

To Err is Human: Supreme Court Holds That Mistakes of Law in Copyright Applications Fall Under Safe Harbor

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Most lawyers are familiar with the well-known legal maxim that “ignorance of the law is no excuse.” In a 6-3 [opinion](#) issued on February 24, 2022, in a copyright case, the Supreme Court nonetheless held that ignorance of the law *is* a valid excuse in certain circumstances. Let’s take a look at the decision to see why.

Unicolors, Inc. v. H&M Hennes & Mauritz, L.P. involved allegations by Unicolors, a fabric designer, that the multinational Swedish fashion company H&M Had infringed Unicolors’ copyrights. After a California jury found in Unicolors’ favor, H&M sought a determination that those copyrights were invalid because Unicolors included inaccurate information on its registration application, rendering the registration invalid. Specifically, H&M claimed

that Unicolors had improperly filed a single application seeking registration for 31 separate works, even though Unicolors had at different times sold some designs separately to different customers. As such, the Copyright Office’s “single unit of publication” requirement (which provides that a single registration can cover multiple works only if those works were “included in the same unit of publication”) barred Unicolors from filing a single application.

The district court denied H&M’s motion, holding that under Section 411(b) of the Copyright Act, a copyright registration that contains inaccurate information is valid, *unless* the inaccurate information was included *with knowledge that it was inaccurate*. The district court reasoned that because Unicolors did not know that it failed to satisfy the “single unit of publication” requirement, the inaccuracy did not invalidate its copyright.

Unhappy with that result, H&M appealed to the Ninth Circuit, which reversed the district court. The Ninth Circuit held that it didn’t matter if Unicolors knew it failed to satisfy the “single unit of publication” requirement. In the Ninth Circuit’s view, the statute only excused good-faith mistakes of fact, not law. Since Unicolors had known the relevant facts – but not the law – it could not rely on the Copyright Act’s safe harbor.

It was now Unicolors’ turn to be unhappy, and it appealed to the Supreme Court. In an opinion written by Justice Breyer, the Supreme Court held that Section 411(b) of the Copyright Act does not distinguish between a mistake of law and a mistake of fact. As such, lack of knowledge of *either* fact or law can excuse inaccuracy in a copyright registration.

Justice Breyer – apparently an avid bird-watcher – began with, well, a bird analogy. Here’s how it went: If someone mistakes a scarlet tanager (red with black wings) for a cardinal (all red) because they didn’t see the bird’s black wings, that’s a mistake of fact. If, on the other hand, the person saw the black wings but didn’t know that scarlet tanagers – but not cardinals – have black wings, that would be a “labeling mistake.” Justice Breyer likened the bird labeling mistake to Unicolors’ mistake – Unicolors had the facts right, it just didn’t know the proper scope of the label “single unit of publication.” (Keep an “eagle” eye peeled for further bird analogies from Justice Breyer as he prepares to retire from the Court.)

The opinion then proceeded to explain the bases for its holding that mistakes of law, and not just those of fact, are covered by the Copyright Act’s safe harbor for good-faith errors. First, the statute itself states that the inaccurate information must be included on the application “with knowledge that it was inaccurate” in order to invalidate the copyright registration. Knowledge, however, is equally applicable to both facts and law. Moreover, according to the Supreme Court, other statutory provisions in the Copyright Act make clear that “knowledge” means “actual, subjective awareness of both the facts and the law.”

While using legislative history as a guide has fallen out of fashion of late, Justice Breyer also diplomatically noted that “those who consider legislative history will find that history persuasive here.” The legislative history here indicates that Congress enacted the safe

harbor provision of Section 411(b) to make it easier, not more difficult, for non-lawyers to obtain valid copyright registrations. If that is true, it makes little sense to excuse mistakes of fact, but not those of law (*i.e.*, the type of mistakes one would expect non-lawyers to make more often).

The Supreme Court also considered and rejected two arguments that H&M made. First, the Supreme Court did not think that H&M's interpretation of the statute would make it too easy for copyright holders to avoid the consequences of inaccurate applications, as circumstantial evidence may lead to a conclusion of actual awareness or willful blindness, neither of which is protected under the safe harbor. Second, the maxim "ignorance of the law is no excuse" applies to criminal cases, not to a civil case concerning the scope of a safe harbor provision.

One interesting thing to ponder is whether this decision will only affect the interpretation of Section 411(b)'s safe harbor provision or whether litigants and courts will apply the Supreme Court's reasoning in other contexts. We know that lack of knowledge of the law is generally not a defense in criminal actions, but might it be a defense in certain civil cases where "knowledge" is a necessary element? We shall see.