

Corporate & Financial Weekly Digest

Posted at 12:44 PM on October 8, 2010 by [Julie Pechersky](#)

Motion to Dismiss Claims for Infringing Use of Photographs Granted in Part and Denied in Part

Co-authored by [Jonathan Rotenberg](#)

The U.S. District Court for the Southern District of New York granted in part and denied in part copyright infringement claims brought by plaintiff, a professional photographer, against a publisher of textbooks and other related educational materials, alleging that defendant exceeded its licenses to use plaintiff's photographs in its publications.

Defendant entered into several licensing agreements with various photo bureaus. Although defendant contracted with the photo bureaus, plaintiff retained the registered copyright for the photographs. Plaintiff alleged that on numerous occasions defendant exceeded the allowed print run for the photographs under the licensing agreements without first seeking plaintiff's prior authorization or paying an additional licensing fee.

Defendant moved to dismiss. The district court granted the motion in connection with one of the photo bureaus, reasoning that the contractual provision in the relevant licensing agreement clearly stated that the photo bureau forgoes its right to sue for copyright infringement until defendant has been invoiced for an unauthorized usage, and failed to pay that amount within ten days of being billed. Plaintiff's complaint failed to allege that defendant was invoiced for the allegedly unauthorized usage of the photos, and plaintiff's related infringement claim was accordingly dismissed.

The district court nevertheless denied defendant's motion to dismiss the claims arising out of the agreements with the other photo bureaus, reasoning that the allegations of the complaint properly stated a cause of action, despite being largely pled upon information and belief. (*Wu v. Pearson Education, Inc.*, No. 09 Civ. 6557, 2010 WL 3791676 (S.D.N.Y. Sept. 29, 2010))

Katten Muchin Rosenman LLP
Charlotte Chicago Irving London Los Angeles New York Washington, DC