

## Executive Summary of Foundation/Fellowship Legal Situation as of June, 2000

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for pre-meeting briefing of General Councilors and TDA Delegates

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### Basic Background Review

The Fellowship is a social and fraternal organization dedicated to the dissemination of *The Urantia Book* and its teachings, founded in 1955. Under our previous name, Urantia Brotherhood, we enjoyed a long and close relationship with Urantia Foundation, serving as the exclusive sales and marketing agent for *The Urantia Book*. In 1989, after an internal schism in Urantia Foundation that left a very autocratic person in control, relationships with the Brotherhood were unilaterally terminated by the Foundation, forcing us to change our name, relocate our offices, and reevaluate our institutional function and mission. We changed our name to “The Fellowship” and used “The Fellowship for Readers of *The Urantia Book*” as our business name. Although Urantia Foundation registered “Urantia” as a trade and service mark, claiming it to be a constructed word with no other significance than to designate their products and services, they knew this to be false, since the word appears hundreds of times in the text of *The Urantia Book*, which asserts as a matter of revealed fact that it is the “universe name” assigned to the planet Earth.

In 1991 Urantia Foundation instituted legal proceedings for copyright infringement against an indigent book believer in Arizona (Maaherra), who had given away computer disks containing a full-text search engine for the book. In 1993 Urantia Foundation established a new membership organization, “International Urantia Association,” to compete with The Fellowship. In 1995 the Federal District Court in Phoenix issued a summary judgment invalidating Urantia Foundation’s copyright in *The Urantia Book*. Also, Urantia Foundation hired a full-time corporate public relations professional (Ms. Tonia Baney) and placed their administrative affairs in her hands. Ms. Baney began an aggressive campaign of disinformation directed against The Fellowship.

In 1996 the Fellowship published *The Urantia Book—A Revelation for Humanity*, and began public commercial distribution. In 1997, the Ninth Circuit restored a “Feist” copyright in *The Urantia Book* to Urantia Foundation, ruling, in effect, that the arrangement, but not the contents, of the book was entitled to copyright protection and that, while the Foundation had failed to demonstrate title, the fact of possession and prior commercial exploitation justified restoration of the copyright. The Fellowship ceased distribution of its book and reached a settlement with the Foundation.

Shortly after this settlement, two members of the Fellowship Executive Committee, Mr. Mo Siegel, who had been active in helping the Fellowship negotiate the settlement with the Foundation, and Mr. Gard Jameson, resigned their positions with the Fellowship and accepted appointment as Trustees of Urantia Foundation.

## History Since the Settlement

In July 1998, the General Council of The Fellowship accepted a plan for enhancing its organizational image that had been developed by an *ad hoc* PR committee. Among the recommendations adopted at this time, The Fellowship began doing its business under the name “*The Urantia Book Fellowship*.” At this time the General Council also discussed a variety of text and trademark permission and licensing arrangements being presented by the Foundation, but did not formally act on them. Rather, the Council provided guidance to the Executive Committee on evolving the relationship with the Foundation. Under The Fellowship Constitution, the power to act on such licenses rests with the Executive Committee.

On 8 September 1998, Urantia Foundation publicly announced “New Copyright, Internet, and Trademark Usage Policies.” The operation of The Fellowship’s web site had been in compliance with the provisions of this new Internet license since its inception. On 9 February 1999 we informed the Foundation of our acceptance of the Internet license.

In July 1999, Michael Foundation, a private foundation sponsored by Mr. Harry McMullan of Oklahoma City, who is Treasurer of The Fellowship, published “*Jesus: A New Revelation*,” containing the text of approximately one-third of *The Urantia Book*, being a life of Jesus, greatly expanded from the traditional Gospel accounts. Ms. Baney immediately issued a public statement for the Foundation condemning this publication and severely criticizing the Fellowship for its participation in the effort. As a matter of record, however, this project had initially been jointly proposed to The Fellowship in August 1996 by Mr. Siegel, Mr. Jameson, and Mr. McMullan, while the copyright was still in abeyance. The Fellowship had rejected the project at that time, when it could have been done with relative impunity.

After restoration of the copyright, Mr. McMullan announced his intent to proceed with the project anyway. At the time of our October 1997 settlement discussions with the Foundation, all parties (Foundation and Fellowship) were aware of Mr. McMullan’s plans. The Fellowship representatives at that settlement conference had received a commitment from Mr. McMullan to abandon the project if the Foundation would license The Fellowship to produce and distribute its own edition of *The Urantia Book*. As part of this proposed arrangement, The Fellowship offered to enter into a licensing agreement with The Foundation respecting their various registered trade and service marks, which had been a continuing source of conflict between the organizations. The Foundation rejected this proposal and Mr. McMullan proceeded with his plans.

Subsequently Mr. McMullan invited The Fellowship to adopt his project as its own, but The Fellowship voted not to accept his offer. After printing was complete Mr. McMullan requested the use of The Fellowship’s mailing list for distribution of free books. The Fellowship rejected this request as well.

On 4 August 1999, we received a letter from Mr. Jacques DuPont, father of Mr. Georges DuPont (a Trustee of Urantia Foundation), and one of the translators of the Foundation’s current “official” French translation of *The Urantia Book*. In this letter Mr. DuPont asserted a “moral right” under international copyright law to demand the removal of the French translation from The Fellowship web site. Since “moral right” is not recognized under U.S. copyright law, and

since our license for presentation of the French translation had been given by the Trustees of Urantia Foundation, we advised Mr. DuPont that Urantia Foundation had issued the license under which the translation was presented.

About this time, The Fellowship became aware of the fact that Berne Convention protection for *The Urantia Book* will end in January 2005. This matter became public knowledge throughout the readership in March 2000. We believe that the Foundation had been aware of this reality for a number of years, but had misrepresented it to avoid compromising their fund raising efforts. Some of the Foundation's more extreme recent actions, such as their claim of a trademark in the title of *The Urantia Book*, may be associated with this developing situation.

During the Fall of 1999, Ms. Baney maintained a constant barrage of criticism of The Fellowship and Mr. McMullan. In December 1999, Urantia Foundation brought suit for copyright infringement against Michael Foundation in Phoenix. The Fellowship is not a party to this suit. This suit initially proceeded through a venue phase, since neither Michael Foundation nor Urantia Foundation have significant business interests or presence in the 9<sup>th</sup> circuit and the Foundation had chosen this inappropriate venue in an attempt to obtain leverage against Michael Foundation from the *Maaherra* decision. The Foundation's suit was recently dismissed in Phoenix for lack of jurisdiction. In Oklahoma City, Michael Foundation asked for declaratory judgment on the Foundation's claims from the Phoenix case, and litigation seems likely to continue for many years before this matter is resolved.

Ms. Baney's public attacks on The Fellowship, on behalf of the Foundation and through various proxies, were accompanied by a series of letters from her and, later, Mr. Georges DuPont, demanding various changes in The Fellowship's web site. During this time we received intelligence from various sources that the Foundation was preparing a lawsuit against The Fellowship, though the likely substance of this suit remained unclear. We recognized one instance in which we had mistakenly assumed a work long out-of-print was not under copyright and removed the material in response to her demand. We replied to the other demands, which essentially called for unilateral rewriting by the Trustees of the web site license, by requesting a meeting with the full Board of Trustees of the Foundation. Such a meeting had been provided for in our settlement discussions of October 1997, and we felt it would likely defuse any attempt to launch a suit. The Trustees agreed to hold such a meeting, but did not respond to our subsequent requests to finalize its time and location.

At this point, Mr. DuPont began to demand that representatives of the Executive Committee meet with a committee of his choosing (not including any other Trustees) to discuss "copyright and trademark infringements" primarily associated with The Fellowship web site. In responding to Mr. DuPont, we indicated our willingness to receive his views and to work informally towards a resolution if (and only if) the Trustees would meet with us to work on the larger issues. The Trustees were kept fully informed of this requirement for the proposed meeting and raised no objection at any step in the process of arriving at the meeting.

### **The Meeting with Foundation Representatives**

Eventually, on 8-9 April 2000, four members of The Fellowship's Executive Committee, acting exclusively as individuals and not in any way as representatives of The Fellowship, met with Mr. DuPont (a Trustee), Ms. Baney (an employee of the Foundation), Mr. Seppo Kanerva (a translator in the employ of the Foundation), and Ms. Nancy Shaeffer (a recent student of *The Urantia Book* and a California attorney specializing in transactions). Mr. DuPont also invited Mr. Steve Hill, an attorney from Atlanta, who has no personal interest in *The Urantia Book*, but who had drafted and approved the web site license.

At the meeting, Mr. Hill announced that the Foundation wished to conduct the meeting as a confidential settlement meeting under Federal rules of procedure. We protested that, as we were not represented by counsel, we could not possibly enter into such an agreement. After further discussion, we agreed that we would not publicize or discuss specific information or admissions provided by the Foundation representatives, except that we would share all the information from the meeting, as needed and appropriate, with any official of the Fellowship, including any member of the General Council or TDA, any Fellowship employee, and any of our attorneys. We understand that any adverse admissions they may have made could not be introduced in evidence against them in subsequent litigation (and vice-versa).

By way of clarification, the Foundation presented each of us with a notebook of some 700 pages of exhibits addressing some 20 types of copyright and trademark infringement. When we challenged that this material (all taken from our own publications and web site) could not possibly be considered confidential, they pointed to two pages summarizing the exhibits as the substance to which the confidentiality agreement applied. Mr. Hill asserted that this material was confidential because it constituted an outline of planned litigation.

For the next day and a half we reviewed the various points in the Foundation's "brief." They repeatedly made the claim that the material showed a pattern of behavior intended to create confusion between our organization and theirs in the public eye and to subvert their commercial, trade, and copy rights. Since much of their material was rather frivolous, we challenged them about wanting to create a pretext for litigation to dissolve the license. On this subject they seemed ambivalent. I would say that the Foundation representatives would have been happy to pursue this line, but Mr. Hill insisted that they simply wanted to "clarify" our mutual obligations under the license so that it would cease to be "sand in the saddle."

Since it appeared that this list of complaints had been assembled with zero tolerance for any variation from a standard that had never been defined or discussed, in the latter part of the meeting we pointed out (as individuals and not as representatives of The Fellowship) a number of similar instances in which the Foundation had and was continuing to abuse established commercial rights of The Fellowship, while indicating that we did not consider focusing a lot of energy on such matters to be appropriate for organizations with a primarily religious and spiritual purpose.

It did not appear that the Foundation representatives were able to apply their own standards to their own behavior to recognize the inappropriateness of these Foundation activities. In at least one area, the use of the term "Matthew" to designate their capital fund raising efforts, the

Foundation has continued to publicly abuse a long-established commercial right of the Fellowship, even after being advised of the conflict in this meeting.

In an informal presentation after the “legal” part of the meeting, Mr. Steve Dreier, Vice President of The Fellowship, presented the results of his ongoing comparative study of the text of *The Urantia Book* in relation to the writings of Henry Wieman, a prominent theologian of the first half of the 20<sup>th</sup> century. Mr. Dreier’s presentation showed how one well-known paper in *The Urantia Book* had been systematically (and rather naively) plagiarized from a book-length work by Dr. Wieman. This research is one small part of a major ongoing project, which has established “sources” for approximately 50% of the text of the book in published works of some 90 human authors.

I have provided this lengthy recapitulation of events to give you an idea of the rather sensitive and guarded relationships that exist today between The Fellowship and the Foundation. We have carefully reviewed each point raised by the Foundation in their complaint. In some cases, The Fellowship has clearly failed to provide correct copyright notices as required by our license. In other cases, we can identify specific errors the Foundation staff made in compiling their “exhibits.” We have no problem in responding to the Foundation’s concerns in these two areas.

### **Areas of Continuing Concern**

There remain a few issues which Urantia Foundation continues to present to the Fellowship for some sort of resolution:

- 1) The Fellowship has invested very large amounts of time and money in formatting the raw text of *The Urantia Book* for attractive presentation on the Internet. The Fellowship claims a copyright interest in this HTML formatting of the text. The Foundation claims no such rights can be established because the underlying text is governed by their license and that claiming such rights is part of a systematic attempt to usurp their role as the sole authorized source of the text. The Executive Committee believes this is an unreasonable position, which derives from repeated attempts they have made to have us load our formatted text onto their web site for distribution.
- 2) The Foundation claims that this formatting, which includes the insertion of paragraph numbers to support references and footnote links to carefully researched scholarly comments (that pop up in separate windows) constitutes a corruption of the “inviolable” text and violates our license. The Executive Committee believes this is an irrational position that substitutes a religious belief of the Foundation about what constitutes “inviolable” text for a practical interpretation of the license, which does not preclude the use of the text for scholarly purposes.
- 3) The text we present is the exact text of the original 1955 printing of *The Urantia Book*. The Foundation claims that, since they have made a number of minor changes to the text in the intervening years, we are not presenting their idea of the “inviolable” text, although every change they have made in the numerous reprintings since 1955 is carefully footnoted in our text. Again, the Executive Committee believes the Foundation is seeking to establish its religious beliefs about the “inviolable” text for a practical interpretation of the license.

4) The Fellowship has also invested large amounts of time and money in formatting the text of the Foundation's official Spanish and French translations of *The Urantia Book* for attractive presentation on the Internet. (We are currently doing the same for their Russian translation, though they do not know this.) The Foundation wants us to remove these translations from our web site and provide, instead, an index that links to copies on their web site. This is contrary to the provisions of our license. It is also technically infeasible for reasons related to Internet bandwidth, the high level of traffic on our site, and the low capacity of the Foundation's service. Finally, the Foundation has, so far, failed to implement a usable presentation of these translations on its own web site.

5) The Fellowship presents on its web site translations of representative papers from *The Urantia Book* into languages where an official Foundation translation does not exist. These languages are, at present, Korean, German, Portuguese, and Serbo-Croatian. The Foundation claims this is not permitted under our license. The Foundation also claims to be preparing official translations into these languages. We know this to be actually true for Korean and Portuguese. We acknowledge this is not covered by the licenses, but claim the small amount of text used, the non-profit nature of the service, and the nature of the Foundation's own rights in the underlying English text, make this an instance of "fair use."

6) At one location The Fellowship web page invites readers interested in joining or forming collaborative translation teams to contact us. The Foundation claims this violates the spirit of the license and deliberately invites people to conspire in the violation of international law. It has been our experience that most qualified native speakers of foreign languages who become interested in the book are unwilling to participate in the Foundation's very constraining translation program. As a universal readership service organization, we will help these readers make connections with each other. We do not sponsor their efforts, but we do present them as scholarly works in progress, open to public examination and criticism.

7) The Fellowship presents a number of documents on its web site that are from the files of Urantia Foundation. The Foundation was apparently required to produce some of these documents in the Maaherra case, which were subsequently sealed by a confidentiality order of the court. The documents on our web site were obtained from the files of private individuals prominent in the history of the movement with no connection to the Maaherra case. The Foundation claims that the documents we present are subject to the court's confidentiality order, but has not identified specific documents.

9) The Fellowship now does business under the name *The Urantia Book* Fellowship and has done so without objection by the Foundation since July 1998. The Foundation claims that this is an infringement of a "common law" trademark in the name of *The Urantia Book*. The Foundation has recently issued a public policy statement asserting that all non-descriptive uses of the title of the book in the names or organizations constitute such infringement. The Foundation admitted to us at our meeting that they intend to seek Federal registration of "The Urantia Book" as a trademark. The Executive Committee does not feel that the organization is infringing on the Foundation's rights, believes it has the right to oppose the Foundation's proposed registration (if it actually occurs), and is interested in the possibility of seeking Federal registration for "The Urantia Book Fellowship."

## Subsequent Events

In early May, the team of four Executive Committee members who had met with the Foundation, after extensive discussion among themselves and discussions with the Fellowship web administration, delivered to the Foundation and its negotiating team a report on adjustments we had caused to be made in the organization and contents of the Fellowship web site and other matters. In this report, we noted that a number of the issues raised by the Foundation were not within our ability to change, regardless of our personal feelings on the matter, and would have to be reviewed by the Executive Committee and, in some cases, the General Council.

Our report conceded that, in some areas, the Fellowship had not acknowledged the Foundation's copyright in every instance where it might have been intended, and indicated our clear intent to correct these omissions. Our report also indicated our willingness to make certain changes in the web site contents, for which the Foundation had failed to provide any rational or legal justification, simply in the spirit of a good faith attempt at conflict resolution. All changes were made as reported.

In early June, we received from the Foundation's team an extensive set of comments on our May report. The tone of these comments was, in many areas, intransigent, and willfully ignorant, as indicated by an unwillingness to accept neutral technical information that could inform and upgrade their thinking. This communication did, however, focus the Foundation's remaining significant issues on four topics, none of which can be adequately addressed without input and guidance from the General Council. These topics, which are discussed at length in other documents, are:

1. The meaning of "inviolate" text.
2. Presentation of translations of the text.
3. Use of the word "urantia" in Internet technology.
4. The organizational name "*The Urantia Book Fellowship*".

It is hoped that this overview of the present situation will broaden the perspectives of Councilors and TDA delegates needing to make decisions related to these matters.