

FEDERAL COURTS HAVE SUBJECT-MATTER JURISDICTION OVER COPYRIGHT INFRINGEMENT CLAIMS INVOLVING UNREGISTERED WORKS

On March 2, 2010, the Supreme Court of the United States held that: (1) the registration requirement of § 411(a) of the Copyright Act, 17 U.S.C. § 411(a), is not jurisdictional; and (2) a copyright holder's failure to register a work therefore does not deprive federal courts of subject matter jurisdiction over copyright infringement claims involving unregistered works. The decision, *Reed Elsevier, Inc. v. Muchnick* (No. 08-103), 2010 WL 693679 (U.S. Mar. 2, 2010), left undecided the question of whether Section 411(a)'s registration requirement is a mandatory prerequisite to suit that district courts may or should enforce by dismissing infringement claims involving unregistered works *sua sponte*. It also did not address the circuit split over when copyright registration is complete for purposes of Section 411(a) analysis.

BACKGROUND

In *Reed Elsevier*, several freelance authors brought suit against the owners of online databases and print publishers for reproducing the authors' works electronically without permission. The plaintiffs included both authors who had registered their copyrighted works pursuant to 17 U.S.C. § 411(a) and authors who had not. The dispute had previously reached the Supreme Court in 2001, when the Court issued its opinion in *New York Times Co. v. Tasini*, 533 U.S. 483 (2001), holding that the Copyright Act required specific permission from the authors to publish electronic versions of their works. Following the *Tasini* opinion and three years of mediation, the parties reached a settlement that was approved by the district court over the objection of 10 freelance authors.

The objectors appealed the approval of the settlement. Shortly before oral argument, the Second Circuit *sua sponte* ordered briefing on the question of whether Section 411(a) deprives the federal courts of subject-matter jurisdiction over their infringement claims involving unregistered copyrights. A divided panel held that Section 411(a)'s registration requirement was jurisdictional and concluded that the district court therefore 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.

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THE “CLEARLY STATES” STANDARD

The Supreme Court reversed, holding that the proper method of distinguishing “jurisdictional” conditions from nonjurisdictional, statutory prerequisites to suit is to determine whether the statutory limit “clearly states” its jurisdictional character, as set forth in *Arbaugh v. Y&H Corp.*, 546 U.S. 500 (2006). Analyzing Section 411(a), the Court found that it says nothing about whether a federal court has subject-matter jurisdiction to adjudicate claims of infringement of unregistered works. In the absence of a clear statement that Section 411(a)’s registration requirement was intended to be a jurisdictional limitation, the Court held that it is a “claim processing rule” and “nonjurisdictional.”

In reaching this conclusion, the Court harmonized its analyses in *Bowles v. Russell*, 551 U.S. 205 (2007) (holding that the requirement that parties file a notice of appeal within 30 days of the judgment being appealed is jurisdictional, despite the absence of express statutory language) and *Arbaugh* (holding that the employee numerosity requirement of Section VII of the Civil Rights Act of 1964 is not nonjurisdictional because the statute lacks a clear statement that it is jurisdictional). *Bowles*, the Court clarified, stands for the proposition that context, including the Court’s interpretation of similar statutory provisions in prior cases, is relevant to determining whether a statutory requirement is jurisdictional. Because Section 411(a) did not have the same type of consistent historical treatment as the statutory requirement that notices of appeal be filed within 30 days, the Court held that the Copyright Act’s lack of a clear statement of the jurisdictional nature of the limitation was determinative.

PRACTICAL IMPLICATIONS AND UNANSWERED QUESTIONS

Reed Elsevier v. Muchnick recognizes that federal courts have jurisdiction over claims involving unregistered copyrights and, importantly, to approve voluntary settlements of such claims. The decision thus potentially enables litigants to obtain court approval for settlements of claims involving unregistered copyrights without

undertaking the burden and expense of registering them. It may therefore provide important protection for freelance authors (like the plaintiffs) who may not be sufficiently compensated for their writing to justify the time and expense of registering copyrights in each of their works. They may, as a practical matter, be able to protect their rights through class action settlements like the one the Supreme Court considered.

Nevertheless, the Court expressly left open the question of whether Section 411(a)’s registration requirement is a “mandatory precondition” to filing suit that district courts may or should enforce *sua sponte* by dismissing infringement claims involving unregistered works. Thus, although nonjurisdictional in nature, Section 411(a) may still preclude even voluntary resolution of claims involving unregistered copyrights through court-approved settlements, if it requires (or authorizes) courts to dismiss infringement actions involving such claims, even where no party objects.

The Supreme Court also did not address the question of when copyright registration is complete for purposes of Section 411(a) analysis—when the application is made or after the Copyright Office has approved the application—which has divided the federal courts of appeals and has significant consequences for when copyright plaintiffs can assert their rights in federal court and the remedies available to them.

We hope that you have found this advisory useful. If you have additional questions, please contact your Arnold & Porter attorney or:

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