

# Supreme Court Holds That Good Faith Mistakes of Law and Fact Are Protected by Copyright Registration Safe Harbor

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On February 24, 2022, the U.S. Supreme Court held in *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.* that the safe harbor provision concerning inaccurate information in copyright registrations, as set forth at 17 U.S.C. § 411(b), does not distinguish between mistakes of law and mistakes of fact, and thus that the inclusion of inaccurate information in a registration does not invalidate the registration when the inaccuracy is the result of a good faith misunderstanding of the law. The Court vacated the U.S. Court of Appeals for the Ninth Circuit's decision that the safe harbor afforded by 17 U.S.C. § 411(b)(1)(A) does not apply to a failure to understand the law. The 6-3 decision has significant implications for copyright owners and litigants alike.

## Background

Pursuant to Section 411(a) of the Copyright Act, registration with the Copyright Office is a prerequisite for a copyright owner to sue for infringement. Pursuant to Section 411(b), possession of a certificate of registration is generally sufficient to satisfy this requirement, unless the registration certificate contains inaccurate information that was included "with the knowledge that it was inaccurate," and "the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration."

In the present case, Unicolors, Inc. sued Hennes & Mauritz, L.P. (H&M) for infringing a design that it registered in 2011 along with 30 other works in a single registration. Following a jury verdict in Unicolors' favor, H&M filed a renewed motion for judgment as a matter of law, arguing that the copyright registration was invalid because it did not comply with a Copyright Office regulation permitting single registrations to cover multiple works only if the works were "included in the same unit of publication."

In 2018, the U.S. District Court for the Central District of California denied H&M's motion based on Section 411(b), noting that Unicolors did not actually know that it had failed to satisfy the "single unit of publication" legal requirement, and thus there was no grounds to invalidate the registration. The Ninth Circuit, however, reversed in 2020 and concluded that the Section 411(b) safe harbor did not apply because Unicolors knew of the fact that some of the 31 designs covered by the registration were initially made available for sale exclusively to certain customers, while others were immediately available to the general public.

The Supreme Court granted Unicolors' petition for *certiorari*, which had sought review of whether Section 411(b) requires that the registrant intended to defraud the Register of Copyrights by knowingly including inaccurate information.

## Supreme Court Ruling

In its 6-3 decision, the Supreme Court vacated the Ninth Circuit's decision on a ground that was not the one proposed, but that the majority concluded was a "subsidiary question fairly included in" Unicolors' petition for *certiorari*. The majority held that Section 411(b) does not distinguish between good faith mistakes of law and good faith mistakes of fact, so either can excuse an inaccuracy in a copyright registration.

Writing for the majority, Justice Stephen G. Breyer (i) understood the Ninth Circuit to have concluded that Section 411(b) "excused only good-faith mistakes of fact" but not good faith mistakes of law, and (ii) found no basis in the statutory language to draw any such distinction. "Knowledge," the majority concluded, historically has "meant and still means 'the fact or condition of being aware of something,'" and because registration

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applications “call for information requiring both legal and factual knowledge,” inaccurate information in a registration is “equally likely to arise from a mistake of law as a mistake of fact.” Surrounding statutory provisions further confirm that the Copyright Act requires actual, subjective awareness of both the facts and the law.

The majority also relied on the legislative history of Section 411(b) and the policy justifications of the safe harbor. Congress enacted the provision in question to make the registration process easier — particularly for nonlawyers — as well as to eliminate technical loopholes that had previously prevented the enforcement of otherwise valid copyright registrations. Based on this history, Justice Breyer concluded that “it would make no sense” for Section 411(b) to only excuse errors in copyright registrations stemming from good faith mistakes of fact but not good faith mistakes of law.

The majority further rejected H&M’s argument that a contrary interpretation was required to avoid “mak[ing] it too easy for copyright holders, by claiming lack of knowledge, to avoid the consequences of an inaccurate application.” In that regard, the majority made clear that copyright plaintiffs still must demonstrate that any inaccurate information resulted from a good faith mistake and that “willful blindness” can support a finding of actual knowledge depriving a party of the safe harbor. The majority further noted that circumstantial evidence bearing on willful blindness could include, among other factors, the significance of the legal error, the complexity of the relevant copyright rule and the applicant’s experience with copyright law. Finally, the majority rejected H&M’s argument that “ignorance of the law is no excuse,” noting that such proposition applies to criminal cases in which courts have to determine whether a defendant has the requisite mental state with respect to elements of a crime but does not apply to the scope of a civil liability safe harbor arising from “ignorance of collateral legal requirements.”

In dissent, Justice Clarence Thomas argued that the writ of *certiorari* should have been dismissed as improvidently granted because in its merits briefing Unicolors had abandoned the question presented at the *certiorari* stage, and instead argued novel

questions of copyright law that had not fairly been included in the petition for *certiorari*. Justice Thomas also expressed concern that the “actual-knowledge-of-law” standard the majority articulated was “virtually unprecedented.”

## Looking Ahead

The majority’s decision is beneficial to copyright applicants, registration owners and plaintiffs who are enforcing copyrights based on registrations that are revealed to have inaccuracies. Both in its formal holding and in its *dicta* discussing the policy justifications undergirding the Section 411(b) safe harbor, the Court now has firmly established not only that good faith mistakes of law do not doom an inaccurate registration but also that the standard for an infringement defendant challenging a registration is a high one that requires establishing scienter. The decision is a particular boon to laypeople unrepresented by legal counsel when registering copyrights or seeking to enforce those copyrights, as the Court’s “willful blindness” standard expressly recognizes that a registrant’s lack of familiarity with the formal — and, in the Court’s words, sometimes “esoteric” — copyright regulations and requirements is a factor to be considered. The holding is also in line with the Copyright Office’s general inclination against excessive formality and confirms that the copyright registration process is supposed to be accessible to all creators, regardless of level of familiarity with copyright law.

That said, copyright holders — and particularly those that are legally sophisticated or represented by counsel — are still well advised to confirm that their registrations are correct and should look to resolve any inaccuracies in their registrations in advance of any potential litigation. Copyright holders should not merely assume that all inaccuracies will be protected under Section 411(b) following the Court’s holding; registrants may not be able to take advantage of the safe harbor if they learn of inaccuracies post-registration but fail to correct them, and “willful blindness” could be found if a party avoids information that would reveal such inaccuracies. If inaccuracies are found, copyright owners should determine whether they have the option to amend their registration, or whether they will need to refile an application for registration.