacred dance is circular. (Emphasis added.)[\[vii\]](#)

What are words but the vessels of thought? What are alphabetical symbols but the vessels of words? Letters are to words as atoms are to things. Both are birthed and begin with the spiral or vortex. It was a goddess, not a god, that was usually credited with the invention of alphabetical letters. Walker continues,

All letters were originally sacred symbols – the literal meaning of *hieroglyph*. In Egypt the art of writing was the gift of the Goddess Isis, Maat, Menos, or Seshat; in Rome, that of the Goddess Carmenta or the Fata Scribunda (writer-Fate); in Scandinavia, that of the Norns as *Schreiberinnen*, “writing-women”; in Babylon, that of the Gulses or Fates. (Emphasis added.)

Written letters were symbols of the Logos power, that is, the power to create the world by means of words. That is why the fifty letters of the Sanskrit alphabet appeared on the necklace of skulls worn by Kali Ma, perhaps the oldest Goddess of Creation. These letters were *matrika*, “the mothers,” which brought all things into being when kali formed them into words.[\[viii\]](#)

The first letter of many alphabets is especially associated with the spiral or vortex form. The Greek equivalent of A – Alpha – is also another name for the river Styx, which represented the cycle of death and rebirth. Walker writes, “Like the sacred spiral, the Styx was said to enter the underground womb and reemerge after seven turns through the nether spheres.”[\[ix\]](#) She reports that some of the older forms, such as Cretan, Syrian, and Sinaitic scripts, the letter appeared “upside down” representing a cow or bull. The Hebrew counterpart, Aleph, means “ox.” The southeastern Asian equivalent – Alpa Akshara – was the symbol for the mother of all wisdom and the “spiritual birth-giver to all enlightened persons.”[\[x\]](#)

Another creation symbol is the double triangle – an inverted equilateral triangle on top of an upright one. (See Exhibit 12.) In the Eastern mystery

schools, it had tantric associations because it also represented the coming together of the yin and yang forces – male and female. Eventually it became the sign for infinity like the figure 8 and the origin of the shape of the hourglass. The outline of the double triangle also follows the directions of the legs on the Hebrew letter Aleph. Viewed three-dimensionally, the double triangle also represents the double vortex – the transition point between worlds. Qabalists have made these associations for millennia. The Hermetic Order of the Golden Dawn is a spiritual order that has roots in ages past and that reached its peak in the 19th century. Volume IV, Book Eight of the Golden Dawn's magickal rituals contains an illustration. (See Exhibit 13.) The double triangle/double vortex represents the connection between two worlds complete with Hebrew letters and Qabalistic associations. That Tenen was well aware of the significance and relevance of this particular archetypal symbol is evidenced by his publication of a paper entitled, “On the Double-Triangle” which is posted on the Internet. (See Exhibit 14.)

When the double triangles unite, a hexagram is created, a symbol that is also the emblem of Judaism known as the Star of David. Yet the hexagram is a universal symbol with esoteric meaning all over the world. Alchemically, it represents the integration of the forces of fire and water. In Yucatan, it symbolizes the sun shining on the Earth. During Biblical times, it was the ultimate tantric symbol of the Eastern mystery traditions representing the union between the Goddess Kali and Shiva, her consort. Interestingly, Walker relates,

The hexagram reached Judaism by a devious route, passing through the Tantric influence on medieval Jewish cabalists, who spoke of the desired reunion between God and his spouse, the Shekina (a Semitic version of Kali-Shakti)... Hence the curious rabbinical tradition that the Ark of the Covenant contained not only the tablets of the law but also “a man and woman in intimate embrace, in the form of a hexagram.”[\[xi\]](#)

Speaking of the Shekina, in the Western mystery tradition of esoteric Christianity, it is a triple flame in primary colors above an amethyst base just behind the heart center or chakra – an energy center in the etheric counterpart of the human body. When I attended the Golden Pyramid, Unity – Church of Christianity in the 1970s, the minister and one of my primary spiritual mentors, Dr. John Rankin, instructed us often to visualize it as swirling, brilliant fire – another version of the Hebrew letter Shin. Again – these flaming Hebrew letters are an old concept indeed – “nothing new.” We used the Holy Shekina in a transmutation process that is described in my book in Chapter 3. Negative energy is pulled up from the abdominal brain or solar plexus energy center/chakra – assigned to the Hebrew letter Kaph and the Tarot Key, “The Wheel of Fortune.” The energy is then purified in the Holy Shekina and then released for recycling into the cosmos. Chakra means “wheel” in Sanskrit. Chakras are whirling vortices of energy, and have Hebrew letters assigned to them. The Wheel of Fortune is swirling and even inscribed with Hebrew letters (See Exhibit 15.) The Hebrew letter assigned to the Wheel of Fortune as a whole is

Kaph, whose hieroglyphic meaning is HAND. So now we have all three components tied together succinctly --- hands, Hebrew letters, and spinning vortices, establishing that there is a prior concept for this art, contrary to Tenen's claim. For a more complete analysis regarding the Hebrew letters Kaph and Shin and their Qabalistic correlations to the hand, the brain, and fire, see copy of Meditations on those letters from the *Book of Tokens* by Paul Foster Case. (Exhibit 16.) Paul Foster Case is one of the primary founders of my spiritual order (which is an offshoot of the Golden Dawn) and published those meditations in approximately 1934.

Another direct connection between Hebrew letters, hands, and spinning spirals or "vortices" is illustrated by Tarot Key 21 known as The World. (See Exhibit 17.) A human figure is seen holding *spirals* in each *hand*, dancing in a wreath. Wreaths are leaves woven by *hands*, intimating that the raw forces of nature are brought into useful form by human intervention. The Hebrew letter Kaph (meaning hand) serves as a veil, covering the figure's reproductive organs. According to Case,

What is meant is that the mechanical appearance of the laws of nature hides the truth that the universe is not a mechanism but an organism. Hence, this veil covers the reproductive organs of the dancer, and, according to an ancient tradition, conceals the fact that the dancer is an Hermaphrodite. Spirals in the hands of the dancer recall the words of the *Chaldean Oracles*: "The god energizes a spiral force." This emphasizes a fact always known to occultists and brought to light by exoteric science, viz., the form-building forces of the universe actually work in spirals. Key 21, moreover, is associated with the letter Tav, and to this letter is associated the planet Saturn, the astrological symbol of all that makes things solid, definite and concrete. Saturn is the form-giving power. All forms whatever are manifestations of spiral activity. (@ 1934)[\[xii\]](#)

The Hebrew letter Yod also means hand. In the meditation attached in Exhibit 16, more correlations are made to fire and the circle of creation. Yod is also the first letter in one of the divine names for God – Yod Heh Vau Heh (יהוה), signifying again the first beginning of things. It is thought to be the "hand of God" or Spirit guiding the soul on its evolutionary way.[\[xiii\]](#) Every Hebrew letter begins with a Yod, meaning that Yod is the foundation for all the letters. If Yod is hand then there is a hand in every Hebrew letter.

In the added excerpt in my book in question, I talk about the correlation between the five-pointed star, also known as a pentagram, and hands as having five fingers. Exhibit 18 is a pentagram with the alchemical symbols for the four elements and the quintessence. In the Golden Dawn rituals, each finger of the hand is attributed to one of these: thumb – spirit or quintessence, third finger – fire, index finger – water, little finger – air, and second finger – earth.[\[xiv\]](#) (Esoteric Buddhism also attributes the same principles known as "tattvas" to the fingers of the hand.)[\[xv\]](#) What is also on this pentagram are the five corresponding Hebrew letters spelling the divine name Yeheshua (יהושע). Yeheshua is a significant modification of the divine name for God -- Yod Heh Vau Heh with an added Shin in the

middle transforming it into the equivalent of the Christ. Inserting the fiery Shin into the divine name for God thus illuminates the Pentagram – symbol for the human being. This illumination is what is known as Christ consciousness. This name is powerfully invoked in the Golden Dawn’s “Formulae of the Magic of Light” ritual. When doing the transmutation technique discussed in my book, pentagram position is often employed – standing straight with arms and legs outstretched to resemble a star. In ceremonial ritual, pentagrams are visualized as blazing symbols, Hebrew letters and all. Many of these rites are centuries old, if not millennia. Illustrations of other magickal sigils often visualized as if on fire are attached as Exhibit 19. Among these are a pentagram, the double triangle vortex figure mentioned above, and images of hands directly in conjunction with Hebrew letters. These particular sigils are taken from *The Key of Solomon the King*, which was translated and edited over 100 years ago from the original manuscripts in the British Museum by S. Liddel MacGregor Mathers, who was instrumental in founding the Hermetic Order of the Golden Dawn. Hebrew letters are inscribed all over these sigils. That they are also to be visualized as “flaming letters” and “whirling” at that, can be found in specific instructions from the organization. In one Golden Dawn invocation in particular:

Go to the South of the Altar, and face the North. Draw the Hebrew letters of Adonai Ha-Aretz in the Air before you. Also the Sigil. Then imagine both in the heart. Vibrate the name several times by the Vibratory Formula of the Middle Pillar until the whole body throbs and pulses with the divine power... Trace the Earth Pentagram and in it the Sigil and Hebrew letters of Auriel. Picture the Name in the lungs, and vibrate it several times by the vibratory formula, circulating the force thereafter.[\[xvi\]](#)

In all esoteric spiritual orders of the Western tradition that took some of their inspiration from the Golden Dawn, variations of these rituals abound. For instance, it is common to visualize the physical body placed inside the entire Qabalistic Tree of Life. The central sephirah (sphere) called Tiphareth is the Christ center located at the heart. While in the Tree, the practitioner may visualize a specific Tarot key, color, and/or Hebrew letter attributed to the path on the Tree where the work is being done. These images are often manipulated and are made to shape-shift into other forms depending on the purpose of the ritual. Whirling Hebrew letters are often visualized shape-shifting into other forms including hands. In fact, the Golden Dawn formulated specific mudras that incorporated the attribution of Hebrew letters to the fingers of the hand, in particular, the Tetragrammaton.[\[xvii\]](#) Chinese cosmology also shares a similar system of trigrams related to sacred hand positions.[\[xviii\]](#)

In the following excerpt directly out of one of the Golden Dawn’s prescribed rituals, take particular note of the Qabalistic references to the spheres on the Tree of Life and the telematic attributions of the Hebrew letters:

In the vibration of Names concentrate first upon the highest aspirations and upon the whiteness of Kether. Astral vibrations and

material alone are dangerous. Concentrate upon your Tiphareth, the centre about the heart, and draw down into it the White Rays from above. Formulate the letters in White Light in your heart. Inspire deeply, and then pronounce the Letters of the Name, vibrating each through your whole system – as if setting into vibration the Air before you, and as if that vibration spread out into space. The Whiteness should be brilliant. The Sigils are drawn from the lettering of the Rose upon the Cross, and these are in Tiphareth, which corresponds to the heart. Draw them as if the Rose were in your heart. In vibrating any Name, pronounce it as many times as it has letters. This is the Invoking Whirl. Example: The Vibration of Adonai Ha-Aretz. Perform the banishing Ceremony of the Pentagram in the four quarters of your room, preceded by the Qabalistic Cross. Then in each quarter perform the Signs of the Adeptus Minor, saying IAO and LVX, making the symbol of the Rose-Cross... Pass to the centre of the Room, and face East. Then formulate before you in brilliant white flashings of the Letters of the name in a Cross – i.e., both perpendicularly and horizontally as a picture before you extrinsically... (See Exhibit 20.)[\[xix\]](#)

In Golden Dawn ritual, the image of the Double Triangle representing transmission between the worlds as a vortex is visualized, complete with the corresponding Hebrew letters and flashing colors:

Were Malkuth and Kether in the same plane or world the transmission of these forces from the one unto the other would proceed *more or less in direct lines*. In this case, *seeing that Malkuth and Kether be in different planes or worlds*, the lines of transmission of these forces are caught up and whirled about by the *upper cone* of the hourglass symbol into the *vortex* where through passeth the thread of the *unformulated*, i.e., the Ain Soph. Thence they are projected in a whirling convolution (yet according to their nature) through the lower cone of the hourglass symbol unto Kether.[\[xx\]](#)
(See Exhibit 13.)

Pentagrams are typically visualized as “glowing figures of fire”[\[xxi\]](#) and that includes the Hebrew letters inscribed on them. Eliphaz Levi, noted occultist of the 19th century in 1896 wrote in his classic treatise, *Transcendental Magic*: “But the Pentagram, profaned by men, burns ever unclouded in the right hand of the Word of Truth, and the inspired voice guarantees to him that overcometh the possession of the Morning Star... the Magus turns his eyes toward this symbol, takes it in his right hand and feels armed with intellectual omnipotence...”[\[xxii\]](#) Another 19th century Golden Dawn luminary, Aleister Crowley, liked to work with the Hebrew letters assigned to each path on the Tree in “Flaming Sword” imagery. The downward involution of the Tree is often represented as a “lightening flash” or “flaming sword.”[\[xxiii\]](#) (See Exhibit 21.)

The mysterious Enochian language system is partly comprised of tablets or “watchtowers” which incorporate spiraling configurations of letters used in the invocation of greater powers.[\[xxiv\]](#)

The sephirahs on the Qabalistic Tree, though usually imaged as spheres, can also be seen as concentric circles that spiral into and interpenetrate one another. (See Exhibit 22.) The spiral as a deeper concept also refers to the First Swirlings or “beginning of whirlings” of Qabalistic philosophy

preceding Kether, the first sphere. This also forms the basis for the Hermetic Axiom: As Below, So Above. (See Exhibit 23.) That brings us to the connection with DNA. As previously mentioned and explored more thoroughly in my book, the chakras (whirling energy vortices) aligned to the human spine allow the fiery kundalini energy to activate consciousness. Walker notes, “The Kundalini energy was supposed to coil around the merudanda in a double spiral, one solar (rightward) and the other lunar (leftward). These were known as Pingala and Ida. The resulting design was remarkably like the Hermetic caduceus with its twin serpents twining around a central staff – or the double helix of DNA.”[\[xxv\]](#) Some practitioners believe that the chakras are the energy vortices at the subatomic level and the equivalent of spiritual DNA.[\[xxvi\]](#) Yet some researchers are beginning to think that physical DNA itself could be the doorway to higher realms or dimensions. They use vortex theory to explain this.

In the 19th century, Lord Kelvin felt that atoms were vortex rings that gave rise to the illusion of matter. Other celebrated scientists of the period like Helmholtz, Maxwell, and Sir Thomson concurred. But when science discovered subatomic particles, this theory was abandoned. British scientists David Ash and Peter Hewitt in their book, *The Vortex: Key to Future Science*, renew this concept by stating that the vortex of energy is found in the elementary particle. The velocity of the vortex movement of energy can exceed the speed of light. When this happens, the particle enters a higher plane, dimension or “super-physical” reality. When the vortex is slowed, it reappears. This process, called transubstantiation, has been used to explain the possibility of interdimensional travel by UFOs, and is just another example of emerging scientific theory verifying Ageless Wisdom.

Resonance, which is discussed at length in Chapter 8 of my book, explains how the physical realm interacts with these “super-physical” realms. One scientist explains, “The DNA in the cells of living organisms acts as a receiver of information from the super-physical realm. DNA molecules have a double helix structure coiled repeatedly upon itself, thus forming a coil reminiscent of that in a radio set. Just like a radio coil can pick up radio waves which the rest of the tuning device of the radio transforms into sound, the DNA picks up super-physical information and relays this to the cell... This information governs the development of the cell...”[\[xxvii\]](#) This is how changes are initially detected in the energy field prior to manifestation in the physical body. Remember that concentric circles and spheres are often 2-3 dimensional representations of vortices. (See Exhibit 24.) This diagram comes from a paper by Dr. Noel Huntley who explains that DNA is the interface vortex between the third and fourth dimensions. Huntley says that a fourth dimensional spherical vortex spiraling inward can be mathematically modeled as countless concentric spheres.[\[xxviii\]](#) Shaping of organisms results from the magnitude of the radius of the spheres and the degree of intersection or phase relation of oscillations. In his words:

The precise placement of any point within the primary vortex, such as in the positioning of a cell, is achieved by programming the phase relationship of the 'spheres' which in the periphery of the vortex is accomplished by adjustment of the phase angles of the 'sine' waves, which precipitate into the centre forming the intersecting 'spheres' or vortices. According to this phase relationship and the magnitude of the final standing wave (an inner-vortex periphery - the outer vortex spirals inward and will be automatically biased one way or the other spatially, homing in perfectly to a specific location... This would be expected to be roughly how extraterrestrials navigate to a coordinate point during teleportation, and also how, for example, a pianist instantly locates, when desired, a point of information in, say, part of a finger movement during whole complex coordinations. In reality we have two conditions: (1) the DNA which we know contains information for the regulation and maintenance of the organism, and (2) a higher-dimensional formative blueprint or spiritual 'seed' which contains potentially infinitely greater probable information in the modulations of its sine waves in its 4D periphery. Since the formative blueprint and the 3D or chemical DNA are intrinsically connected one might say that this blueprint is inside the DNA. The DNA thus provides the 3D control, and by sending its resonances up through the gradient spiral of the vortex, meeting at every level the basic program of higher-dimensional information, selection of probabilities takes place.[\[xxix\]](#)

This is not New Age fringe science. The following abstract on a paper entitled "Vortex Pluralism: A New Philosophical Perspective" was published by the Pacific Neuropsychiatric Institute. The paper is written by Vernon M. Neppe, M.D., Ph.D., FRCPC, the director of the Institute and professor of psychiatry at St. Louis University in Missouri. It proposes,

... a radical, new mind-body theory involving perceiving the mind and body link dilemma as neither being dualistic or monistic. Instead, mind and body reflect part of a grander pluralistic design, with a gradual process of diminishing density in infinite dimensional vortices impacting at specific points which are partly observed dependent interwoven with a broader existence. Simplistically, the model of a spinning top allows the subject to experience the vortices at specific defined points in an N dimensional space-time universe allowing meeting points for such phenomena as precognition, survival after bodily death, and mind-brain. This theory appears tenable using natural scientific models ranging from psychology and the unconscious to genetics, quantum physics and relativity, astronomy, chemistry, anthropology, religion, philosophy, sociology, biology, physiology and anatomy. Theories pertaining to numerous concepts and ideas such as overlaps, parallel universe and holograms; nanosecond biology, molecular interaction, circular motion and crystal structure; vibrations, density and frequency; spatial gaps, observer-observed, minuscule-macropedic differences, parallel and non-parallel vortices; are all workable within the vortex pluralism framework. The external unconsciousness model, temporal lobe, helices, electrical wiring and nerves, paranormality, survival communication, meditation, death, free-will, psychokinesis, out-of-body experience and extrasensory perception are all impacted within this all encompassing fundamental theory.[\[xxx\]](#)

Therefore, if DNA, like a radio, is a transceiver for ideas originating on higher planes, then communication methodology is intrinsically encoded. Linguist/Archeologist/Author Zecharia Sitchin claims that our genes are our "cosmic connection."[\[xxxi\]](#) Cuneiform tablets from Mesopotamia translated by him explain that the "seed of life," otherwise known as the

genetic alphabet, was imparted to Earth from Nibiru by our extraterrestrial ancestors over four billion years ago. He theorizes that all early mystical or “sacred” alphabets, including Hebrew, derive from the genetic code. For instance, DNA is decoded by messenger RNA that transcribes and rearranges the DNA letters (CGTA) into three-letter words. He states:

The rich and precise Hebrew language is based on “root” words from which verbs, nouns, adverbs, adjectives, pronouns, tenses, conjugations and all other grammatical variants derive. For reasons that no one has been able to explain, these root words are made up of *three letters*. This is quite a departure from the Akkadian, the mother-language of all Semitic languages, which was formed from syllables – sometimes just one, sometimes two or three or more.

Could the reason for the three-letter Hebrew root words be the three letter DNA-language – the very source, as we have concluded, of the alphabet itself? If so, then the three letter root words corroborate this conclusion.

“Death and life are in the language,” the Bible states in Proverbs (18:21). This statement has been treated allegorically. It is time, perhaps, to take it literally; *the language of the Hebrew Bible and the DNA genetic code of life (and death) are but two sides of the same coin.*

The mysteries that are encoded therein are vaster than one can imagine; they include among other wondrous discoveries the secrets of healing.[\[xxxii\]](#)

I summarize Dr. Strassman’s findings from his experimental studies with DMT in the same chapter of the book containing the excerpts in question. Many of Dr. Strassman’s subjects described experiences filled with vibrating colorful imagery involving the “spiritual” component of DNA. They often saw the spirals transforming into images resembling geometric shapes and alphabetical figures.[\[xxxiii\]](#) It is clear that Tenen is not the first to “rediscover” these correlations.

Finally, Tenen forewarns, “... if you were to take your book to another publisher rather than making the effort to understand the Court’s findings and do the right thing, the Court would simply take this as confirmation of your knowing and willful responsibility.” I have no need to take my book elsewhere because these allegations are totally unfounded. But even if I chose to take my book elsewhere, there could be a multitude of reasons for doing that, e.g., better royalties, better service, more control over distribution, etc. Such action would not be an admission of anything except for my desire to do so.

Hall in her editorial encourages folks to view the website showcasing Winter’s work that is still published on the Internet from overseas. Tenen has not yet attempted to censor her. Hall’s article has been around for a long time and is published in other journals as well. If Tenen was genuinely concerned with preserving the integrity of his work and his reputation in the manner he claims, why hasn’t he confronted her and others publishing similar material? The fact that these ideas remain published online at many websites fortifies their presence in public

domain. Therefore, Tenen is estopped from legally claiming otherwise.

The Tenens feel that my actions are causing them “professional and legal damage.” Given the cumulative effect of their mischaracterization of this whole situation and their misrepresentation of the facts, that is a burden they simply cannot lawfully make or bear. They chose to make a problem where there was none. Any litigation initiated on their behalf would be deemed frivolous prosecution, and indeed there are penalties for that.

IV. THE LAW

This section includes an analysis of the law as it pertains to the original lawsuit, *Tenen v. Winter*, the allegations currently being made against me and anyone else in similar context, the tension between First Amendment rights and intellectual property interests, and the just resolution of this matter.

A. What Really Happened in *Tenen v. Winter*

Tenen sent me a copy of the “Findings of Fact, Conclusions of Law, and Order” signed by Judge Charles J. Siragusa of the United States District Court, Western District of New York at Rochester, on September 9, 1998 in the case *Stanley N. Tenen, et al. v. Daniel Winter, et al.*, 15 F.Supp.2d 270 (1998). He also sent me one page of excerpted testimony from the deposition of Richard Leviton, and an Affidavit signed by James J. Hurtak, both witnesses on their behalf in this lawsuit. This Order which in effect was an injunction and judgment, was stipulated – meaning that it was agreed upon and signed by plaintiffs and defendant. This document was prepared and submitted to the Court three months after the main business of the Court was concluded. Therefore, it was not included in the publication of the authoritative records of all District Court cases called *The Federal Supplement* (F.Supp. for short.) When attorneys or anyone looks up this case in the records in order to cite it as law, they will not find this detailed document, which is good, because it is severely flawed. Nonetheless, although this Order was not directly made by the Judge as a finder of fact absent a jury, it is still an Order with the same effect as any other kind of order. In reality, the language of the Order was constructed by attorneys for plaintiffs Tenen. Once signed by defendant Winter, it was submitted to the Judge for his signature. It appears that the Judge made a serious oversight or abused his discretion in allowing certain language to remain in the injunction because it is blatantly unconstitutional. Before I explain how and why, we must first examine what really occurred in the courtroom leading up to the conclusion of this case – and what subsequently was published as the *law* for future reference and citation.

The published headnotes for this case summarize it as follows:

In copyright infringement action, copyright holder filed several motions. The District Court, Siragusa, J., held that (1) Rule 37 sanctions were appropriate where alleged copyright infringer failed to provide discovery concerning interrogatories he was court ordered

to answer on the subject of his allegation that copyright holder had made defamatory statements; (2) court would not grant plaintiffs' motion for change of venue; (3) copyright holders were not entitled to preliminary injunction; and (4) judgment was entered against alleged infringer for amount of unpaid previously awarded costs. Judgment as ordered.

It is not clear in the published case whether or not Winter actually plagiarized Tenen's materials as alleged. What is clear, based on the published facts and orders, is this:

1. Winter filed a counterclaim alleging defamation against him by the Tenens. As is standard protocol in all litigation, the parties have a right to file "discovery" pleadings in an attempt to arrive at certain facts at issue. Tenen submitted interrogatories (questions) to Winter, to which he never responded. Court procedure allows sanctions against those who do not comply with discovery requests. Tenen wanted the Court to find Winter in contempt, meaning Winter would have probably had to pay a fine or spend time in jail. The Judge instead opted to dismiss Winter's counterclaim, thereby denying him the opportunity to present evidence at trial in support of his defamation claim against Tenen. The law requires full disclosure of all witnesses and documents to be used at trial *before* trial. All parties have the right to review these and respond to them beforehand in an order to adequately prepare for trial. Tenen objected to this ruling, arguing that it did not afford them the opportunity to address the issue of damages. Therefore the Court ordered that Winter supply certain documents to a third party referee for determining what damages, if any, were due Tenen.

2. Tenen wanted to postpone the trial date, originally scheduled for July 27, 1998, by moving for a change of venue, probably due to lack of readiness and a proper expert witness. The Court denied this motion.

3. Tenen, more than once, asked the Court for a "preliminary injunction" which would have prevented Winter from publishing, promoting, or distributing certain materials that Tenen believed Winter plagiarized. Another Judge/Magistrate had jurisdiction over this case before it was assigned to Judge Siragusa. The Magistrate already denied Tenen's previous request for an injunction based on lack of sufficient evidence likely to prove that Tenen's copyright was violated. When the case arrived at Judge Siragusa's Court, a similar decision was made. Judge Siragusa ruled accordingly:

This court agrees with Magistrate Judge Scott's assessment of the case at this stage: "plaintiffs have not established that the ideas upon which the defendants' work are based are subject to copyright protection, or to the extent the plaintiffs have a copyright, that such copyright has been infringed by the defendants' work." Clearly the factual issue pertaining to the ability of defendants to create the shape he claims he has through mathematical means will require expert testimony to establish and to refute. In view of this court's order to the defendants to keep more accurate records of sales, it appears that damages will suffice to remedy any breach of copyright found after trial. The plaintiffs' request for a preliminary injunction is denied.

This is extremely important for reasons soon stated.

4. Against a formal Report and Recommendation, Judge Siragusa ordered Winter to pay costs in the amount of \$1,928.82 for his disobedience to the Court.

5. Final orders reiterated that in the event a future showing of business records provided sufficient evidence in support of plaintiffs' request for an injunction, it would be reconsidered, but stands denied as of the final ruling.

The case never went to trial. Usually the jury is the fact finder in litigation except in matters where judgment can be made as a matter of law, meaning that no substantial issues of material fact are disputed. In that event, a party files a motion for summary judgment or a motion for a directed verdict. If the judge finds that no issues of material fact are in dispute, a ruling will be made as a matter of law without the case proceeding to trial. That did not happen in this case, even though there were many material facts in dispute. What happened was a stipulated settlement between the parties that was subsequently entered into the Court records as a final "Finding of Facts, Conclusion of Law, and Order." This document is so skewed and flawed, it is a wonder the Judge let it through. The only logical reason had to be because the parties agreed to its terms, and it appears that was the case, as the document is signed by Tenen and Winter. The Judge was probably relieved to see this case end because it involved complex issues regarding intellectual property that had not yet been adequately resolved, and issues with a problematic defendant who at this point was representing himself – Dan Winter. Judges typically do not write judgments and orders. Attorneys, usually for the prevailing party, do this and then submit it to the Judge for signature. It is routine for Judges to assign the task of reviewing Judgments and Orders to law clerks. An inexperienced law clerk probably read it and advised the Judge to sign it. Subsequently, it was entered into the *unpublished* record as a matter of law without careful review. How Winter came to sign this document is not entirely clear. Speculation on the Internet is that he was very ill, under extreme duress, and just wanted to settle the case in order to get rid of it and move on with his life.

Winter, by signing this Stipulated Order agreed that he plagiarized Tenen's works. As a result, he was required to publish the Order along with a "Corrective Notice" on the Internet for public clarification. He also agreed to surrender all rights to his website, www.danwinter.com, to Tenen. He also agreed to specific orders protecting Tenen from future copyright infringement. As is standard, the Order lists specific documents that Winter was refrained from distributing or claiming as his own. The Order then lists by number particular actions that Winter cannot do. The Order states that Dan Winter "as well as each of his employees and agents, whether he does business as Daniel Winter and Friends or Crystal Hill Farm or San Graal School or under any other name, and each person in privity with him, if any, is permanently enjoined from engaging in any of the following

activities...”

[item 6.] making or publishing any oral or written disparaging or unsubstantiated statement, or any statement inconsistent with these findings of fact, to any person or entity about the quality, originality, competence, motives or religious status of the plaintiffs or about their published or unpublished works.

This is the problem paragraph which Tenen is attempting to leverage on his behalf, giving him unprecedented and illegal authority to control anything and everything that anyone has to say about him, his work, or research remotely related to any and all aspects of his work.

It appears that Dan Winter had neither understanding nor respect for the law and the judicial process. As a result, he was unable to appreciate the consequences of his actions arising out of that lack of understanding and respect. For example, in the Order he agreed to a statement that he considered all copyrights to be “childish” and that all information should be “shared.” Given these facts and that attitude, it is easy to imagine how frustrated the Court and the plaintiffs were. In the initial stages of the litigation, it is my understanding that Winter had legal counsel. However, when counsel learned that Winter could not afford the \$50,000 retainer for trial he withdrew. This left Winter with no legal representation at all. Therefore, he had to proceed *pro per* – on his own behalf. Winter’s genius is legendary, according to what is published on the Internet. Unfortunately, he chose not to apply that genius and his analytical skills to the law in representing himself. I believe that if he would have, this profoundly flawed and unconstitutional Order would never have come to be.

B. The Injunction is Void Because It Is a Prior Restraint and Does Not Comply with Fed.R.Civ.P. 65(d) or U.S.C.A. Const. Amend. 1.

Federal Rules of Civil Procedure, Rule 65(d) governs the scope of an injunction issued by a federal court. It states that an injunction “is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.” This rule is derived from common law doctrine, defining “those persons in active concert or participation” as persons identified with the defendant “in interest, in ‘privity’ with them, represented by them or subject to their control.” *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945). In order to determine this, the court must look to the *actual relationship* between the person enjoined and the person alleged to be bound by the injunction *at the actual time* of the injunction. *Id.* No such relationship existed between myself and Dan Winter. I have never met him. I have never spoken or corresponded with him. We may share similar interests and ideas, yet on the other hand, I disagree with some of his views. The same thing could be said of me and President Bush. Either way, that’s not enough to establish *actual relationship* at the time of injunction. Therefore, the injunction does not apply to me for this and

other reasons.

Overbroad injunctions offend the principles of due process. *United States Steel Corp. v. United Mine Workers of Am.*, 519 F.2d 1236, 1246 (5th Cir. 1975). This is partly attributed to the fact that violation of such an injunction resulting in a contempt proceeding is a summary process lacking the protection of a jury trial. *Nabkey v. Hoffius*, 827 F.Supp. 450, 452 (W.D. Mich. 1993). The United States Supreme Court recognizes that this is particularly important in matters involving freedom of expression because injunctions “carry greater risks of censorship and discriminatory applications than do general ordinances.” *Madsen v. Women’s Health Center*, 512 U.S. 753, 765, 114 S.Ct. 2516, 129 L.Ed. 593 (1994). In addition, Justice Souter in *Madsen* emphasized that trial judges determining whether someone is acting “in concert” must scrutinize the individual case on its own merits, and not decide based solely upon the viewpoints of the movant. Such determinations can only be decided on a case-by-case basis after sufficient evidence has been presented to the Court in an appropriate hearing. In another First Amendment case, the Supreme Court held that even “the *likelihood* that a film will later be judged obscene is insufficient to justify even a preliminary injunction.” *Vance v. Universal Amusement Co.*, 455 U.S. 308, 100 S.Ct. 1156, 63 L.Ed.2d 413 (1980) (Emphasis added.) Particular expression cannot be forbidden without also running a substantial risk of suppressing ideas in the process. *Cohen v. California*, 403 U.S. 15 (1971). Preliminary injunctions must also be immediately appealable for adequate due process. *Freedman v. Maryland*, 380 U.S. 51, 59, (1965). Noted legal scholar, Laurence H. Tribe, states that “[a]lthough the First Amendment is not an absolute bar to prior restraints, the Supreme Court has repeatedly said that any ‘system of prior restraints comes to this Court bearing a heavy presumption against its constitutional validity.’” Laurence H. Tribe, *American Constitutional Law* (2d ed. 1988) § 12-34 at 1041; see also *Near v. Minnesota*, 283 U.S. 697, 716, 51 S.Ct. 625, 631, 75 L.Ed. 1357 (1931), firmly establishing that a court cannot, in advance, prohibit free speech. Bottom line is that an injunction entered many years ago cannot be binding upon me when I had no right or ability to defend myself in the first place.

Even in the unlikely event that a complicit relationship could be established between Winter and anyone at the time of the injunction, the language in paragraph 6 of the Judge’s Order is so vague and nonspecific that it begs for constitutional scrutiny and appeal. It appears that Tenen and his lawyers deliberately constructed it that way in an attempt to give Tenen unprecedented editorial authority over anyone and anything said regarding him, his work, or similar research. However, as Judge Learned Hand emphasizes, “No court can make a decree which will bind any one but a party; a court of equity is as much so limited as a court of law; it cannot lawfully enjoin the world at large, no matter how broadly it words its decree. If it assumes to do so, the decree is *pro tanto brutum fulmen*, and the persons enjoined are free to ignore it.” *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 832033 (2d Cir. 1930). Indefinite language such as “all persons

associated or affiliated with him” or “in any way identifying themselves with” is traditionally deemed too vague and unenforceable to satisfy the standards of First Amendment due process. All prevailing legal authority emphatically reiterates that “Constitutionally permissible restrictions on First Amendment rights must be drawn with narrow specificity.” U.S.C.A. Const. Amend. 1. Court orders regarding First Amendment issues are typically subject to a higher standard of specificity and precision. *Goguen v. Smith*, 471 F.2d 88, 105 (1st Cir. 1972), *CPC International v. Skippy*, 2000WL 710147 (4th Cir. 2000). In *Skippy* the court vacated a trademark injunction because it lacked such specificity and was overly broad. All injunctions regarding free speech issues must be tested against this vagueness doctrine. *U.S. v. Patco*, 678 F.2d 1, 3 (1st Cir. 1982). The effect of such vagueness is to suppress valid, free and protected speech, intended or not, especially for third parties who are unsure as to whether such injunction applies to them. If third parties are unable to determine if they are bound by the Order, they must refrain from speaking or risk contempt. This directly violates all principles of due process and has a chilling effect on everyone’s right to free speech.

This inappropriate language appears in the most vital directive of Tenen’s Order. It particularly seeks to enjoin Winter and all those “acting in concert” with him from “making or publishing any oral or written disparaging or unsubstantiated statement, or any statement inconsistent with these findings of fact, to any person or entity about the quality, originality, competence, motives or religious status of the plaintiffs or about their published or unpublished works.” Such language is guaranteed to be stricken if this Order comes under second scrutiny or appeal because it clearly violates the standards of both copyright law and the First Amendment.

For one, the terms “disparaging” and “unsubstantiated” are indefinite. If a person knowingly published a false damaging statement with actual malice regarding Tenen or his work, Tenen could pursue a claim of libel against such person pursuant to state law. An additional injunction under federal law is superfluous, overbroad, and overreaching. It may even be in conflict with the negligence standard adopted in most states. In order to prove libel, it must be shown that the libelous statement was written with actual malice or a reckless disregard for the truth. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). Furthermore, the court clearly defines “actual malice” as *subjective* knowledge on the part of the perpetrator that the statement is probably false. *St. Amant v. Thompson*, 390 U.S. 727 (1968). Opinions – disparaging or not – are not considered defamatory if they fall under the privilege of “fair comment” or “public concern.” Most of the criticism and commentary published online regarding Tenen, his work, and the controversy between him and Winter is protected by this privilege. The research is a matter of public concern because it involves important data that may potentially impact the growth of scientific knowledge. In the event of actual libel, courts ordinarily ban preliminary injunctions –

particularly those brought by private citizens because of the complexity of issues, the danger of using the government as a vehicle for censorship, due process concerns, and the fact that an accurate assessment of damages is nearly always impossible to determine.

Other problematic language in the Order is where parties are enjoined from saying anything about Tenen's "unpublished works." This makes the judgment's application "prospective" or "executory," increasing the likelihood that it will not prevail. *Marshall v. Board of Education*, 575 F.2d 417, 425 (3rd Cir. 1978). The standard for "determining whether an order or judgment has prospective application... is whether it is 'executory' or involves 'the supervision of changing conduct or conditions...'" *Twelve John Does v. District of Columbia*, 841 F.2d 1133, 1139 (D.C. Cir. 1988) (citing *United States v. Swift & Co.*, 286 U.S. 106 (1932); *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. 421 (1856)). Such an order that compels or prohibits certain future actions or requires a court's supervision of conduct between parties is unenforceable, especially when the Order does not identify who the exact prospective parties might be and is riddled with other ambiguities.

Even in the unlikely event that the injunction were upheld, it would be improper to join me in its coverage for three specific reasons: (1) I was not in privity with Winter; (2) Rules 14, 19, and 20 of the Fed.R.Civ.P. exclude me from joinder; and (3) the New York court has no jurisdiction over me.

In addition to the requirement that the alleged illegal act must have taken place within the state of the court applying jurisdiction, a court cannot establish jurisdiction over nonparties to the lawsuit unless it has solid and sound evidence supporting knowledge and complicity of the nonparty "acting in concert" with the primary infringer *at the initial time of the infringement*. *Waffenschmidt v. McKay*, 763 F.2d 711 (5th Cir. 1985). If the court is unable to consistently identify and apply the order to *all* possible nonparties aiding and abetting the infringer, then the court loses jurisdiction and its power to enforce the injunction. *Lynch v. Rank*, 639 F.Supp. 69 (N.D. Cal. 1985). This means that even if Tenen could get a court to name specific nonparties (and only after lengthy due process hearings) he would have to prove impartiality and consistency in his allegations. He could not realistically and fairly bring such action against me without also initiating it against any and all other persons publishing similar text in print or online over the Internet – impossible indeed, given that the Internet unlike print is a dynamic medium. Christine Hall, Vincent Bridges and Paul White among others are currently publishing similar research and text – including text that directly addresses the Winter/Tenen controversy unlike mine and that in particular includes commentary unfavorable to Tenen. Consequently, the court would not take him seriously and would rightly question his motives regarding his inequitable, selective (and unlawful) prosecution.

For one, it was never succinctly *proven* by a triar of fact that Winter's works infringed Tenen's copyrights. Nowhere in the authoritative published case record does it say that Winter was an infringer or plagiarist. The word "alleged" is always used. In an effort to make me believe otherwise, Tenen provided me with a copy of the deposition testimony of Richard Leviton and the Affidavit of James Hurtak. Neither one is an expert in the area of mathematics. The Court, in its published decision, clearly states that only an expert in that field could make a proper determination of copyright infringement. Leviton only admits to witnessing the change in Winter's attitude toward Tenen throughout the years of the controversy, and to watching him work with Tenen's graphics on a computer. Hurtak, though a noted scholar and author in his own right, is still only an expert in the fields strictly delineated in his Affidavit; specifically, history, oriental studies, and linguistics. Though he supports Tenen's allegations against Winter, his opinion is of little merit, if any, because it does not meet the standards of expert witness testimony under Rule 702, Federal Rules of Evidence. Even if Tenen obtained an appropriate expert, Winter would have been obliged to do the same. The experts battle it out in court, and the one whose arguments are most convincing to the jury wins. In this case, neither party had an appropriate expert per the Court's decision, and therefore no direct finding by the Court that Winter plagiarized or infringed anything could be made.

So how was it determined that Winter plagiarized Tenen's work? He "confessed" to it, to use Tenen's own words from his letter. After unilaterally and erroneously deciding that my work is a derivative of Winter's, they argue that passing it along is forbidden because of the "fruit of the poisoned tree" doctrine. This doctrine is traditionally associated with criminal law, and refers to the fact that any testimony that is illegally obtained is not admissible in court pursuant to the Fourth Amendment of the United States Constitution. It is an argument rarely used in civil matters, and never in the context imagined by Tenen. Again, this is a misrepresentation of the law and a law that is clearly inapplicable to this situation. If there was any such contamination in this case, it would be the fruit of a possible "coerced confession" that should be thrown out.

If Winter's works really did infringe Tenen's copyrights, then he should be held responsible and pay the penalty. I am not arguing against anyone's intellectual property rights. Unlike Winter, I fully acknowledge such rights and respect them as law, pursuant to the Copyright Act -- the governing federal statute: 17 U.S.C. §502. But in this case, it is irrelevant whether or not Tenen's copyrights were infringed by Winter. The issue at hand involves specific content in my book and my right to publish that material.

C. Balancing First Amendment Rights with Intellectual Property Interests

Copyright laws in the United States have roots in the Constitution: Article 1, Section 8 authorizes Congress 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...” Therefore many cases cite this as one reason why copyright is a constitutionally permissible speech restriction. (For example, see *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 558 (1985)). The preceding clause grants power to Congress, but the Bill of Rights which are amendments to the Constitution provides a necessary check and restrains government in the exercise of its powers. Therefore, Congress and all statutory laws are subject to First Amendment constraints. For example, the government has the power to run the post office, but that doesn’t mean it can refuse to carry communist propaganda. *Lamont v. Postmaster Gen.*, 381 U.S. 301, 307 (1965). The Judicial branch is also subject to these constraints because a court’s enforcement of copyright law to restrict private action is state action. *Zacchini v. Scripps-Howard Broad Co.*, 433 U.S. 562, 574-78 (1977).

1. Copyright Law 101

The axiom of copyright law is that copyright protects only an author’s expression of an idea, not the idea itself. 17 U.S.C. §102(b) states: “In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.” The Supreme Court affirmed this as early as 1880 in *Baker v. Selden*, 101 U.S. 99 (1880). This doctrine directly addresses the legislative intent to balance the granting of a monopoly to an author for only his expressions – not his ideas – with the First Amendment interest in the free exchange of ideas. The ideas rest in the public domain and are free for all to use so long as the expression itself is not appropriated. Tenen argues that there is “no prior art” for his concept. As established in the previous section, there is no need for there to be any “prior art” because a concept is an idea. It is not his “concept” that is protected by copyright – only his expression of that concept which takes the form of a specific sculpture.

Elements of an idea springing forth from the original expression are not protected either. *Data East USA, Inc. v. Epyx, Inc.*, 862 F.2d 204 (9th Cir. 1988). In fact, the Copyright Act lists specifically the following items as not subject to copyright: “Words and short phrases such as names, titles, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listing of ingredients or contents.” 37 C.F.R. §202.1(a)(1985). The short phrases Tenen alleges I cannot use because he imagines they all refer back to his work or Winter’s supposed plagiarism of that work, are: “alphabetic shapes,” “spinning vortices,” “alphabets from spinning vortices,” “hands being visualized as spiraling geometric shapes of letters of the alphabets,” “nothing new,” “intellectual elitism,” “owning” [ideas], and any other language resembling these phrases. Again, these phrases represent ideas or parts of ideas, and cannot be protected under copyright. The fact that they may or may not refer to anyone’s work is irrelevant. As stated before, many people are

engaged in research incorporating these ideas – not just Tenen and Winter.

The copyright laws do not protect names, titles, or short phrases period. Therefore, Tenen’s name is not protected either. Yet he alleges it is because the Court’s Order says that no one can make “any statement... about the quality, originality, competence, motives or religious status of the plaintiffs or about their published or unpublished works.” As said before, I deleted Tenen’s name and all references to him and his work. Yet material published on the Internet is full of speculation about Tenen, his work, and the Tenen/Winter controversy. Therefore, according to Tenen, all those authors are in contempt per his Order. Per copyright law and the First Amendment, he is wrong and his Order if challenged would be vacated on those premises.

Copyright does not protect the fruits of creative research – only an author’s fixed, original, and minimally creative expression of his interpretation of that work. Even if certain phrases or words could only be traced to a specific work, there is no legal requirement to provide attribution for them when copied into new works because they are in the public domain. A very recent Supreme Court case directly reaffirms this: *Datastar Corp. v. 20th Century Fox Film Corp.*, 123 S.Ct. 2041 (2003).

Similarity in ideas is not always due to copying. For Tenen to assert that the only source of the ideas presented in my book in relation to “hands, DNA, and Hebrew letters” would be his work or Winter’s alleged plagiarism of that work is completely unfounded as previously stated in the Facts section of this Memorandum. The noted copyright legal scholar, Alexander Lindey, authored a classic study entitled *Plagiarism and Originality* published by Harper in 1952. In this study he identified 14 causes, other than copying, why two works may be similar. Out of the 14, 6 particularly apply to the works at issue in this Memorandum:

- the use, in both, of the same or similar theme;
- the fact that commonplace themes carry commonplace accessories;
- the fact that both authors have drawn from the world’s cultural heritage, or have cast their works in the same tradition; (*e.g.*, the Western mysteries and in particular, the Qabalah in this case);
- the impact of influence and imitation;
- the fact that both have made legitimate use of the same news item or fact, historical event, or other source materials; and
- the intervention of coincidence.[\[xxxiv\]](#)

Therefore, in all honesty, my statement “that the hands can be visualized as spiraling geometric shapes or letters of the alphabet is nothing new,” is not only perfectly genuine, but based on sound legal principle. As Supreme Court Justice Story explained, “[i]n truth, in literature, in science and in art,

there are, and can be, few, if any, things, which in an abstract sense, are strictly new and original throughout. Every book in literature, science and art, borrows, and must necessarily borrow, and use much which was well known and used before.” *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994) quoting Justice Souter in delivering the opinion for a unanimous Supreme Court. It is not that statement that so raises Tenen’s hackles in as much as the *truth* in that statement. Disillusionment can indeed be crushing, initially.

2. *Fair Use and Merger*

The reprinting of the abstract and quote from Tenen’s article, “How to Talk to An Extraterrestrial” in the original edition of my book was fair use, and a court of law would have affirmed so had it been challenged. While my book no longer includes copies of text quoted from that article or any of Tenen’s written works, the law regarding fair use and merger must be addressed because it bears directly on the lack of constitutionality of Tenen’s injunction. Authors are free to copy a limited amount from a copyrighted work for purposes such as criticism, news reporting, teaching, research, and even parody as long as the value of the copyrighted work is not significantly diminished. 17 U.S.C. §107 (1994). (See also *Campbell* at 579, and *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539 (1985). This is in fact, necessary, because the work of most researchers or scholars depends on the ability to refer to and quote from prior scholars’ work. If this was not possible, we would forever be re-inventing the wheel. These exempted uses represent the most important forms of communication protected by the First Amendment. Thus, the fair use doctrine “permits [and requires] courts to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster.” *Stewart v. Abend*, 495 U.S. 207, 236 (1990). In fact, to place greater dispositive weight to the commercial nature of any expression of fair use over First Amendment concerns is in error. See *Campbell* (1994). The ability to criticize any speech, especially that of the government, is essential to the orderly functioning of democracy. *Jones v. Battles*, 315 F.Supp. 601, 607 (D. Conn. 1970). Copyright law simply does not allow owners categorical control over their works, contrary to Tenen’s delusions. For example, an author has no right to prevent a newspaper from publishing a devastating review of that author’s book, or even from using small excerpts from the book in the review in order to bolster the critique. *Campbell* (1994) *supra*. Even if that book review lessens demand for the book and therefore diminishes the author’s earnings, this principle still stands. See *id.*, at 591-592 (“[W]hen a lethal parody, like a scathing theater review, kills demand for the original, it does not produce a harm cognizable under the Copyright Act.”) (citing *Fisher v. Dees*, 794 F.2d 432, 438 (9th Cir. 1986). Therefore any allegation by Tenen about the fact that “unauthorized persons” writing about his work is jeopardizing his ability to obtain funding for it is irrelevant and not an argument favored by copyright law or the First Amendment.

Where would the field of psychology be if Sigmund Freud had obtained an injunction against Carl Jung with regard to his psychoanalytic theory? Jung, initially a student of Freud's, became extremely critical of Freud's application of psychoanalytic theory and consequently developed his own theories about Freud's discoveries. History has favored Jung in this regard. Freud's theories are merely academic, prejudicial, patriarchal, and largely inapplicable today, and his methodology flawed. Yet researchers are continuing to build upon Jung's work and therefore enlarging the scope of consciousness studies for the benefit of all.

In some cases, especially regarding technical and scientific works, some copying is unavoidable and therefore protected. This is known as the doctrine of merger and applies mainly to factual works such as histories, biographies, and scientific treatises. It is based on the reality that sometimes there is just one way or only a few ways to adequately express a particular idea or fact. Einstein's theory of relativity is a good example, particularly his famous mathematical formula: $E = mc^2$. His formula represents a fact that has its own limitation of how it can be described. Therefore, in some cases verbatim copying or close paraphrasing is protected, even if it's a significant amount. The doctrine of merger was designed to prevent an author from monopolizing an idea merely by copyrighting a few expressions of it. *Morrisey v. Proctor & Gamble Co.*, 379 F.2d 675, 678-79 (1st Cir. 1967). (See also *Baker, supra.*). So when the idea and its expression are inseparable, copying the expression is not barred.

3. Tenen's Monopoly

Intellectual Property law does not permit unlimited exploitation of the statutory monopolies of copyright. 17 U.S.C. §§107-117, 35 U.S.C. §271(d). Case law has repeatedly affirmed this standing. In the 1940s, the United States filed in Federal District Court for an injunction against the Associated Press and other defendants for violating the Sherman Anti-Trust Act, 26 Stat. 209, 15 U.S.C.A. 1-7, 15, charging that defendants' acts and conduct constituted (1) a combination and conspiracy in restraint of trade and commerce in news among the states, and (2) an attempt to monopolize a part of that trade. The case went all the way to the Supreme Court and set a strong precedent applying the Sherman Act to intellectual property interests. The Supreme Court recognized that to grant unlimited monopolizing of information places competitors at a disadvantage and hinders the progress of the arts and sciences.

If Winter had been properly informed about the law, he could have asked Tenen for a license to use his copyrighted sculptures in advancing his own theories about how they could be applied. Then if Tenen had refused, Winter could have brought an antitrust claim against him. Tenen claiming his research could significantly impact our understanding of basic communication to the degree we could learn to "talk with extraterrestrials"

indeed makes it a noble endeavor for grand scale research in a global context. Yet Tenen and his organization, the Meru Foundation, are alleging that no one can talk about their work or even mention it without his permission. Therefore he is engaging in what antitrust law calls “exclusionary conduct.”

In 1995, the Department of Justice and Federal Trade Commission published *Guidelines for the Licensing of Intellectual Property*. Section 2.2 of those guidelines states that a copyright holder has no general duty to license its intellectual property. However, the guidelines warn that this principle is not without limits, acknowledging that intellectual property rights could be used or misused in an anti-competitive way. In fact the guidelines state that the duty to license clearly emerges especially when a group of competitors with market power pool or cross-license their intellectual property.

A recent Fifth Circuit Court of Appeals decision, *Alcatel USA, Inc., v. DGI Technologies, Inc.*, 166 F.3d 772 (5th Cir. 1999), sent a strong message to intellectual property owners who refuse to grant access to information and operating systems needed by competitors in order to achieve interoperability in related or derivative markets. The court reversed a copyright infringement injunction against DGI based on a jury finding that DSC had misused its copyright.

The Ninth Circuit Court of Appeals recently stated that “a unilateral refusal to license a copyright may constitute exclusionary conduct giving rise to a claim of misuse” subject to the *Kodak* presumption of valid business justification. *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1027 (9th Cir. 2001). The *Kodak* presumption was based on an earlier First Circuit Court of Appeals decision that stated that “while exclusionary conduct can include a monopolist’s unilateral refusal to license a copyright,” a monopolist’s “desire to exclude others from use of its [protected] work is a presumptively valid business justification for any immediate harm to consumers.” *Data General Corp. v. Grumman Systems Support Corp.*, 36 F.3d 1147, 1187 (1st Cir. 1994). This is called the “rebuttable presumption test” and is often used as a defense by copyright holders in antitrust litigation. However, *Kodak* modified this test by extending it to a refusal to sell patented items to competitors, not just a refusal to license. This ruling enables the valid business justification to be rebutted by evidence of pretext. The court specifically indicated, “[n]either the aims of intellectual property law, nor the antitrust laws justify allowing a monopolist to rely upon a pretextual business justification to mask anti-competitive conduct.” *Image Technical Servs., Inc. v. Eastman Kodak Co.*, 125 F.3d 1195 (9th Cir. 1997), *cert. denied*, 523 U.S. 1094 (1998). Kodak had refused to sell patented and unpatented parts to independent services on the pretext that its refusal was based on copyright infringement concerns. But the Court found that this was just an excuse to mask exclusionary conduct. Kodak was in effect using its monopoly on parts to exclude competition in a different

market, specifically the aftermarket for service. Justice Scalia, notwithstanding his conservatism, even observed that when a party “maintains substantial market power, his activities are examined through a special lens.” *Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504 U.S. 451, 488 (1992).

Other tests are often used to determine liability regarding antitrust claims against intellectual property owners, the discussion of which goes beyond the scope of this Memorandum. Yet it is easy to see how Tenen’s behavior could result in a monopolizing of his ideas, thus actually hindering the progress of the work he professes to advocate. His exclusionary conduct certainly suggests a pretextual motive.

It is naive to assume that the First Amendment law precludes any consideration of economic concerns. Yet those concerns should not be allowed to override our basic freedoms. The original marketplace is the marketplace of ideas – everything emerges from that. Indeed, it was the illustrious Justice William J. Brennan, Jr. who coined that phrase in *Lamont* (1965): “The dissemination of ideas can accomplish nothing if otherwise willing addresses are not free to receive and consider them. It would be a barren marketplace of ideas that only had sellers and no buyers.” People profit from selling the expression of their ideas on all levels – not just economically. The more people who participate in intellectual debate and discussion of a wide range of ideas, the more society flourishes and produces services and products that benefit everyone. In order to experience those benefits, we need to stay open to all ideas, their expressions, modifications, derivatives and versions, no matter how silly, inaccurate, or offensive. Justice Brennan again reminds us: “[W]e consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times v. Sullivan* (1964).

Regarding such “vehement” expressions, it is evident that Tenen and Winter exercised their fair share. Any author with a website presence is a public person, especially if they publish research that may affect others. Tenen owns and operates a commercial enterprise that profits from the sale of his books, tapes, and products. As a public purveyor of goods, his services and products are open to public scrutiny and criticism. If someone wanted to publish a website with the domain name of www.tenensucks.com devoted to publishing critical comments regarding his work, his services, and his products, they could do that and be completely protected under the law. A recent high court decision succinctly affirms this. The 6th Circuit Court of Appeals in *Taubman Co. v. Webfeats*, 319 F.3d 770 (6th Cir. 2003) ruled that because defendant’s “taubmansucks.com” site was purely an exhibition of free speech and a not a commercial enterprise, it did not violate the Lanham Act which governs the protection of trademarks. In fact, the Court admitted that “although economic damage might be an

intended effect of [defendant's] expression, the First Amendment protects critical commentary when there is no confusion as to source, even when it involves criticism of a business.” *Id.* at 777-78.

A website called www.tenensucks.com might certainly offend and appear to “disparage” the Tenens. To disparage means “to belittle, to discredit.” Such disparagement can be but expressions of opinions which are fully protected under the law. Yet publishing one’s ideas and opinions regarding such broad topics as current research and concepts like “intellectual elitism” is not disparaging -- especially when the text contains no names to disparage! Unfortunately, courts being comprised of fallible human beings can often misapply the law resulting in inconsistent decisions. Such rulings usually get appealed. For example, in *Tenen v. Winter*, it was ordered that Winter entirely relinquish ownership of his domain name, www.danwinter.com to Tenen. If you go to www.danwinter.com now, you will find the Corrective Notice and the Order favoring Tenen’s perspective on these matters. It can even be said that this website is now disparaging Dan Winter. It certainly has the effect of confusing first time visitors in search of material by Dan Winter. Some might call this immoral and duplicitous – perhaps even *unlawful*. Indeed, another court ruling is directly on point. In *People for the Ethical Treatment of Animals v. Doughney*, 263 F. 359 (4th Cir. 2001), an injunction was granted against a parody site called “www.peta.org” (people who eat tasty animals) – not because it was a parody (which expression is fully protected pursuant to *Campbell* stated previously) -- but because it *confused* people and was directly involved with the sale of goods. Similarly, another court granted an injunction against an anti-choice group that acquired the domain name “plannedparenthood.com” due to the likelihood of confusion with the established pro-choice organization, Planned Parenthood. *Planned Parenthood Fed’n of America, Inc. v. Bucci*, 152 F.3d 920 (2d Cir. 1998). Therefore, if it were not for this unconstitutional Order, Winter could lawfully bring a suit against Tenen for usurping his domain name “www.danwinter.com” in order to rightfully reclaim it. Actually he could still try this on the basis that the Order is unconstitutional and so unenforceable if he so desired. Current court precedent is solidly in his favor. Not only that, but he could entertain the possibility of bringing criminal charges against them for conversion – theft of property. In another recent case, *Kremen v. Cohen*, 2003 U.S. App. LEXIS 14830 (9th Cir. 2003), the court held that the theft of a domain name constituted conversion, even though such property right was intangible. But this remedy is solely for Winter. What about remedies for me or anyone else in the event that Tenen seeks to enforce his unconstitutional injunction attempting to censor us?

D. Possible Remedies

It is unfortunate that Winter felt (as a result of coercion or not) that he had to give up his First Amendment freedoms and flee the country in exile. Little does he know that he did not need to do that, that there were

remedies, that an admission of copyright infringement does not require giving up all one's First Amendment rights to self-expression, study, and research and the right to publish the results of exercising those rights. Yet that's what Tenen and company sold him. What a lemon, indeed. And now they're trying to sell this truly rotten "poisoned fruit" to me. But I'm not buying it.

I have not infringed anyone's copyright. I have not defamed anyone. I am not subject to the injunction Tenen obtained against Dan Winter. Therefore, if an action is initiated against me or anyone else in similar circumstance, there are a number of options to consider.

Proactively, one could file a motion for declaratory judgment seeking a direct ruling on the invalidity and inapplicability of the Judgment. Any pleading filed by Tenen would be frivolous, and therefore, a motion to dismiss and a motion for sanctions would be in order pursuant Fed.R.Civ.P. 11(b) and (c). Sanctions would include costs incurred in responding to his allegations, which in my case, are continuing to accrue.

Anyone whose interests are being affected by this Order can easily reopen it for any significant "reason justifying relief," giving the court broad authority to vacate or void it when doing so is appropriate to accomplish justice pursuant to Fed.R.Civ.P. 60(b)(4-6). Rule 60 also provides for relief from a final judgment if giving it prospective application would be inequitable, which indeed it would be in this case. "Void" means the court lacked the power to enter the judgment because it lacked jurisdiction, violated "due process of law" or engaged in "a plain usurpation of power." *Matter of Whitney-Forbes*, 770 F.2d 692, 696-97 (7th Cir. 1985); *V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224-25 (10th Cir. 1979); *United States v. Holtzman*, 762 F.2d 720, 724 (9th Cir. 1985). In *United States v. Holtzman*, the judgment was voided because the court deemed misinterpretation of statutorily delegated power (such as the Copyright Act provides) a "blatant usurpation" of power. 60(b) rulings are also made in the event of "mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc."

The court can also be asked to cancel the unconstitutional stipulated Order if sufficient evidence showed it was signed under extreme duress or fraudulent circumstance. In *Wise v. Midtown Motors, Inc.*, 231 Min. 46, 51, 42 N.W.2d 404,407 (1950), a stipulation was dismissed because the party had demonstrated a genuine issue of material fact on the issue of duress. Duress in a contract is found "when a person is coerced by physical force or unlawful threats that destroy the person's free will and compel compliance with some demand of the party exerting the coercion." *Id.* Winter already has one genuine issue of material fact – his complaint bringing harassment charges against Tenen. This complaint was dismissed as part of a sanction, and consequently never given an evidentiary hearing. Whether or not he was actually harassed is not the issue. It is sufficient that he thought, felt, and believed that he was, which could have significantly

exacerbated his duress. The harassment complaint put the Court on notice of this point and is duly noted in the record for purposes of appeal.

That plaintiffs and their attorneys were significantly empowered against defendant Winter who appeared to be disempowered by illness, duress, and lack of legal representation, is suspect. In determining whether parties are of sound mind and competent to understand and sign agreements, the courts measure the degree to which the parties were fully informed about the nature of the agreement and its consequences. Therefore a significant element seriously considered in these cases is whether or not a party was represented by counsel when signing the stipulation. A clause in the Tenen/Winter Stipulation asserts that the parties had reached an agreement while Winter was represented for settlement purposes only, and it was that agreement that was incorporated into the final Order. Still, he was not represented when he actually signed it, so it is possible that he could not properly understand the legal consequences of what he was signing due to significant impairments. The fact remains that injurious stipulations must be set aside, especially when they include misrepresentations as to material facts, undue influence, collusion, duress, fraud, and even inadvertence. *Lowery v. Locklear Constr.*, 132 N.C. App. 510 at 514, 512 S.E.2d 477 at 479 (1999) (citing 73 Am. Jur. 2d Stipulations §14 (1974)); *Thomas v. Poole*, 54 N.C. App. 239 at 242, 282 S.E.2d 515 at 517 (1981).

Finally, because the Court inevitably signed an Order which was constitutionally invalid and statutorily unenforceable, relief may also be sought on the grounds that the court abused its discretion under Rule 65(d). The Seventh Amendment requires a right to jury trial in copyright cases whenever damages are sought. *Feltner v. Columbia Pictures Television, Inc.*, 118 S.Ct. 1279 (1998). Winter was ordered to pay Tenen over \$85,000 including costs for damages, yet the case never went to trial. This is only one factor suggesting such abuse.

Perhaps most significantly, the entire case can be appealed -- especially if anyone is erroneously named a party "acting in concert" with Winter. Yet even for nonparties, their rights to appeal are assured as long as their interests and the interests of their publishers are affected. *United States v. Chagra*, 701 F.2d 354, 358-59, (5th Cir. 1983). See also *United States v. Kirschenbaum*, 156 F.3d 784, 794 (7th Cir. 1998) finding that where a nonparty is bound by an injunction, the nonparty may bring an appeal rather than face the possibility of a contempt proceeding. *In re Estate of Ferdinand Marcos Human Rights Litig.*, 94 F.3d 539, 544 (9th Cir. 1996) also found standing for a nonparty where an injunction confronted the nonparty with the choice of either conforming its conduct to the dictates of the injunction or risking contempt proceedings.

V. CONCLUSION

In most cases of this kind, First Amendment considerations always outweigh copyright considerations. But what is so erroneous about this

case is that the copyright considerations are strongly suspect in themselves, if not invalid, for reasons discussed *supra*.

It must be reiterated that I am acting in my own interests and in the interests of justice. I do not support or defend Dan Winter's position. I am not "passing along his prohibited materials." Neither am I disputing Tenen's copyrights. I am protecting and defending my right to freedom of expression – a right guaranteed to all citizens of the United States of America. Stan Tenen's research in particular was not critical to my book. Therefore, out of courtesy, I complied with his request and took it out. However, his insistence that I refrain from speaking in general about this area of research, whether it be expressing my personal opinions or reflecting on the work of another author, is going one step too far. When our precious freedom of expression guaranteed by our Constitution is threatened in itself, a line must be drawn. This freedom, to me, is one of my highest values, and I equate it with spiritual principle. At the back of my book on the "About the Author" page, the first line reads as follows: "Judy Kennedy is a creative artist with an unwavering commitment to civil liberties – especially freedom of expression, continual cultivation of spiritual awareness, and a passion for principle-centered living." I live my life centered on this fundamental principle as a writer and a composer. I am a long time member of the American Civil Liberties Union and regularly correspond with my government representatives on these issues. All my life have I championed civil liberties and fought against censorship in all forms and in all forums – especially with regard to the arts and spiritual practice -- from public media to the courts, from the workplace to the halls of government. I have a record of many personal and public battles on these issues and have prevailed at the trial level in a court of law. Therefore, this issue is very near and dear to my heart, as it should be to most Americans.

After 9-11, many Americans were so frightened of future acts of terrorism that they allowed the government to take away many of their freedoms. If we continue to slide down that slippery slope, democracy will die. Yet the majority should not be penalized for the actions of one. Just because Dan Winter may have abused his right does not mean all other authors are doing the same and subsequently should be censored. To allow Tenen unconstitutional and unprecedented editorial authority over another author's work is sliding down that slippery slope to fascism. The brakes must hold or else we all suffer. I may have given an inch, but I will NOT surrender the mile. Truth and freedom will prevail.

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[\[i\]](#) Gage, Cynthia. "Secrets of the Hebrew Letters," *Atlantis Rising*, Issue 13, also published at <http://www.atlantisrising.com/issue13/ar13hebrew.html>.

[\[ii\]](#) Gage.

[iii] Hulse, David Allen. *The Key of It All: An Encyclopedic Guide to the Sacred Languages and Magickal Systems of the World*, (2 Volumes: The Western Mysteries and The Eastern Mysteries), Llewellyn Publications, 2000.

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[xi] *Id.*, p. 69.

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[xiii] Knight, Gareth. *A Practical Guide to Qabalistic Symbolism, Vol. 2*, Helios Books, 1972, p. 106.

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[xxii] Levi, Eliphas. *Transcendental Magic*, translated by A.E. Waite, Samuel Weiser, Inc., 1972, pp. 240-241.

[xxiii] Hulse, David Allen. *The Western Mysteries, Book II of the Key of It All: An Encyclopedic Guide to the Sacred Languages and Magickal Systems of the World.*, Llewellyn Publications, 2000.

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[xxv] Walker, p. 26.

[xxvi] See <http://www.ancientpathway.com/energy/chakra.html>.

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*** *afternote:*

Tenen was not successful in suppressing this book or the information in it. The second edition, released by Paper Wings Publishing, LLC:

SPIRITUAL PRACTICE, OCCULTISM, AND EXTRATERRESTRIAL INTELLIGENCE: A TRAVEL GUIDE FOR BEYOND THE RAINBOW

is available wherever books are sold!

