

NEW YORK TIMES CO. v. TASINI

533 U.S. 483 (2001)

- 10 Justice Ginsburg, delivered the opinion of the Court.
- 11 This copyright case concerns the rights of freelance authors and a presumptive privilege of their publishers. The litigation was initiated by six freelance authors and relates to articles they contributed to three print periodicals (two newspapers and one magazine). Under agreements with the periodicals' publishers, but without the freelancers' consent, two computer database companies placed copies of the freelancers' articles—along with all other articles from the periodicals in which the freelancers' work appeared—into three databases. Whether written by a freelancer or staff member, each article is presented to, and retrievable by, the user in isolation, clear of the context the original print publication presented.
- 12 The freelance authors' complaint alleged that their copyrights had been infringed by the inclusion of their articles in the databases. The publishers, in response, relied on the [488] privilege of reproduction and distribution accorded them by § 201(c) of the Copyright Act, which provides:
- 13 "Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work 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." 17 U. S. C. § 201(c).
- 14 Specifically, the publishers maintained that, as copyright owners of collective works, *i. e.*, the original print publications, they had merely exercised "the privilege" § 201(c) accords them to "reproduc[e] and distribut[e]" the author's discretely copyrighted contribution.
- 15 In agreement with the Second Circuit, we hold that § 201(c) does not authorize the copying at issue here. The publishers are not sheltered by § 201(c), we conclude, because the databases reproduce and distribute articles standing alone and not in context, not "as part of that particular collective work" to which the author contributed, "as part of . . . any revision" thereof, or "as part of . . . any later collective work in the same series." Both the print publishers and the electronic publishers, we rule, have infringed the copyrights of the freelance authors.

I

A

- 18 Respondents Jonathan Tasini, Mary Kay Blakely, Barbara Garson, Margot Mifflin, Sonia Jaffe Robbins, and David S. Whitford are authors (Authors). Between 1990 and 1993, they wrote the 21 articles (Articles) on which this dispute centers. Tasini, Mifflin, and Blakely contributed 12 Articles to The New York Times, the daily newspaper published

by [489] petitioner The New York Times Company (Times). Tasini, Garson, Robbins, and Whitford wrote eight Articles for Newsday, another New York daily paper, published by petitioner Newsday, Inc. (Newsday). Whitford also contributed one Article to Sports Illustrated, a weekly magazine published by petitioner Time, Inc. (Time). The Authors registered copyrights in each of the Articles. The Times, Newsday, and Time (Print Publishers) registered collective work copyrights in each periodical edition in which an Article originally appeared. The Print Publishers engaged the Authors as independent contractors (freelancers) under contracts that in no instance secured consent from an Author to placement of an Article in an electronic database.[1]

- 19 At the time the Articles were published, all three Print Publishers had agreements with petitioner LEXIS/NEXIS (formerly Mead Data Central Corp.), owner and operator of NEXIS, a computerized database that stores information in a text-only format. NEXIS contains articles from hundreds of journals (newspapers and periodicals) spanning many years. The Print Publishers have licensed to LEXIS/ NEXIS the text of articles appearing in the three periodicals. The licenses authorize LEXIS/NEXIS to copy and sell any portion of those texts.
- 20 Pursuant to the licensing agreements, the Print Publishers regularly provide LEXIS/NEXIS with a batch of all the articles published in each periodical edition. The Print Publisher codes each article to facilitate computerized retrieval, then transmits it in a separate file. After further coding, LEXIS/NEXIS places the article in the central discs of its database.
- 21 [490] Subscribers to NEXIS, accessing the system through a computer, may search for articles by author, subject, date, publication, headline, key term, words in text, or other criteria. Responding to a search command, NEXIS scans the database and informs the user of the number of articles meeting the user's search criteria. The user then may view, print, or download each of the articles yielded by the search. The display of each article includes the print publication (*e. g.*, The New York Times), date (September 23, 1990), section (Magazine), initial page number (26), headline or title ("Remembering Jane"), and author (Mary Kay Blakely). Each article appears as a separate, isolated "story"—without any visible link to the other stories originally published in the same newspaper or magazine edition. NEXIS does not contain pictures or advertisements, and it does not reproduce the original print publication's formatting features such as headline size, page placement (*e. g.*, above or below the fold for newspapers), or location of continuation pages.
- 22 The Times (but not Newsday or Time) also has licensing agreements with petitioner University Microfilms International (UMI). The agreements authorize reproduction of Times materials on two CD—ROM products, the New York Times OnDisc (NYTO) and General Periodicals OnDisc (GPO).
- 23 Like NEXIS, NYTO is a text-only system. Unlike NEXIS, NYTO, as its name suggests, contains only the Times. Pursuant to a three-way agreement, LEXIS/ NEXIS provides UMI with computer files containing each article as transmitted by the Times to LEXIS/NEXIS. Like LEXIS/NEXIS, UMI marks each article with special codes. UMI also provides an index of all the articles in NYTO. Articles appear in NYTO in essentially

the same way they appear in NEXIS, *i. e.*, with identifying information (author, title, etc.), but without original formatting or accompanying images.

- 24 [491] GPO contains articles from approximately 200 publications or sections of publications. Unlike NEXIS and NYTO, GPO is an image-based, rather than a text-based, system. The Times has licensed GPO to provide a facsimile of the Times' Sunday Book Review and Magazine. UMI "burns" images of each page of these sections onto CD—ROMs. The CD—ROMs show each article exactly as it appeared on printed pages, complete with photographs, captions, advertisements, and other surrounding materials. UMI provides an index and abstracts of all the articles in GPO.
- 25 Articles are accessed through NYTO and GPO much as they are accessed through NEXIS. The user enters a search query using similar criteria (*e. g.*, author, headline, date). The computer program searches available indexes and abstracts, and retrieves a list of results matching the query. The user then may view each article within the search result, and may print the article or download it to a disc. The display of each article provides no links to articles appearing on other pages of the original print publications.[2]

B

- 27 On December 16, 1993, the Authors filed this civil action in the United States District Court for the Southern District of New York. The Authors alleged that their copyrights were infringed when, as permitted and facilitated by the Print Publishers, LEXIS/NEXIS and UMI (Electronic Publishers) placed the Articles in the NEXIS, NYTO, and GPO databases (Databases). The Authors sought declaratory [492] and injunctive relief, and damages. In response to the Authors' complaint, the Print and Electronic Publishers raised the reproduction and distribution privilege accorded collective work copyright owners by 17 U. S. C. § 201(c). After discovery, both sides moved for summary judgment.
- 28 The District Court granted summary judgment for the Publishers, holding that § 201(c) shielded the Database reproductions. [...]The privilege conferred by § 201(c) is transferable, the court first concluded, and therefore could be conveyed from the original Print Publishers to the Electronic Publishers. [...]Next, the court determined, the Databases reproduced and distributed the Authors' works, in § 201(c)'s words, "as part of . . . [a] revision of that collective work" to which the Authors had first contributed. To qualify as "revisions," according to the court, works need only "preserve some significant original aspect of [collective works]—whether an original selection or an original arrangement." [...]This criterion was met, in the District Court's view, because the Databases preserved the Print Publishers' "selection of articles" by copying all of the articles originally assembled in the periodicals' daily or weekly issues. [...]The Databases "highlight[ed]" the connection between the articles and the print periodicals, the court observed, by showing for each article not only the author and periodical, but also the print publication's particular issue and page numbers. [...]
- 29 The Authors appealed, and the Second Circuit reversed. [...]The Court of Appeals granted summary judgment for the Authors on the ground that the Databases were not among the collective works covered by § 201(c), and specifically, were not "revisions" of the periodicals in which the Articles first appeared. [...]Just as § 201(c) does not "permit a

Publisher to sell a hard [493] copy of an Author's article directly to the public even if the Publisher also offered for individual sale all of the other articles from the particular edition," the court reasoned, so § 201(c) does not allow a Publisher to "achieve the same goal indirectly" through computer databases. *Id.*, at 168. In the Second Circuit's view, the Databases effectively achieved this result by providing multitudes of "individually retrievable" articles. [...] As stated by the Court of Appeals, the Databases might fairly be described as containing "new antholog[ies] of innumerable" editions or publications, but they do not qualify as "revisions" of particular editions of periodicals in the Databases. [...] Having concluded that § 201(c) "does not permit the Publishers," acting without the author's consent, "to license individually copyrighted works for inclusion in the electronic databases," the court did not reach the question whether the § 201(c) privilege is transferable. [...]

- 30 We granted certiorari to determine whether the copying of the Authors' Articles in the Databases is privileged by 17 U. S. C. § 201(c). [...] Like the Court of Appeals, we conclude that the § 201(c) privilege does not override the Authors' copyrights, for the Databases do not reproduce and distribute the Articles as part of a collective work privileged by § 201(c). Accordingly, and again like the Court of Appeals, we find it unnecessary to determine whether the privilege is transferable.

II

- 32 Under the Copyright Act, as amended in 1976, "[c]opyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression . . . from which they can be perceived, reproduced, or otherwise communicated." 17 U. S. C. § 102(a). When, as in this case, a freelance author has contributed an article to a "collective work" such as a newspaper or magazine, see § 101 (defining "collective work"), the statute recognizes two distinct copyrighted works: "Copyright in *each separate contribution to a collec[494]tive work* is distinct from copyright in *the collective work as a whole . . .*" § 201(c) (emphasis added). Copyright in the separate contribution "vests initially in the author of the contribution" (here, the freelancer). *Ibid.* Copyright in the collective work vests in the collective author (here, the newspaper or magazine publisher) and extends only to the creative material contributed by that author, not to "the preexisting material employed in the work," § 103(b). See also *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U. S. 340, 358 (1991) (copyright in "compilation"—a term that includes "collective works," 17 U. S. C. § 101—is limited to the compiler's original "selection, coordination, and arrangement").
- 33 Prior to the 1976 revision, as the courts below recognized, [...] authors risked losing their rights when they placed an article in a collective work. Pre-1976 copyright law recognized a freelance author's copyright in a published article only when the article was printed with a copyright notice in the author's name. See Copyright Act of 1909, § 18, 35 Stat. 1079. When publishers, exercising their superior bargaining power over authors, declined to print notices in each contributor's name, the author's copyright was put in jeopardy. [...] The author did not have the option to assign only the right of publication in the periodical; such a partial assignment was blocked by the doctrine of copyright "indivisibility." [...] Thus, when a copyright notice appeared only in the publisher's name, the author's work would fall into the public domain, unless the author's copyright, in its

entirety, had passed to the publisher. [...]Such complete transfer might be accomplished by a contract, perhaps one with a provision, not easily enforced, for later retransfer of rights back to the author. [...]Or, absent a specific contract, a court might find that an author had tacitly [495] transferred the entire copyright to a publisher, in turn deemed to hold the copyright in "trust" for the author's benefit. [...]

- 34 In the 1976 revision, Congress acted to "clarify and improve [this] confused and frequently unfair legal situation with respect to rights in contributions." H. R. Rep. No. 94— 1476, p. 122 (1976) (hereinafter H. R. Rep.).^[3] The 1976 Act rejected the doctrine of indivisibility, recasting the copyright as a bundle of discrete "exclusive rights," 17 U. S. C. § 106 (1994 ed. and Supp. V),^[4] each of which "may be transferred [496] . . . and owned separately," § 201(d)(2).^[5] Congress also provided, in § 404(a), that "a single notice applicable to the collective work as a whole is sufficient" to protect the rights of freelance contributors. And in § 201(c), Congress codified the discrete domains of "[c]opyright in each separate contribution to a collective work" and "copyright in the collective work as a whole." Together, § 404(a) and § 201(c) "preserve the author's copyright in a contribution even if the contribution does not bear a separate notice in the author's name, and without requiring any unqualified transfer of rights to the owner of the collective work." H. R. Rep. 122.
- 35 Section 201(c) both describes and circumscribes the "privilege" a publisher acquires regarding an author's contribution to a collective work:
- 36 "In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work 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." (Emphasis added.)
- 37 A newspaper or magazine publisher is thus privileged to reproduce or distribute an article contributed by a freelance author, absent a contract otherwise providing, only "as part of" any (or all) of three categories of collective works: (a) "that collective work" to which the author contributed her work, (b) "any revision of that collective work," or (c) "any later collective work in the same series." In accord with Congress' prescription, a "publishing company could reprint [497] 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. 122-123.
- 38 Essentially, § 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. Cf. *Stewart v. Abend*, 495 U. S. 207, 229 (1990) ("[w]hen an author produces a work which later commands a higher price in the market than the original bargain provided, the copyright statute [*i. e.*, the separate renewal term of former 17 U. S. C. § 24] is designed to provide the author the power to negotiate for the realized value of the work"); *id.*, at 230 (noting author's "inalienable termination right" under current 17 U.

S. C. §§ 203, 302 ([...]t would scarcely "preserve the author's copyright in a contribution" as contemplated by Congress, H. R. Rep. 122, 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. [...] [6] [498]

III

- 40 In the instant case, the Authors wrote several Articles and gave the Print Publishers permission to publish the Articles in certain newspapers and magazines. It is undisputed that the Authors hold copyrights and, therefore, exclusive rights in the Articles.^[7] It is clear, moreover, that the Print and Electronic Publishers have exercised at least some rights that § 106 initially assigns exclusively to the Authors: LEXIS/NEXIS' central discs and UMI's CD—ROMs "reproduce . . . copies" of the Articles, § 106(1); UMI, by selling those CD—ROMs, and LEXIS/NEXIS, by selling copies of the Articles through the NEXIS Database, "distribute copies" of the Articles "to the public by sale," § 106(3); and the Print Publishers, through contracts licensing the production of copies in the Databases, "authorize" reproduction and distribution of the Articles, § 106.^[8]
- 41 [499] Against the Authors' charge of infringement, the Publishers do not here contend the Authors entered into an agreement authorizing reproduction of the Articles in the Databases. [...]Nor do they assert that the copies in the Databases represent "fair use" of the Authors' Articles. [...]Instead, the Publishers rest entirely on the privilege described in § 201(c). Each discrete edition of the periodicals in which the Articles appeared is a "collective work," the Publishers agree. They contend, however, that reproduction and distribution of each Article by the Databases lie within the "privilege of reproducing and distributing the [Articles] as part of . . . [a] revision of that collective work," § 201(c). The Publishers' encompassing construction of the § 201(c) privilege is unacceptable, we conclude, for it would diminish the Authors' exclusive rights in the Articles.
- 42 In determining whether the Articles have been reproduced and distributed "as part of" a "revision" of the collective works in issue, we focus on the Articles as presented to, and perceptible by, the user of the Databases. See § 102 (copyright protection subsists in original works fixed in any medium "from which they can be perceived, reproduced, or otherwise communicated"); see also § 101 (1994 ed., Supp. V) (definitions of "copies" and "fixed"); [...]In this case, the three Databases present articles to users clear of the context provided either by the original periodical editions or by any revision of those editions. The Databases first prompt users to search the universe of their contents: thousands or millions of files containing [500] individual articles from thousands of collective works (*i. e.*, editions), either in one series (the Times, in NYTO) or in scores of series (the sundry titles in NEXIS and GPO). When the user conducts a search, each article appears as a separate item within the search result. In NEXIS and NYTO, an article appears to a user without the graphics, formatting, or other articles with which the article was initially published. In GPO, the article appears with the other materials published on the same page or pages, but without any material published on other pages of the original periodical. In either circumstance, we cannot see how the Database perceptibly reproduces and distributes the article "as part of" either the original edition or a "revision" of that edition.

- 43 One might view the articles as parts of a new compendium—namely, the entirety of works in the Database. In that compendium, each edition of each periodical represents only a minuscule fraction of the ever-expanding Database. 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. "Revision" denotes a new "version," and a version is, in this setting, a "distinct form of something regarded by its creator or others as one work." Webster's Third New International Dictionary 1944, 2545 (1976). The massive whole of the Database is not recognizable as a new version of its every small part.
- 44 Alternatively, one could view the Articles in the Databases "as part of" no larger work at all, but simply as individual articles presented individually. That each article bears marks of its origin in a particular periodical (less vivid marks in NEXIS and NYTO, more vivid marks in GPO) suggests the article was *previously* part of that periodical. But the markings do not mean the article is *currently* reproduced or distributed as part of the periodical. The Databases' reproduction and distribution of individual Articles—*simply as* [501] *individual Articles*—would invade the core of the Authors' exclusive rights under § 106.[9]
- 45 The Publishers press an analogy between the Databases, on the one hand, and microfilm and microfiche, on the other. We find the analogy wanting. Microforms typically contain continuous photographic reproductions of a periodical in the medium of miniaturized film. Accordingly, articles appear on the microforms, writ very small, in precisely the position in which the articles appeared in the newspaper. The Times, for example, printed the beginning of Blakely's "Remembering Jane" Article on page 26 of the Magazine in the September 23, 1990, edition; the microfilm version of the Times reproduces that same Article on film in the very same position, within a film reproduction of the entire Magazine, in turn within a reproduction of the entire September 23, 1990, edition. True, the microfilm roll contains multiple editions, and the microfilm user can adjust the machine lens to focus only on the Article, to the exclusion of surrounding material. Nonetheless, the user first encounters the Article in context. In the Databases, by contrast, the Articles appear disconnected from their original context. In NEXIS and NYTO, the user sees the "Jane" Article apart even from the remainder of page 26. In GPO, the user sees the Article within the context of page 26, but clear of the context of page 25 or page 27, the rest of the Magazine, or the remainder of the day's newspaper. In short, unlike microforms, the Databases do not perceptibly reproduce articles as part of the [502] collective work to which the author contributed or as part of any "revision" thereof.[10]
- 46 Invoking the concept of "media neutrality," the Publishers urge that the "transfer of a work between media" does not "alte[r] the character of" that work for copyright purposes. [...] That is indeed true. See 17 U. S. C. § 102(a) (copyright protection subsists in original works "fixed in any tangible medium of expression"). But unlike the conversion of newsprint to microfilm, the transfer of articles to the Databases does not represent a mere conversion of intact periodicals (or revisions of periodicals) from one medium to another. The Databases offer users individual articles, not intact periodicals. In this case, media neutrality should protect the Authors' rights in the individual Articles to the extent those Articles are now presented individually, outside the collective work context, within the Databases' new media.[11]

- 47 For the purpose at hand—determining whether the Authors' copyrights have been infringed—an analogy to an [503] imaginary library may be instructive.[12] Rather than maintaining intact editions of periodicals, the library would contain separate copies of each article. Perhaps these copies would exactly reproduce the periodical pages from which the articles derive (if the model is GPO); perhaps the copies would contain only typescript characters, but still indicate the original periodical's name and date, as well as the article's headline and page number (if the model is NEXIS or NYTO). The library would store the folders containing the articles in a file room, indexed based on diverse criteria, and containing articles from vast numbers of editions. In response to patron requests, an inhumanly speedy librarian would search the room and provide copies of the articles matching patron-specified criteria.
- 48 Viewing this strange library, one could not, consistent with ordinary English usage, characterize the articles "as part of" a "revision" of the editions in which the articles first appeared. In substance, however, the Databases differ from the file room only to the extent they aggregate articles in electronic packages (the LEXIS/NEXIS central discs or UMI CD—ROMs), while the file room stores articles in spatially separate files. The crucial fact is that the Databases, like the hypothetical library, store and retrieve articles separately within a vast domain of diverse texts. Such a storage and retrieval system effectively overrides the Authors' exclusive [504] right to control the individual reproduction and distribution of each Article, 17 U. S. C. §§ 106(1), (3). [...]
- 49 The Publishers claim the protection of § 201(c) because users can manipulate the Databases to generate search results consisting entirely of articles from a particular periodical edition. By this logic, § 201(c) would cover the hypothetical library if, in response to a request, that library's expert staff assembled all of the articles from a particular periodical edition. However, the fact that a third party can manipulate a database to produce a noninfringing document does not mean the database is not infringing. Under § 201(c), the question is not whether a user can generate a revision of a collective work from a database, but whether the database itself perceptibly presents the author's contribution as part of a revision of the collective work. That result is not accomplished by these Databases.
- 50 The Publishers finally invoke *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U. S. 417 (1984). That decision, however, does not genuinely aid their argument. *Sony* held that the "sale of copying equipment" does not constitute contributory infringement if the equipment is "capable of substantial noninfringing uses." *Id.*, at 442. The Publishers suggest that their Databases could be liable only under a theory of contributory infringement, based on end user conduct, which the Authors did not plead. The Electronic Publishers, however, are not merely selling "equipment"; they are selling copies of the Articles. And, as we have explained, it is the copies themselves, without any manipulation by users, that fall outside the scope of the § 201(c) privilege.

IV

- 52 The Publishers warn that a ruling for the Authors will have "devastating" consequences. Brief for Petitioners 49. The Databases, the Publishers note, provide easy access to [505] complete newspaper texts going back decades. A ruling for the Authors, the Publishers

suggest, will punch gaping holes in the electronic record of history. The Publishers' concerns are echoed by several historians[...] but discounted by several other historians[...]

- 53 Notwithstanding the dire predictions from some quarters, it hardly follows from today's decision that an injunction against the inclusion of these Articles in the Databases (much less all freelance articles in any databases) must issue. See 17 U. S. C. § 502(a) (court "may" enjoin infringement); *Campbell v. Acuff-Rose Music, Inc.*, 510 U. S. 569, 578, n. 10 (1994) (goals of copyright law are "not always best served by automatically granting injunctive relief"). The parties (Authors and Publishers) may enter into an agreement allowing continued electronic reproduction of the Authors' works; they, and if necessary the courts and Congress, may draw on numerous models for distributing copyrighted works and remunerating authors for their distribution. See, *e. g.*, 17 U. S. C. § 118(b); *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U. S. 1, 4-6, 10-12 (1979) (recounting history of blanket music licensing regimes and consent decrees governing their operation).[13] In any event, speculation about [506] future harms is no basis for this Court to shrink authorial rights Congress established in § 201(c). Agreeing with the Court of Appeals that the Publishers are liable for infringement, we leave remedial issues open for initial airing and decision in the District Court.[...]
- 55 We conclude that the Electronic Publishers infringed the Authors' copyrights by reproducing and distributing the Articles in a manner not authorized by the Authors and not privileged by § 201(c). We further conclude that the Print Publishers infringed the Authors' copyrights by authorizing the Electronic Publishers to place the Articles in the Databases and by aiding the Electronic Publishers in that endeavor. We therefore affirm the judgment of the Court of Appeals.