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APA ALERT!

Do you have images with Corbis? Did you sign the Corbis Copyright Assignment Affirmation Declaration? If so, you may have invalid copyright registrations.

Last week, Judge Loretta A. Preska of the United States District Court, Southern District of New York, issued a summary judgment in the case Meunch Photography Inc, v. Houghton Mifflin Harcourt Publishing Company and R.R. Donnelley & Sons Company (09-CV-2669). In the case, Meunch Photography Inc. (MPI) claimed that Houghton Mifflin Harcourt Publishing Company (HMH) and R.R. Donnelley & Sons Company (Donnelley) “engaged in the unauthorized and impermissible use” of MPI images. The defendants, HMH and Donnelley, moved to dismiss the complaint arguing that the photographs at issue were not properly registered with the U.S. Copyright office. The defendant’s motion was GRANTED in part and DENIED in part.

Summary

MPI licenses photographs for Marc and David Meunch. Between March of 2001 and December 2006 MPI through its agent Corbis, sold limited licenses to HMH. MPI claims HMH exceeded the number of licenses granted that caused unauthorized reproductions of the images. This constituted copyright infringement in the eyes of MPI. By printing the textbooks where the images were used, MPI claims Donnelley is also guilty of violating MPI’s copyright.

At question is the process of copyright registration for the majority of these images. MPI had a copyright registration agreement with Corbis granting legal title in selected images digitized by Corbis and included in the Corbis digital collection “solely for the purpose of copyright registration.” After registration Corbis agreed to “promptly reassign legal title to Marc and David Muench with respect to (their) registered original film images.”

The Corbis procedure of acquiring signed Copyright Assignment Affirmation Declaration documents from photographers that allowed them to make compilation registrations rested upon the questionable and legally unsubstantiated foundation of a single letter from the Copyright Office’s Chief of Examining, Nanette Petruzzelli.

The Petruzzelli letter stated that the Copyright Office considers the procedure instituted by Corbis to be valid whereby Corbis is the author of the compilation by an acceptable transfer statement of the photographers and interpreted the claim to extend to the individual photographers. The letter also stated that the Copyright Office preferred, but did not require, the registration application to contain the names of all of the photographers on continuation sheets. The process was compared to the process to register magazines and other serial works, which do not require the listing of individual contributor names.

The unsupported written statements made by Petruzzelli seemed to legitimize the questionable procedure of Corbis. In fact, it ineffectually "registered" an unknown large number of images that has resulted in a significant increase in vulnerability for photographers that have used this system through Corbis.

The court has determined in its summary judgment that the Corbis Compilation registration is only valid as a compilation. The creators of the images, in this case MPI, do not have a valid registration for all of their individual images in the compilation. The process Corbis used in registering the compilation does not list the names of the individual creators (photographers). Because of that, the images are only registered for the compilation and not the photographer. 20 of the approximately 180 MPI images were previously registered as unpublished by the Muench brothers. The summary judgment DENIED the defendant's claim on those images.

The Corbis copyright registrations were the subject of an APA advocacy investigation in 2003-2005. APA questioned the Chief Examiner of the Visual Arts section at the Copyright Office along with General Counsel, David Carson, on the validity of the Corbis registrations. The practice was continued, putting at risk hundreds of thousands of images in APA's opinion.

This emphasizes the importance of registering one's own images.

What You Need To Do

If you have images with Corbis and signed a Corbis Copyright Assignment Affirmation Declaration you should immediately identify which of your images Corbis accepted and begin the process of properly registering those images. They are at risk of infringement.

Professional photographers need to register all of their marketable images themselves. You should not depend on an agency doing it for you.

For more information view these links:

The complete Court Order for summary judgment:
<http://www.scribd.com/doc/31039514/Usdc-Sdny-09cv2669-Order>

Attorney Ed Greenberg and Photographer Jack Reznicki Blog, The Copyright Zone:
<http://thecopyrightzone.com/>

John Harrington Blog, Photo Business News & Forum:
<http://photobusinessforum.blogspot.com/2010/05/corbis-copyright-registrations-images.html>