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RECENT SUPREME COURT DECISION EFFECTS COPYRIGHT CLAIMS

The U.S. Supreme Court recently decided a case that has a bearing on whether or not infringement claims can be brought in federal court for unregistered copyrights. Since this is an important decision, we wanted to alert our clients and friends of it.

The U.S. Supreme Court's decision in *Reed Elsevier, Inc. et al. v. Muchnick et al.* 599 U.S._____(2010) will undoubtedly be seen by many as approval of an $18M settlement agreement reached between publishers and freelance authors. However, it is not.

In *Reed Elsevier*, the U.S. Supreme Court specifically "express[es] no opinion on the settlement's merits." *Id.* published opinion at 16. Rather, the Court reverses the U.S. Court of Appeals for the Second Circuit conclusion that a federal district court lacks subject matter jurisdiction over infringement claims involving unregistered copyrights, thereby reviving the settlement of copyright suits that began over ten years ago.

The $18M settlement followed the Supreme Court's 2001 decision in *New York Times Co. v. Tasini,* which held that the federal Copyright Act does not permit publishers to reproduce works authored by freelance authors without specific permission from the authors. 533 U.S. 483 (2001). After *Tasini*, several copyright infringement cases, which involved both registered and unregistered Copyrights, were consolidated in federal district court, where eventually a class action and subsequent settlement was certified. Ten freelance authors objected to the settlement and the case was appealed to the Second Circuit.

The Second Circuit, *sua sponte*, raised the question of whether a federal court had subject matter jurisdiction over infringement claims concerning unregistered Copyrights. While "all parties filed briefs asserting that the District Court had subject-matter jurisdiction to approve the settlement agreement even though it included unregistered works," the Second Circuit "concluded that the District Court lacked jurisdiction to certify a class of claims arising from the infringement of unregistered works, and also lacked jurisdiction to approve a settlement with respect to those claims." *Reed Elsevier*, published opinion at 4.

The case before the Supreme Court concerned the requirements of 17 USCA §411(a) and "whether §411(a) deprives federal courts of subject-matter jurisdiction to adjudicate infringement claims involving unregistered works." *Id.,* at 2. Section 411(a) "provides, *inter alia* and with certain exceptions, that 'no civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title.'" *Id.,* published opinion at p.2, *citing* 17 USCA §411(a).

In concluding that §411(a) does not restrict a federal court's subject matter jurisdiction over copyright infringement claims involving unregistered works, the Court states that §411(a) does not clearly state that the registration requirement is jurisdictional, and any jurisdictional cast alleged by Amicus arguing in support of the Second Circuit is not valid since §411(a):

(1) "imposes a precondition to filing a claim that is not clearly labeled jurisdictional;"
(2) "is not located in a jurisdiction-granting provision;" and
(3) "admits of congressionally authorized exceptions."

Id., published opinion at 11.

Having now determined that failure to comply with the registration requirements of §411(a) does not restrict a federal court's subject-matter jurisdiction over claims involving unregistered copyrights, the case will now return to the Second Circuit, where the issues raised on appeal will be addressed.

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