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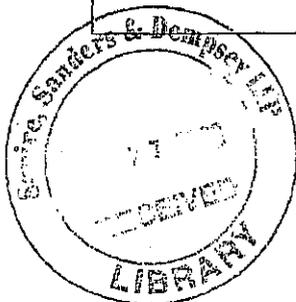
RECENT CASES AND DEVELOPMENTS

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SUMMARY

A divided en banc panel (7-5) of the Eleventh Circuit agreed with the Second Circuit that defendants' use constitutes a privileged revision under Section 201(c).

Facts

Jerry Greenberg is a freelance photographer, some of whose photographs were published in four issues of the National Geographic Magazine—January 1962, February 1968, May 1971, and July 1990. In 1997, the National Geographic Society (Society) arranged with others to produce "The Complete National Geographic" (CNG), a 30-disc CD-ROM set containing each monthly issue of the Magazine, as it was originally published, for the 108 years from 1888 through 1996—roughly 1200 issues of the Magazine. The CNG includes a short opening montage and a computer program that allows users to search the CNG, zoom into particular pages, and print copies.

Greenberg sued the Society alleging that it infringed his copyrights by reproducing in the CNG the print Magazine issues that included his photographs. The district court ruled that the CNG constituted a "revision" of the print issues and concluded that the reproduction of Greenberg's photographs in the CNG was privileged under Section 201(c) of the Copyright Act, and did not infringe. The Eleventh Circuit reversed, 244 F.3d 1267 (11th Cir. 2001), 15 CLJ 26 (May-June 2001) (*Greenberg I*), holding that the use of the photographs in a CD-ROM version of the Magazine is not a privileged revision. On remand, after a jury trial on damages, the jury returned a verdict against defendants in the amount of \$400,000. The Society appealed again, this time arguing that the intervening decision of the U.S. Supreme Court in *New York Times Co. v. Tasini*, 533 U.S. 483 (2001), 15 CLJ 38 (July-August 2001), decided shortly after *Greenberg I*, mandated a reversal of the jury verdict. Subsequent to the *Tasini* decision, the Second Circuit decided a case involving the CNG with nearly identical facts to *Greenberg*, *Faulkner v. National Geographic Enterprises, Inc.*, 409 F.3d 26 (2d Cir. 2005), 19 CLJ 26 (May-June 2005), held that because the CNG is a new version of the Magazine, the CNG is a privileged revision. The Eleventh Circuit agreed that *Tasini* compelled a reversal of the jury verdict because, under *Tasini*'s rationale, the Society was privileged to reproduce its print magazines in digital format pursuant to Section 201(c). See *Greenberg II*, 488 F.3d 1331 (11th Cir. 2007), 21 CLJ 38 (July-August 2007). The Eleventh Circuit vacated *Greenberg II* and granted a rehearing en banc.

THE ELEVENTH CIRCUIT OPINION

The Majority Opinion

Judge Barkett noted at the outset that Section 201(c) of the 1976 Copyright Act provides that in the absence of

an express transfer of copyright, when a freelance author or photographer contributes an article or photograph to a newspaper, magazine, or other periodical for publication, "The owner of copyright in the collective work [the periodical] is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series." The purpose of Section 201(c), he said, was to limit what the author is presumed to give away and to bar periodical publishers from revising the author's contribution or including it in a "new anthology or an entirely different magazine or other collective work." *Tasini*, 533 U.S. at 497 (quoting H.R. Rep. No. 94-1476, at 122-23 (1976)). Thus, said Judge Barkett a magazine publisher is privileged to reproduce and distribute an article or photograph contributed by a freelancer only (a) as part of that particular collective work to which the author contributed his or her work, (b) any revision of that collective work, or (c) any later collective work in the same series. The Society argued that it reproduced and distributed the CNG as a "revision" of the collective works to which Greenberg contributed his photographs. Greenberg contended that the CNG is a "new collective work" and not entitled to any privilege under Section 201(c).

Based on *Tasini*'s definition of "revision" and its discussion of microfilm, Judge Barkett concluded that the reproduction of the Magazines from print to CD-Rom is a "revision" of the original "collective work" and therefore privileged under Section 201(c). *Tasini*, he said, defined "revision" as a "new 'version,' and a version is, in [the Section 201(c)] setting, a distinct form of something regarded by its creators or others as one work." 533 U.S. at 500.

The articles at issue in *Tasini*, written by freelance authors, originally appeared in *The New York Times* and other periodicals. Pursuant to agreements with two computer database companies, the periodical publishers provided the database companies with the separate articles from each periodical which were then placed in electronic databases, isolated from the context of the original print publications in which they first appeared. The *Tasini* Court noted that the databases are similar in that a user of any of them can only view articles in isolation of the context of their original print publications. The Supreme Court concluded that the electronic databases did not reproduce or distribute the freelance authors' works as part of either the original editions or as a revision of those editions. Because the freelance authors' articles were presented to the user in isolation, clear of the context of the original print publication, the publishers could not claim a privilege under Section 201(c). The Supreme Court found that by presenting the articles outside of their original context, the databases were not revisions of the original collective works. The question in *Tasini* was "whether the database itself perceptively presents the author's contribution as part of a revision of that collective work." 533 U.S. at 504. In determining whether the articles were reproduced and distributed as part of a revision of the collective works at issue, *Tasini*, focused on the articles "as presented to, and perceptible by, the user of databases." *Id.* at 499.

The teachings of *Tasini* are twofold, said Judge Barkett. First, the concept of "revision" necessarily includes some element of "newness," and second, consideration of the context in which the contributions are presented is crucial. In its discussion of microform reproductions, he said, the *Tasini* Court noted the difference between revisions of collective works and collective works where the individual contributions have been taken out of context. Judge Barkett found the CNG analogous to the microforms discussed in *Tasini*. Similar to microfilm or microfiche, he said, the CNG uses the identical selection, coordination, and arrangement of the underlying individual contributions as used in the original collective work.

After noting that Congress intended Section 201(c) to prevent publishers from revising the contribution or including it "in a new anthology or an entirely different magazine or other collective work," H.R. Rep. No. 94-1476, at 122 (1976), Judge Barkett rejected Greenberg's claim that the CNG is a "new collective work," stating that Congress intended for publishers to retain their Section 201(c) privilege unless the republication constituted an "entirely different collective work." (Emphasis added).

Judge Barkett ruled that the new elements of the CNG—the 25-second montage, the computer program's search functions and zoom capacity—do not take the CNG outside the Section 201(c) privilege.

Citing the principle of media neutrality, Judge Barkett noted that it is incorrect to say that an exact digital replica of a print magazine is somehow a "new collective work." With publications continuously being reproduced in new mediums, he said that courts should not disapprove of the reproduction of collective works in those mediums without determining whether the publisher has violated the contextual fidelity of the original collective work. Courts, he said, must determine whether the reproduction creates an "entirely different" collective work, not whether the medium itself presumptively creates a "new collective work."

Judge Barkett concluded that in light of *Tasini's* holding that the bedrock of any Section 201(c) analysis is contextual fidelity to the original print publication, as presented to and perceivable by the users of the revised version, he agreed with the Second Circuit's holding in *Faulkner* that the Society is privileged to reproduce and distribute the CNG under the "revision" prong of Section 201(c). Judge Barkett's opinion was joined by Circuit Judges Dubina, Black, Carnes, Marcus, Pryor, and Kravitch.

Dissenting Opinions

Judge Birch, who wrote the opinion in *Greenberg I*, dissented. Putting aside the legal analysis, he pointed to the pecuniary or commercial positions of the parties. On one side are the authors, artists, and other creators of copyrightable works who maintain that their creative contributions to collective works already exploited by publishers should not be further exploited by those publishers without sharing the profits realized by that further commercial exploitation. They also contend that publishers want to ignore the economic compromise—the balancing of equities—that is reflected in Section 201(c). He noted that Marybeth Peters, the Register of Copyrights, stated in her 2001 letter to Congress

regarding *Tasini* that: "Section 201(c) was intended to limit a publisher's exploitation of freelance authors' works to ensure that authors retained control over subsequent exploitation of their works." With respect to the interpretation of Section 201(c) advanced by the publishers in *Tasini*, she said that that "would give them the right to exploit an article on a global scale immediately following its initial publication, and to continue to exploit it indefinitely. Such a result is beyond the scope of the statutory language and was never intended because, in a digital networked environment, it interferes with authors' ability to exploit secondary markets. Acceptance of this interpretation would lead to a significant risk that authors will not be fairly compensated as envisioned by the compromises reached in the 1976 Act. The result would be an unintended windfall for publishers of collective works." 147 Cong. Rec. E 182-02 (2001). (Letter from Marybeth Peters to Representative James R. McGovern, February 14, 2001).

On the opposite side, said Judge Birch, the publishers seek to generate new revenues by repackaging an old product. The new packaging of the old content, "replicated but unrevised," (original emphasis) in electronic medium is, he said, cost-efficient, profitable and attractive to a new, computer-savvy generation of consumers. The profits are enhanced exponentially when the publisher can exclude the contributing authors and other creators of the content from sharing in those profits. This case, he said, "is about who gets the money."

Judge Birch proceeded to examine the Congressional motivation for passage of Section 201(c). If Congress intended to require publishers to share profits from a new or different work, he said, then the authors win. If the intent of Congress was to allow publishers to produce an up-to-date modern, and desirable incarnation of a previously exploited work, he said, then the publishers win.

According to Judge Birch, there are at least three distinct legal rationales that support affirmance of *Greenberg I*. Each of these rationales demonstrates the erroneous conclusions and logic of the majority. The three rationales are: (A) the CNG is a "new," "entirely different" collective work to which Section 201(c) does not apply; (B) the Society cannot transfer its privilege to third parties to exercise; and (C) defendants have undertaken to display Greenberg's works publicly by means of a projection on a computer screen, a non-privileged exercise.

New Collective Work

To create the CNG, the Society contracted with a company to digitally scan the pages of the Magazines. Each issue of the Magazine was scanned, page by page, into a computer system. The scanning process created an exact image of each page as it appeared in the Magazines. The assembly of those "particular collective works," i.e., 1,200 issues of the Magazine—is, said Judge Birch, far different from the permitted reproduction and distribution of "that particular collective work," i.e., an issue of the magazine.

Judge Birch noted that throughout the litigation the Society has shifted its legal position many times. Initially, he said, the Society argued that the CNG is not a new collective work for the purposes of Section 201(c) because it does not differ in any material creative respect from pages

of the Magazine. As a straightforward reprint of the Magazine, the Society said it is entitled to publish it pursuant to Section 201(c). The Society also contended that revisions of a particular collective work and later collective works in the same series—both explicitly authorized by Section 201(c)—are clearly new collective works. In another court proceeding the Society maintained that the CNG “is merely a reproduction, not a revision, of the Magazine . . . [and] is nothing more than a collection of issues of the Magazine in a different medium.” In *Greenberg I*, the Society conceded that the CNG is indeed a “new” collective work but claimed that “Section 201(c) of the Copyright Act permits the Society to publish [the CNG] as a revision even if it is a new collective work.” Thus, said Judge Birch, the Society has conceded that the CNG is not a revision but an exact replica placed in a different medium. He noted that the act of scanning is all that is necessary to place the rote copy of each issue of the Magazine into the digital medium. The assembly of these separate and independent works, he said, constitutes a “new” and, even “completely different” collective work. A “collective work” is defined in Section 101 as a work “in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.”

In the case at bar, the Society claimed that it may license a reproduction or republication of all issues of the Magazine, collectively in a new anthology or aggregation, so long as each republication is in “context” as per *Tasini*. But, said Judge Birch, *Tasini* was a “disassembly” case not an “assembly” case; and the Supreme Court focused on the textual and pictorial context, in a threshold examination, to determine whether a “particular collective work” even existed in order to ascertain whether the statutory privilege was available. Determining that it was not, he said that the Supreme Court never reached the controlling issue in this case, *i.e.*, whether the assemblage is privileged. An assemblage of replicas, said Judge Birch, is not privileged because a “new collective work” is expressly not included in Section 201(c) and each “particular collective work” (each issue of the Magazine) is not part of a “revision.” See House Report No. 94-1476, at 122 (1976). The CNG, he said, is an aggregation of 1,200 issues of the Magazine into a “new collective work,” which is a work such as an “anthology . . . in which a number of contributions consisting of separate and independent works in themselves are assembled into a collective whole.” The Society, he said, registered its claim to copyright to the CNG as a “Compilation of Pre-Existing Material Primarily Pictorial.” The Society’s argument that the CNG is a privileged “revision” fails, said Judge Birch, “because no revisions have been made to the magazines. No revisions have been made because nothing has been ‘revised.’” (Original emphasis). The CNG, he said, is not a privileged revision because it is not a revision but a new and different collective work expressly exempted from the coverage of Section 201(c). The “revision” clause in Section 201(c), he said, was not intended to permit the inclusion of previously published freelance contributions “in a new anthology or an entirely different magazine or other collective work,” citing H.R. Rep. No. 94-1476 at 122-23.

Judge Birch noted that both the Second Circuit opinion in *Tasini v. The New York Times Co.*, 206 F.3d 161 (2d Cir. 2001), which was affirmed, and *Greenberg I* concluded

that a “new anthology” or a “new collective work” was not within the “revision” privilege of Section 201(c). In affirming *Tasini*, he said, the Supreme Court explained that “Section 201(c) adjusts a publisher’s copyright in its collective work to accommodate a freelancer’s copyright in her contribution. If there is demand for a freelance article standing alone or in a new collection, the Copyright Act allows the freelancer to benefit from that demand; after authorizing initial publication, the freelancer may also sell the article to others.” 533 U.S. at 485. (Emphasis added). The Supreme Court, he said, found that the publishers had no Section 201(c) privilege because: “It would scarcely ‘preserve the author’s copyright in a contribution’ as contemplated by Congress, if a newspaper or magazine publisher were permitted to reproduce or distribute copies of the author’s contribution in isolation or within new collective works.” 533 U.S. at 497. (Emphasis added). In determining that the databases in *Tasini* did not constitute a revision, the *Tasini* Court stated that the aggregation of the entirety of the works in the database does not constitute a revision of each constituent edition. The *Tasini* Court concluded that the databases “simply cannot bear the characterization as a ‘revision’ of any one periodical edition.” *Id.* at 501, n.9. (Emphasis added).

Judge Birch noted that the *Tasini* opinions, both in the Second Circuit and the Supreme Court, as well as *Greenberg I*, all cite to the same House Report for interpretation of the “revision” clause in Section 201(c), which reads in pertinent part as follows: “Under the language of this clause a publishing company could reprint a contribution from one issue in a later issue of its magazine, and could reprint an article from a 1980 edition of an encyclopedia in a 1990 revision of it; the publisher could not revise the contribution itself or include it in a new anthology or an entirely different magazine or other collective work.” H.R. Rep. at 122-23.

Using the microform analogy from *Tasini* dicta, both the Second Circuit in *Faulkner* and the *en banc* majority avoided the obvious conclusion that the CNG is a new anthology or “other collective work,” said Judge Birch. The majority, he said, believed that the Supreme Court suggested that the reproduction of print publications in microfilm would be privileged under Section 201(c). But, said Judge Birch, *Tasini* found no analogy between the databases and microfilm or microfiche. The majority, nonetheless, found the CNG analogous to these microforms, he said. Combining the copyrighted computer programs with the unrevised individual issues of the Magazine resulted in an “other collective work” or even “an entirely different collective work,” said Judge Birch.

In Part B of his dissent, Judge Birch said that the Society cannot claim the benefit of a statutory privilege for a group of third parties that actually compiled and published the CNG. Section 201(c) provides publishers with a mere privilege that is not transferable, he said. In Part C of his dissent, Judge Birch said another determinative issue that has been ignored and omitted by the majority, is the “public display” issue. Even if the Society enjoys a Section 201(c) privilege, he said, it does not include the privilege of publicly displaying *Greenberg*’s photographs.

Judge Birch concluded that the majority’s rationale, essentially adopting that of *Faulkner* should be rejected. Circuit Judge Wilson joined in Judge Birch’s dissent, and

Chief Judge Edmonson and Circuit Judge Anderson joined that dissent in Part A only.

Judge Anderson's Dissent

The issue, said Judge Anderson, is whether the CNG is a privileged "revision" of the individual issues (the collective works) of the Magazine or an unprivileged "new anthology or an entirely different magazine or other collective work." *Tasini*, he said, does not fully resolve this issue. In *Tasini*, he said, because the republished newspaper and magazine articles did not appear in context—the contextual analysis was decisive—the new publication was not privileged. Because the individual articles in the CNG appear in their original context, the re-publication of Greenberg's photos satisfies the threshold contextual analysis, said Judge Anderson. But, he added, satisfaction of the contextual analysis does not mean that the new publication is privileged. Though the threshold issue is satisfied, he said, the crucial issue remains—whether the CNG is a revision of those collective works of the Magazine to which Greenberg contributed, or "an entirely different . . . or other collective work." Section 201(c), he said, permits the Society to distribute Greenberg's photo as part of a particular collective work (the issue of magazine to which he contributed the photo), or as part of the revision of that particular issue. But, he said, the compilation of 1,200 issues of the Magazine does not constitute a "revision" of any single issue.

Tasini noted that placing all the articles from one edition of the N.Y. Times into a CD-ROM database along with all the articles from other editions of the paper, does not constitute a revision of each edition. 533 U.S. at 500. According to the Supreme Court, "[t]he massive whole of the Database is not recognizable as a new version of its smallest part." *Id.* Similarly, said Judge Anderson, the massive whole of the CNG is not recognizable as a new version of the individual issues of the Magazine in which Greenberg's photos originally appeared. Notwithstanding that the photos appear in their original context, he said, the CNG is a new anthology of many editions of the Magazine. Judge Anderson pointed out that the mere fact that in dicta the Supreme Court distinguished the databases from microfilm and microfiche does not indicate, as the majority believes, that microforms, which often collect multiple editions of a particular newspaper or magazine, constitute a privileged revision of each individual edition. *Tasini* rejected the comparison between databases and microforms because databases, unlike microfilms, failed the contextual threshold. *Tasini*, he said, did not hold that microform copies of multiple editions qualify for the Section 201(c) privilege. When the Society combined about 1,200 issues of its Magazine into a new product in a new format with new features and new uses, it created a new collective work that exceeds the Section 201(c) privilege, said Judge Anderson. Chief Judge Edmonson, and Circuit Judges Tjoflat, Birch, and Wilson joined Judge Anderson dissenting opinion.

COMMENT

1. Under the 1909 Copyright Act, freelance authors risked losing their copyrights when their articles appeared in newspapers, magazines, or other collective works because

the prior law recognized a freelance author's copyright in a published article only if the article was published with a separate copyright notice in the author's name. When publishers of collective works, exercising their superior bargaining power over freelancers, refused to print a separate notice in each freelance contributor's name, the freelancer's copyright was put in jeopardy. A freelance author could not assign just the right of publication in a periodical because such a partial assignment was barred under the former doctrine of copyright indivisibility. The 1976 Act clarified the confusing and unfair situation relating to rights in contributions to collective works. The 1976 Act rejected the doctrine of indivisibility, deemed the copyright a bundle of discrete rights, each of which may be transferred and owned separately, and provided that a single copyright notice applicable to the collective work as a whole protects the rights of freelance contributors to newspapers, magazines, and other periodicals.

2. Under Section 201(c), a newspaper or magazine publisher, for example, is presumed to have the "privilege" of reproducing and distributing an article or other work contributed by a freelancer only as part of any of three categories of collective works: (a) the particular collective work (e.g., the particular issue of a magazine) to which the freelancer contributed his or her work; (b) any revision of that collective work; or (c) any later collective work in the same series. A periodical publisher, unless expressly authorized to do so, may not reproduce or distribute a freelance author's contribution in isolation or as part of a new collective work. Since Congress enacted Section 201(c) to "preserve the author's copyright in a contribution" to a collective work, H.R. Rep. No. 94-1476, at 122, courts should narrowly construe the publisher's "privilege" when balancing it against the author's constitutionally protected rights. Unfortunately, the Second Circuit in *Faulkner* and the *en banc* majority in *Greenberg III*, stood copyright law on its head and provided a windfall for periodical publishers.

3. Jerry Greenberg contributed photographs which were published in four different issues of the National Geographic Magazine. Those particular issues (collective works) were not altered, modified, updated, enhanced, or otherwise revised. They were copied exactly in digital form and combined with about 1,200 other issues resulting in the CNG on CD-ROM. When the Society registered its copyright claim to the CNG as a derivative or collective work, it responded to Item 5 on the registration application by stating that no prior registration had been made for earlier versions of the work. In response to Item 6 on the application, the CD-ROM library was described as a "compilation of pre-existing material," and in response to Item 6b, the Society stated that the material added to the work consisted of a brief introductory audiovisual montage. In *Greenberg I*, the Society argued that its use of Greenberg's photographs constituted a revision of the Magazine issues in which they initially appeared because the CD-ROM library is a compendium of more than 1,200 back issues of the Magazine. Judge Birch in *Greenberg I* correctly concluded that the defendants created a new product, in a new medium, for a new market that far transcends any privilege of revision under Section 201(c). The CD-ROM was found to be an unauthorized "other collective work." *Greenberg I* concluded that defendants had no right or privilege to include Greenberg's contributed works in a new anthology or other collective work.

4. Both *Greenberg I* and *Tasini* found the revision privilege under Section 201(c) inapplicable. *Faulkner* (on the same facts as *Greenberg*) held the privilege applicable. The issue is whether the privilege applies as long as the individual contributions appear in their original context and are presented to and perceived by the users as they appeared in the original periodicals or a revision of them (*Faulkner*), or whether the CD-ROM library is not a privileged revision but a new collective work (*Greenberg I*). Because *Tasini* found that the electronic databases at issue did not perceptibly reproduce articles as part of the collective work to which the authors contributed or as part of any revision thereof, it did not address the issue presented in *Greenberg* or *Faulkner*, namely, whether combining the particular collective works—i.e., the particular issues of the magazine—to which the authors contributed, with about 1,200 other issues of the magazine constitutes a privileged revision or an impermissible new collective work, or even whether the particular collective works to which the authors contributed were, in fact, revised. Without any discussion as to whether or how the particular collective work to which *Faulkner* contributed was ever “revised,” or whether the CNG constitutes a new collective work, the sloppily reasoned *Faulkner* opinion merely stated that “because the original context of the Magazine is omnipresent in the CNG and because it is a new version of the Magazine, the CNG is a privileged revision.”

5. Both *Faulkner* and the *en banc* majority referred to the microform analogy in *Tasini* dicta and believed that the Supreme Court suggested that the reproduction of print publications in microfilm would be privileged. *Tasini* found no such analogy. Justice Ginsburg stated: “The Publishers press an analogy between the Databases, on the one hand, and microfilm and microfiche, on the other. We find the analogy wanting.” 533 U.S. at 501. The *en banc* majority’s analogy between the CNG and microform, supposedly based on the *Tasini* dicta, is baseless and misses the point. Combining the four issues to which *Greenberg* contributed his photos with about 1,200 other issues of the Magazine does not constitute a “revision” of those four issues. As Justice Ginsburg explained in *Tasini*: “The Database no more constitutes a ‘revision’ of each constituent edition than a 400-page novel quoting a sonnet in passing would represent a ‘revision’ of that poem.” *Id.* at 500. Moreover, contrary to the suggestions in *Faulkner* and the *Greenberg III* majority, the Supreme Court never gave tacit approval to microfilm and microfiche as permissible revisions under Section 201(c). The *en banc* majority simply followed the sloppy reasoning of *Faulkner*. By a stunning act of judicial ju-jitsu, the *en banc* majority concluded that while the CNG may be a “new collective work,” it is not an “entirely different” collective work and is therefore privileged.

6. **Practice Tip:** Even assuming that the CNG is a privileged revision under Section 201(c) and that the Society may therefore make and sell copies of it to the public, to the extent the CD-ROMs are part of a library, for example, or other places open to the public, the freelance authors’ exclusive right of public display is infringed.

7. Some of the Society’s marketing materials that urge consumers to print “any article or photograph” and advise them that they “are free to modify and publish the Images

as you wish” and to “incorporate any Image(s) into your own original work and publish, display, and distribute your work in any media”—are a clear invitation (inducement?) to infringe freelance authors’ copyrighted contributions. See, e.g., *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster*, 545 U.S. 913 (2005), 19 CLJ 38 (July-August 2005). To paraphrase Sir Winston Churchill: Rarely have so few (appellate judges) deprived so many (freelance authors) of so much (the ability to exploit secondary markets).

Richlin v. Metro-Goldwyn-Mayer Pictures, Inc.,
531 F.3d 962 (9th Cir. 2008)

SUMMARY

The Ninth Circuit affirmed that the heirs of the co-author of the unpublished story treatment used to create the smash-hit film *The Pink Panther* have no interest in the film’s copyright.

Facts

In April 1962, Maurice Richlin and Blake Edwards co-authored a story treatment (Treatment) which formed the basis for the well-known motion picture, starring Peter Sellers as Inspector Clouseau, and numerous derivative works. In May 1962, Richlin and Edwards entered into an Employment Agreement to write the screenplay for the Motion Picture. They agreed to create the screenplay as a work made for hire. They were paid \$150,000 for their work on the Treatment and the screenplay. Later that month, Richlin and Edwards transferred and assigned “forever” all rights in their written literary material, including any adaptations, treatments, scripts, or screenplays entitled or known as “Pink Panther,” to Mirisch. The Assignment also provided that if Mirisch copyrighted the Treatment, it would have all rights of copyright for the full duration of copyright, including any renewals thereof.

In 1963, *The Pink Panther* was released and distributed in theaters to great acclaim. Nine movie sequels followed, many of which gave screen credit to Richlin and Edwards for creating the characters. The first motion picture bears a 1963 copyright notice in the name of Mirisch and G&E Productions. The copyright was registered in 1964. Neither the Treatment nor the screenplay was ever separately published or registered for copyright production.

Richlin died in November 1990. The first term of copyright in the motion picture was due to expire in 1991 (28 years after first publication), but the copyright was timely renewed by MGM-Pathé Communications Co./Godfrey Productions, Inc. (collectively “MGM”), the successors-in-interest to Mirisch-G&E Productions. The copyright renewal certificate identified MGM as the claimant and “proprietor of copyright in a work made for hire” and the author and original claimant as Mirisch-G&E Productions. None of the