



The Importance of Naming Names: Why a Compilation Copyright Registration May Not Be Enough to Protect Your Rights

Content owners that register works with the Copyright Office as "compilations" or "collective works" should be aware of a string of recent court decisions that may bar federal suit to enforce copyrights in the individual works that comprise these collections. This year federal district courts in New York, Arizona, and Alaska have addressed the question of whether copyright registrations for compilations of photographs protect the individual works within the compilations, when the authors (and copyright owners) of the individual work or works are not separately named in the application. *Muench Photography, Inc. v. Houghton Mifflin Harcourt Publishing Company and R.R. Donnelley & Sons Company*, 95 USPQ2d 1489 (S.D.N.Y. 2010); *Bean v. Houghton Mifflin Harcourt Publishing Company*, 2010 WL 3168624 (D. Ariz. 2010); *Alaska Stock, LLC v. Houghton Mifflin Harcourt Publishing Company and R.R. Donnelley & Sons Company*, Case No. 3:09-cv-0061-HRH (D. Alaska 2010).

Two of the suits arose when authors of individual works that had been registered as compilations by Corbis Corporation sued Houghton Mifflin Harcourt Publishing Company for use of photographs beyond the scope of a license. The third suit arose when the stock photography agency itself, Alaska Stock, LLC, sued Houghton Mifflin Harcourt Publishing Company for use of certain photographs beyond the scope of a license. The photographs at issue were only registered en masse as compilations and the registration certificates did not identify the names of the individual author of each photograph. The claims for infringement of the individual works were dismissed because the courts found that while the group registrations were valid as to the compilations, they did not protect the individual works.

A compilation is a collection of works that have been arranged together to form a new work, e.g., a book of short stories or poems¹. In most circumstances, both the individual works and the final assembled product are copyrightable subject matter. However, there are separate rules governing federal copyright registration for each.

17 USC § 103(a) states that the "copyright in a compilation ... extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material." The Copyright Office regulations permit group registration of photographs, which extends copyright protection to both the compilation and the individual photographs, provided they are all by the same author and all published in the same year. See 37 CFR 202.3(b)(10).

To obtain copyright registration over individual works, on the other hand, the application must comply with the requirements in 17 USC § 409. One of those requirements is to list the author of the work, which the compilation registrations at issue in these cases did not do.

The courts in the above cases held that a copyright registration for a compilation of photographs did not extend to the individual works because the application did not provide the names of all authors of the individual works. The courts thus dismissed those claims, despite the Copyright Office's practice, which was to acknowledge that the individual works were protected under a group registration even though individual author information was not provided.

Under 17 USC § 411, without copyright registration to cover the individual works, the individual authors could not file suit in federal court for copyright infringement. These decisions are important because they potentially prohibit the filing of a suit for infringement of an individual photograph based on a registration for the compilation of which the photograph is a part. The decision in Muench Photography is before the court for reconsideration, and the decision in Bean has been appealed to the Ninth Circuit Court of Appeals. However, in the interim, authors should play it safe and register the individual works if their name was not listed as an author on the compilation copyright registration certificate. And going forward, all information necessary for individual registration (names of all authors and titles of all individual works) should be provided in these compilation registrations.

For more information, please contact one of our Copyright Group Co-Chairs:

[Joel D. Leviton](#)
Principal
Twin Cities office
leviton@fr.com
612-337-2591

[Kristen McCallion](#)
Associate
New York office
mccallion@fr.com
212-641-2261

This alert was prepared by [Tashia Bunch Henderson](#) (Associate), [Heidi Harvey](#) (Of Counsel), and [Adam Kessel](#) (Associate) of Fish's Boston office.

1- See 17 USC §101 A compilation is "a work formed by collection and assembling of preexisting materials or of data that are coordinated or arranged in such a way that the resulting work as a whole constitutes an original work of authorship."

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