
Reed Elsevier, Inc. v. Muchnick: The Supreme Court Unanimously Clarifies Jurisdictional Requirements for Copyright Infringement Actions

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On March 2, 2010, the Supreme Court ruled that ownership of a copyright registration is not a prerequisite for subject matter jurisdiction in a copyright infringement case, abrogating the rulings of a majority of circuit courts and vacating the Second Circuit's ruling below. The question before the Supreme Court was whether the registration requirement in Section 411(a) of the Copyright Act deprived a federal court of jurisdiction over a copyright infringement action based on unregistered copyrights. *Reed Elsevier, Inc. v. Muchnick*, No. 08-103, 559 U.S. ___, slip op. at 1 (2010). The Supreme Court unanimously held that it did not: "Section 411(a)'s registration requirement is a precondition to filing a claim that does not restrict a federal court's subject-matter jurisdiction." *Id.*

In reaching its decision, the Court adhered to the framework that it had articulated in *Arbaugh v. Y & H Corp.*, 546 U.S. 500 (2006) (Title VII's employee-numerosity requirement is not jurisdictional). The validity of the *Arbaugh* framework was left uncertain by the Court's 2007 decision in *Bowles v. Russell*, 551 U.S. 205, which held that a statutory 30-day time limit for filing an appeal is jurisdictional. *Reed Elsevier* affirms that courts should apply the *Arbaugh* framework. In practice, this means that a statutory condition is not

jurisdictional in the absence of a clear statement from Congress that it is.

In *Reed Elsevier*, plaintiffs alleged that the owners of certain online databases had reproduced freelance works electronically without the authors' permission, infringing plaintiffs' copyrights in those works. The district court certified a plaintiff class and later approved a class action settlement. The "overwhelming majority of claims within the certified class," however, arose "from the infringement of *unregistered* copyrights." *In re Literary Works in Elec. Databases Copyright Litig.*, 509 F.3d 116, 118 (2d Cir. 2007) (emphasis added). Section 411(a) of the Copyright Act provides, with 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" 17 U.S.C. § 411(a). Based on the language of Section 411(a), the Second Circuit *sua sponte* raised the question of whether the district court had jurisdiction to certify such a class, and concluded by a vote of 2-1 that it did not.

In reversing the Second Circuit, the Supreme Court held that the federal court had jurisdiction under 28 U.S.C. §§ 1331 and 1338 (jurisdiction over claims "arising under" federal laws, including the copyright laws) both to certify the class and to enforce the settlement agreement, and that it was not deprived of jurisdiction by Section 411(a) of the Copyright Act. Expressly relying on *Arbaugh*, the Court noted that the copyright registration requirement (1) "is not clearly labeled as jurisdictional"; (2) "is not located in a jurisdiction-granting provision"; and (3) "admits of Congressionally authorized exceptions." *Reed Elsevier*, slip op. at 11. The Court distinguished *Bowles*, saying that it merely "stands for the proposition that context, including this Court's interpretation of similar provisions in many years past, is relevant to whether a statute ranks a requirement as jurisdictional," *id.* at 13, *i.e.*, precedent matters; *see also* opinion of Ginsburg, J., concurring,

slip op. at 3 (noting that *Arbaugh* and *Bowles* can be reconciled on the ground that the *Bowles* Court was bound by *stare decisis*).

Reed Elsevier gives federal courts critical guidance for analyzing whether statutory conditions are jurisdictional. And as a practical matter, it permits (but does not require) a district court to certify a class containing members who have not fulfilled non-jurisdictional conditions to bringing suit, and to create equitable exceptions to such conditions as the circumstances may require. In the copyright context, it also firmly settles any dispute that a plaintiff's failure to obtain a federal registration before filing suit will not deprive the court of subject matter jurisdiction.

View the decision: [*Reed Elsevier, Inc. v. Muchnick*](#).

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