

Jason Bloom in Law360: High Court Limit On Costs in Copyright Cases Clarifies Stakes

By Jason P. Bloom | March 15, 2019

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Haynes Boone Partner [Jason Bloom](#) talked with *Law360* about a U.S. Supreme Court decision restricting the costs that prevailing parties can recover in copyright litigation.

Here is an excerpt:

The Copyright Act states that prevailing parties can recover their "full costs," and the Ninth Circuit held that that includes things like expert witness fees and e-discovery expenses. However, the justices held that costs are limited to six narrower categories found in the general litigation cost statute, and threw out \$12.8 million in costs that Oracle Corp. won in a case against technical support service Rimini Street Inc.

Attorneys agreed that in most cases, the high court's ruling will have a limited effect, just increasing the cost of some aspects of copyright litigation while creating additional considerations about how cases are handled.

"Now that it's clear you can't recover your expert fees, I think people are going to be less likely to retain multiple experts or the priciest expert," said Jason Bloom of Haynes Boone. "It's not going to discourage people from having expert witnesses where they need them. ... In a big enough case, parties are going to be willing to spend what they've got to spend on their expert, whether they recover it or not." ... If the plaintiff thinks it has a strong case and is likely to win substantial damages, the inability to recover those costs may end up being a minor point.

"I don't think this is going to discourage people from filing suits to protect their copyright interests," Bloom said.

Bloom said he is not sure there is a policy justification for such a change, since expressly providing for the recovery of additional costs "could discourage people from fighting against a claim that they think has no merit" and instead agree to settle to avoid a judgment that includes those additional expenses.

"That's not what the Copyright Act intended," he said. "The act wants people to litigate meritorious claims as well as meritorious defenses, and if the burden of losing is too heavy on either side, it discourages that."

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