

Justices' Ruling On Inadvertent Error Excuse May Be Limited

By **Jesse Jenike-Godshalk** (April 13, 2022)

In *Unicolors Inc. v. H&M Hennes & Mauritz LP*,^[1] the U.S. Supreme Court construed a safe harbor provision in the Copyright Act and concluded that a copyright registration containing incorrect information is not invalid even if the inaccuracy was due to ignorance or a mistake of law. On its face, this decision appears to be at odds with the maxim that ignorance of the law is no excuse.



Jesse Jenike-Godshalk

The court's decision might be viewed as a broad abandonment of the maxim, but a more likely conclusion is that the court decided only that the maxim does not apply in the specific context presented in the *Unicolors* case. At the same time, the court did not resolve the circuit split that brought the *Unicolors* case before it in the first place, and lower courts may find support in the opinion for either side of that split.

Copyright Registration

To obtain a copyright registration, the author of a work must submit to the U.S. Copyright Office an application providing information about the work. If the Copyright Office decides that the work is copyrightable and meets other legal requirements, it will issue a certificate of registration containing the information the registrant included on the application.

While inaccurate information provided on the application could invalidate the resulting registration, the Copyright Act contains a safe harbor. The safe harbor states that a registration is valid — despite inaccurate information — unless "the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate."^[2]

Unicolors v. H&M

The *Unicolors* case began when *Unicolors*, which owns copyrights in certain fabric designs, sued H&M for copyright infringement. H&M defended by arguing that *Unicolors*' registration was invalid — and therefore could not support an infringement suit — because it included inaccurate information.

Under a certain Copyright Office regulation, a registrant can file a single application covering multiple works only if the works meet particular requirements. *Unicolors* had filed a single application for 31 separate works even though, unbeknownst to *Unicolors*, the works did not meet the legal requirements. The question was whether the Copyright Act's safe harbor applied.

In deciding this case, the court focused on the words "with knowledge that it was inaccurate" and considered whether this language applies only when an inaccuracy in an application originates from the applicant's lack of knowledge of facts or whether the language also applies when an inaccuracy flows from the applicant's lack of knowledge of the law.

The court determined that "[I]ack of knowledge of either fact or law can excuse an inaccuracy in a copyright registration"^[3] and found that *Unicolors*' copyright registration

was not invalid even though it contained inaccurate information.

The court provided several reasons supporting its ruling. As an initial matter, its conclusion was driven by the text of the Copyright Act. Unicors claimed it did not know that the 31 designs it was registering failed to meet the requirements for inclusion in a single application. On its face, this scenario appears to satisfy the Copyright Act's safe harbor provision. That is, Unicors did not act "with knowledge that [information on its application] was inaccurate."

Further, the safe harbor does not explicitly differentiate between knowledge of fact and knowledge of law. If Congress had intended for the safe harbor to apply to factual mistakes and not legal ones, it could have, and presumably would have, made this clear in the safe harbor's language. The absence of that differentiation suggests that Congress intended for the safe harbor to cover both factual and legal mistakes.

This conclusion was further supported by the safe harbor's legislative history, which shows that Congress enacted the safe harbor to make it easier to obtain and enforce copyrights and to eliminate loopholes that might prevent the enforcement of otherwise valid copyright registrations. It would therefore be nonsensical if the safe harbor allowed for invalidation of copyrights based on a misunderstanding of the details of copyright law.

Ignorance of the Law Is an Excuse?

One immediate reaction to Unicors is that it appears to run afoul of the maxim that ignorance of the law is no excuse. The court directly confronted this issue, stating:

H&M ... argues that our interpretation is foreclosed by the legal maxim that "ignorance of the law is no excuse." This maxim normally applies where a defendant has the requisite mental state in respect to the elements of a crime but claims to be unaware of the existence of a statute proscribing his conduct. It does not apply in this civil case concerning the scope of a safe harbor that arises from ignorance of collateral legal requirements.[4]

In support of this pronouncement, the court cited a single 2019 Supreme Court criminal case: *Rehaif v. U.S.*[5]

Elsewhere, however, the Supreme Court has applied the maxim in civil cases concerning the scope of a safe harbor without regard to whether the legal requirement at issue is collateral. In 2010, the court decided *Jerman v. Carlisle McNellie Rini Kramer & Ulrich LPA*, a civil case involving a safe harbor provision in the Fair Debt Collection Practices Act.[6]

In *Jerman*, the court held that the safe harbor did not extend to mistakes of law,[7] and it relied upon the "common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally." [8] The court did not analyze whether the legal requirement at issue was collateral, thus suggesting that this consideration was not material to its ruling.

In reaching its holding, the *Jerman* court relied upon a second Supreme Court case from 1833 — *Barlow v. U.S.*, [9] a civil forfeiture case concerning sugar. Congress had passed a statute requiring payment of a duty on refined sugars in the U.S., but the duty would be drawn back if the sugar was exported.

To determine whether a person needed to pay the duty, they would provide information

about the sugar to the collector's office. If the person provided false information, they would forfeit the sugar. But the statute included a safe harbor for mistakes.

In *Barlow*, the defendant had represented to the collector's office that the sugar he was exporting was refined sugar, leading to a drawback of the duty. In fact, the product was not refined sugar, but a lower grade of sugar.

The defendant had supplied false information to the office of the collector but argued that he was mistaken regarding whether the sugar qualified as refined, thus bringing him within the safe harbor. The Supreme Court disagreed, finding that the mistake was not factual, but legal.

The court then determined that the maxim at issue applied to the safe harbor without regard to whether the mistake of law was collateral. In reaching this conclusion, the court noted that "[t]here is not the least reason to suppose that the legislature, in this [statute], had any intention to supersede the common [maxim]."[10]

Importantly, the court quoted this same language when it decided *Jerman* 177 years later and then reaffirmed the holding in *Barlow*, stating that "precedents tend to gain, not lose, respect with age." [11] Thus, the court endorsed the view that the maxim at issue presumptively applies unless Congress expressly overrides it in particular statutes.

In *Unicolors*, the court did not cite either *Jerman* or *Barlow*. How can *Unicolors* be squared with these cases? It seems unlikely that the *Unicolors* court intended to completely overturn 200 years of prior precedent without directly addressing *Jerman* and *Barlow*.

A more probable conclusion is that the *Unicolors* court intended to craft a narrow exception to the maxim — an exception that applies only to the particular safe harbor and the particular facts presented in the case. If so, *Jerman* and *Barlow* maintain their vitality, and the general rule is still that ignorance of the law is no excuse. It is an open question, however, whether the court will be willing to create additional exceptions in future cases.

Intent to Defraud

In *Unicolors*, Justice Clarence Thomas dissented. His chief criticism of the majority opinion was that it had not decided the issue on which the court had granted certiorari and "on which the Courts of Appeals were split: whether [the safe harbor's] 'knowledge' element requires 'indicia of fraud'" — specifically an intent to defraud.[12]

That is, under the safe harbor, does inaccurate information in a copyright registration render the registration invalid only if the inaccurate information was included with intent to defraud?

Justice Thomas appears to be correct. The majority never provides a clear answer to this question. Nevertheless, lower courts will undoubtedly look to *Unicolors* for guidance when addressing this issue in the future. How are lower courts likely to rule in light of *Unicolors*? Unfortunately, the answer is not entirely clear.

On the one hand, courts can find support in *Unicolors* for the proposition that the Copyright Act's safe harbor does not require intent to defraud. The majority stated that courts should "follow the text of the statute" and give it a straightforward interpretation.[13]

The statute does not mention fraud or intent to defraud. If Congress had wanted to require

fraudulent intent, it could have expressly done so, but it did not. Instead, the safe harbor uses the term "knowledge," which is not tantamount to fraudulent intent. Further, according to the dissent, both parties and their amici agreed in their briefing that the safe harbor does not require intent to defraud.

On the other hand, courts might also find support in *Unicolors* for the argument that fraudulent intent is required. In *Unicolors*, the court adopted an interpretation of the safe harbor that is favorable to copyright registrants and consistent with congressional intent to make it easier to obtain valid copyright registrations. These facts counsel in favor of also requiring intent to defraud before invalidating a registration that contains incorrect information.

Indeed, the *Unicolors* majority stated that "[g]iven this [legislative] history, it would make no sense if [the safe harbor] left copyright registrations exposed to invalidation based on applicants' good-faith misunderstandings of the details of copyright law."^[14] This language suggests a distinction between good faith mistakes, which are covered by the safe harbor, and fraudulent mistakes, which are not.

Conclusion

Following the *Unicolors* case, ignorance of the law is forgivable under the Copyright Act's safe harbor, but litigants should not assume that ignorance of the law is similarly forgivable in any other contexts. For those litigating the Copyright Act's safe harbor, it remains uncertain whether this provision requires fraudulent intent, but the *Unicolors* decision might provide support for either position on this issue. Only time will tell how each of these issues plays out.

Jesse L. Jenike-Godshalk is a partner at Thompson Hine LLP.

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[1] 595 U.S. ___ (2022) (slip op.).

[2] 17 U.S.C. § 411(b)(1)(A).

[3] 595 U.S. ___ (2022) (slip op., at 2).

[4] *Id.* at 8 (internal citations and quotation marks omitted).

[5] 588 U.S. ___ (2019).

[6] 559 U.S. 573 (2010).

[7] *Id.* at 604–05.

[8] *Id.* at 581 (2010) (quoting *Barlow v. United States*, 32 U.S. 404 (1833)).

[9] 32 U.S. 404 (1833)

[10] *Id.* at 411.

[11] 559 U.S. at 582 n.5.

[12] *Unicolors*, 595 U.S. ___ (2022) (Thomas, J., dissenting) (slip op., at 1).

[13] *Unicolors*, 595 U.S. ___ (2022) (slip op., at 5).

[14] *Id.* at 7 (emphasis added).