

## Supreme Court Rules That Copyright Registration Requirement Is Not Jurisdictional

March 3, 2010

The U.S. Supreme Court yesterday reversed the Second Circuit Court of Appeals and held in *Reed Elsevier v. Muchnick* that the copyright registration requirements for certain works under Section 411(a) of the Copyright Act of 1976 are not jurisdictional, but rather are preconditions for instituting an infringement action. In reaching the decision, the Court diverged from more than 200 district and appellate court decisions that characterized Section 411(a) as jurisdictional, describing those decisions as “drive-by jurisdictional rulings” with “no precedential effect.”

This week’s decision in *Reed Elsevier* came after literally years of litigation and attempts to resolve litigation between freelance authors, publishers, and providers of electronic databases of publications regarding the right of publishers and online databases to reproduce authors’ works electronically without first securing express permission to do so. In March 2005, the parties reached a settlement agreement that was intended “to achieve global peace in the publishing industry.” *In re Literary Works in Electronic Databases Copyright Litigation*, 509 F.3d 116, 119 (2d Cir. 2007). Several freelance authors objected to the settlement, but the district court overruled the objections and approved the class action settlement as fair, reasonable, and adequate. When the objectors appealed, the Second Circuit on its own ordered briefing on the question of whether Section 411(a) deprives the federal court of subject-matter jurisdiction over infringement claims involving unregistered works. Significantly, none of the parties or objectors claimed that the court lacked jurisdiction.

Relying on prior Second Circuit decisions that characterized Section 411 as jurisdictional, the Second Circuit determined that the district court lacked jurisdiction to certify a class of claims arising from the use of unregistered works and, as a result, lacked jurisdiction to approve a settlement. The owners and publishers petitioned the Supreme Court for review. Since no party supported the appellate court’s position, the Supreme Court appointed a “friend of the court” to defend the appellate decision.

Section 411(a) provides that, except in limited circumstances, “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.” While some courts initially treated this as a condition for litigation to proceed, over the years district and appellate courts have been increasingly more vigilant in requiring registration before allowing actions to proceed, describing this statute as “jurisdictional.”

In reaching its decision, the Supreme Court considered whether Section 411(a) “clearly states” that its



property enforcement programs; trade secret protection; related matters involving franchises, the Internet, advertising, and unfair competition; outsourcing and managed services; and the full range of intellectual property issues that arise in business transactions.

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