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NEW YORK TIMES CO. v. TASINI (00-201) 206 F.3d 161, affirmed.		
Syllabus	Opinion [Ginsburg]	Dissent [Stevens]
HTML version PDF version	HTML version PDF version	HTML version PDF version

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued.

The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader.

See *United States v. Detroit Timber & Lumber Co.*, [200 U.S. 321](#), 337.

SUPREME COURT OF THE UNITED STATES

NEW YORK TIMES CO., INC., et al. v. TASINI et al.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 00—201. Argued March 28, 2001—Decided June 25, 2001

Respondent freelance authors (Authors) wrote articles (Articles) for newspapers and a magazine published by petitioners New York Times Company (Times), Newsday, Inc. (Newsday), and Time, Inc. (Time). The Times, Newsday, and Time (Print Publishers) engaged the Authors as independent contractors under contracts that in no instance secured an Author's consent to placement of an Article in an electronic database. The Print Publishers each licensed rights to copy and sell articles to petitioner LEXIS/NEXIS, owner and operator of NEXIS. NEXIS is a computerized database containing articles in text-only format from hundreds of periodicals spanning many years. Subscribers access NEXIS through a computer, may search for articles using criteria such as author and subject, and may view, print, or download each article yielded by the search. An article's display identifies its original print publication, date, section, initial page number, title, and author, but each article appears in isolation—without visible link to other stories originally published in the same periodical edition. NEXIS does not reproduce the print publication's formatting features such as headline size and page placement. The Times also has licensing agreements with petitioner University Microfilms International (UMI), authorizing reproduction of Times materials on two CD—ROM products. One, the New York Times OnDisc (NYTO), is a text-only database containing Times articles presented in essentially the same way they appear in LEXIS/NEXIS. The other, General Periodicals OnDisc (GPO), is an image-based system that reproduces the Times' Sunday Book Review and Magazine exactly as they appeared on the printed pages, complete with photographs, captions, advertisements, and other surrounding materials. The two CD—ROM products are searchable in much the same way as LEXIS/NEXIS; in both, articles retrieved by users provide no links to other articles appearing in the original print publications.

The Authors filed this suit, alleging that their copyrights were infringed when, as permitted and facilitated by the Print Publishers, LEXIS/NEXIS and UMI (Electronic Publishers) placed the Articles in NEXIS, NYTO, and GPO (Databases). The Authors sought declaratory and injunctive relief, and damages. In response to the Authors' complaint, the Print and Electronic Publishers raised the privilege accorded collective work copyright owners by §201(c) of the Copyright Act. That provision, pivotal in this case, reads: "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." The District Court granted the Publishers summary judgment, holding, *inter alia*, that 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. The Second Circuit reversed, granting the Authors summary judgment 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.

Held: Section 201(c) does not authorize the copying at issue here. The Publishers are not sheltered by §201(c) 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." Pp. 8—21.

(a) Where, as here, a freelance author has contributed an article to a collective work, copyright in the contribution vests initially in its author. §201(c). Copyright in the collective work vests in the collective author (here, the Print Publisher) and extends only to the creative material contributed by that author, not to "the preexisting material employed in the work," §103(b). Congress enacted the provisions of the 1976 revision of the Copyright Act at issue to address the unfair situation under prior law, whereby authors risked losing their rights when they placed an article in a collective work. The 1976 Act recast the copyright as a bundle of discrete "exclusive rights," §106, each of which "may be transferred ... and owned separately," §201(d)(2). The Act 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. Together, §404(a) and §201(c) preserve the author's copyright in a contribution to a collective work. Under §201(c)'s terms, a publisher could reprint a contribution from one issue in a later issue of its magazine, and could reprint an article from one edition of an encyclopedia in a later revision of it, but could not revise the contribution itself or include it in a new anthology or an entirely different collective work. 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, 230. It would scarcely preserve the author's copyright in a contribution as contemplated by Congress if a print publisher, without the author's permission, could reproduce or distribute discrete copies of the contribution in isolation or within new collective works. Pp. 8—12.

(b) The Publishers' view that inclusion of the Articles in the Databases lies within the "privilege of reproducing and distributing the [Articles] as part of ... [a] revision of that collective work," §201(c), is unacceptable. In determining whether the Articles have been reproduced and distributed "as part of" a "revision," the Court focuses on the Articles as presented to, and perceptible by, a Database user. See §§102, 101. Here, 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 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 it 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, the Database does not reproduce and distribute the article “as part of” either the original edition or a “revision” of that edition. The articles may be viewed as parts of a new compendium—namely, the entirety of works in the Database. Each edition of each periodical, however, represents only a miniscule fraction of the ever-expanding Database. The massive whole of the Database is not recognizable as a new version of its every small part. Furthermore, the Articles in the Databases may be viewed “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 suggests the article was *previously* part of that periodical, not that the article is *currently* reproduced or distributed as part of the periodical. The Databases’ reproduction and distribution of individual Articles—simply *as individual Articles*—would invade the core of the Authors’ exclusive rights. The Publishers’ analogy between the Databases and microfilm and microfiche is wanting: In the Databases, unlike microfilm, articles appear disconnected from their original context. 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. The concept of “media-neutrality” invoked by the Publishers should therefore protect the Authors’ rights, not the Publishers’. The result is not changed because users can manipulate the Databases to generate search results consisting entirely of articles from a particular periodical edition. Under §201(c), the question is not whether a user can assemble 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. Pp. 12—19.

(c) The Publishers’ warning that a ruling for the Authors will have “devastating” consequences, punching gaping holes in the electronic record of history, is unavailing. It hardly follows from this decision that an injunction against the inclusion of these Articles in the Databases (much less all freelance articles in any databases) must issue. The 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. In any event, speculation about future harms is no basis for this Court to shrink authorial rights created by Congress. The Court leaves remedial issues open for initial airing and decision in the District Court. Pp. 19—21.

206 F.3d 161, affirmed.

Ginsburg, J., delivered the opinion of the Court, in which Rehnquist, C. J., and O’Connor, Scalia, Kennedy, Souter, and Thomas, JJ., joined. Stevens, J., filed a dissenting opinion, in which Breyer, J., joined.

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