

## Copyright Developments Blog

### U.S. Supreme Court Finds Lack of Either Factual or Legal Knowledge Can Excuse Inaccuracy in Copyright Registration under Safe Harbor Provision of Copyright Act

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In [\*Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.\*](#), Case No. 20–915, 595 U. S. \_\_\_\_ (2022), the U.S. Supreme Court held that the safe harbor provision provided under § 411(b) of the Copyright Act does not distinguish between a mistake of law and a mistake of fact. Lack of either factual or legal knowledge can excuse an inaccuracy in a copyright registration.

The Supreme Court vacated the judgment of the U.S. Court of Appeals for the Ninth Circuit and remanded the case for further proceedings.

#### Background

Unicolors, a company that creates fabric designs, sued the fast-fashion retail clothing store H&M for copyright infringement, alleging that H&M sold clothing with its copyrighted artwork. H&M argued, among other things, that Unicolors' registration certificate was invalid (and that therefore Unicolors could not sue for infringement) because it contained inaccurate information. Specifically, H&M argued that Unicolors improperly filed a single application seeking registration for 31 separate works. Relying on a Copyright Office regulation that which provided that a single registration can cover multiple works if those works were "included in the same unit of publication," H&M argued that the 31 fabric designs covered by the single registration had not been published as a single unit of publication because Unicolors had made some of the designs, including the designs at issue, available for sale exclusively to certain customers, while other designs were available to the general public.

The district court rejected H&M's argument, noting that "a registration remains effective despite containing inaccurate information" if the registrant included the inaccurate information in the registration application without "knowledge that it was inaccurate." Thus, because Unicolors did not know that it had failed to satisfy the "single unit of publication" requirement when it filed its application, the district court found the inaccuracy couldn't invalidate the registration.

The Ninth Circuit reversed, finding that it did not matter whether Unicolors did or didn't know that it failed to satisfy the "single unit of publication" requirement. The Ninth Circuit held that the statute excused only good faith mistakes of fact, not law, and Unicolors knew the facts.

### Supreme Court Decision

The Supreme Court vacated the Ninth Circuit decision in a 6-3 ruling. Following the text of the statute, the Court considered the scope of the phrase "with knowledge that it was inaccurate." The Court determined that the language makes no distinction between lack of legal knowledge and lack of factual knowledge.

Other provisions in the Copyright Act confirm that here "knowledge" refers to knowledge of the law as well as the facts. Registration applications call for information – e.g., whether a work was made "for hire," when and where the work was "published," and whether a work is "a compilation or derivative work" – that requires both legal and factual knowledge. Inaccurate information in a registration may arise from a mistake of law or a mistake of fact. And other provisions of the Copyright Act suggest that if Congress had intended to impose a *scienter* standard other than actual knowledge, it would have explicitly said so.

The Court noted further that the legislative history of § 411(b) suggests that Congress enacted the safe harbor provision to make it easier, not more difficult, for nonlawyers to obtain valid copyright registrations. Therefore, in the Court's view, it would not make sense if the statute left copyright registrations exposed to invalidation based on applicants' good-faith misunderstandings of "the details of copyright law."

The Court dismissed H&M's contention that its interpretation of the statute will make it too easy for copyright holders claiming lack of knowledge to avoid the consequences of an inaccurate application, noting that in civil cases willful blindness, through circumstantial evidence, may support a finding of actual knowledge.

Justice Breyer wrote the opinion in which five other Justices joined. Justice Thomas dissented, joined by Justice Alito and, in part, Justice Gorsuch. The dissent would dismiss the writ of certiorari as improvidently granted, because Unicolors persuaded the Court to grant certiorari to resolve an alleged circuit split on one question – whether "knowledge" under § 411(b) requires indicia of fraud – but in its merits briefing relied on a different argument, which the majority impermissibly addressed.

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