

U.S. Supreme Court Holds that Copyright Registration Requirement Is Not Jurisdictional

The U.S. Supreme Court yesterday opened the courthouse door a bit wider to copyright infringement lawsuits, holding that the Copyright Act requirement that plaintiffs register their copyright before they file suit is not a jurisdictional limit. The ruling held that a major class action involving rights of freelance writers could proceed, even though some of the writers covered by a pending settlement of the case never registered their copyrights.

At issue in the case, *Reed Elsevier, Inc. v. Muchnick*, was the requirement found in section 411(a) of the Copyright Act that a plaintiff must first have a copyright registration before he or she can sue for copyright infringement. The original plaintiffs in the case (freelance writers who objected to electronic publication of their works) all had registered their works and hence met section 411(a). But over time, both they and the publisher defendants broadened the case, making it a class action on behalf of all writers who had claims of electronic infringement.

When approval of the settlement of the case reached the U.S. Court of Appeals for the Second Circuit, that court interpreted section 411(a) as a jurisdictional barrier to the settlement, since many of the class members who might benefit from the settlement never registered their copyrights. Both the plaintiffs (writers) and defendants (publishers) appealed to the Supreme Court, claiming that section 411(a) was not such a barrier or, alternatively, that class action powers trumped the copyright statute.

The Supreme Court ruled on the narrow ground of interpreting section 411(a) and thus did not address the powers of courts in class actions. Specifically, it examined whether section 411(a)'s registration requirement was a strong "subject-matter jurisdiction" barrier or just a less-strict "filing precondition." Contrary to many lower court decisions, the Supreme Court found section 411(a) to be merely a non-jurisdictional precondition to filing a claim. It reached this conclusion for several reasons: (1) the section did not "clearly" set forth a jurisdictional barrier; (2) the section was located in the Copyright Act, not the part of the U.S. Code dealing with judicial jurisdiction; and (3) the act permitted courts to decide some claims involving unregistered copyrights.

As a result, the *Muchnick* class action (already in its ninth year) will go back to the Court of Appeals for further review of the proposed settlement. In future copyright cases, class action or otherwise, the section 411(a) requirement, though it will continue in effect, will present much less of a hurdle than under pre-*Muchnick* law. Among other things, because the registration requirement is now considered merely a filing precondition and not a jurisdictional requirement, courts may delay rather than dismiss cases where the plaintiff does not yet have a registration. It should be noted that with the change in the law, defendants or the court might be able to waive the registration requirement.

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