



Supreme Court Holds Recovery Of “Full Costs” Under Copyright Act Is Limited To Those Costs Enumerated In The General Costs Statute

Rimini Street, Inc. v. Oracle USA, Inc., No. 17-1625

Decided March 4, 2019

Today, the Supreme Court unanimously held that a provision in the Copyright Act authorizing a prevailing party to recover “full costs” entitles that party to recover only those categories of costs enumerated in 28 U.S.C. §§ 1821 and 1920, and not all litigation expenses.

Background:

While the so-called “American rule” generally provides that each party in litigation must bear its own costs, federal law sets out six discrete and exclusive categories of costs which a court may, in its discretion, award a prevailing party. 28 U.S.C. §§ 1821, 1920. Those categories include clerk and marshal fees, transcript fees, fees for printing and witnesses, certain fees for exemplification and copies, designated docket fees, and fees for court-appointed experts and interpreters. Section 505 of the Copyright Act states, “In any civil action under [the Copyright Act], the court in its discretion may allow the recovery of full costs by or against any party [T]he court may also award a reasonable attorney’s fee to the prevailing party as part of the costs.” 17 U.S.C. § 505. Oracle sued Rimini Street for infringing its copyright and prevailed in part. The district court awarded Oracle nearly \$5 million in costs and nearly \$12.8 million in additional expenses, including expert witness fees, jury consultant fees, and other expenditures not enumerated in Sections 1821 and 1920. The Ninth Circuit affirmed the award of these additional litigation expenses, holding that the phrase “full costs” in the Copyright Act authorizes an award of costs beyond those categories set forth in Sections 1821 and 1920.

“[T]he term ‘costs’ refers to the costs generally available under the federal costs statute— §§ 1821 and 1920. ‘Full costs’ are all the costs generally available under that statute.”

Justice Kavanaugh,
writing for the unanimous Court

**Gibson Dunn
represented the
winning parties:**

Rimini Street, Inc. and
Seth Ravin

Issue:

Whether the Copyright Act provision permitting an award of “full costs” to the prevailing party authorizes an award of expert witness fees, e-discovery expenses, jury consulting fees, and other litigation expenses not authorized as costs under 28 U.S.C. §§ 1821 and 1920.

Court’s Holding:

No. The term “full costs” in Section 505 of the Copyright Act refers to the specific categories of costs defined in 28 U.S.C. §§ 1821 and 1920, and a prevailing party may not recover litigation expenses outside those categories.

What It Means:

- The Court’s opinion reaffirms that “costs” is a term of art that encompasses only the specific categories of costs enumerated in 28 U.S.C. §§ 1821 and 1920. A statute will not be interpreted as expanding the categories of recoverable costs unless Congress expressly so provides.
 - A statutory provision authorizing the recovery of “full costs” does not expressly expand the categories of recoverable costs beyond those enumerated in 28 U.S.C. §§ 1821 and 1920. “Full” is an adjective that describes the quantity or amount of the noun “costs,” and so the term “full costs” does not change the meaning of “costs”—the categories of expenses set forth in Sections 1821 and 1920—but instead simply permits an award of all costs otherwise recoverable under those provisions.
 - The Court rejected Oracle’s argument that there was any historical justification for interpreting the term “full costs” to expand the categories of recoverable expenses. As Gibson Dunn successfully argued, none of the more than 800 copyright decisions awarding costs between 1831 and 1976 (when the Copyright Act was amended) awarded expenses other than those specified by state or federal law.
 - The Court’s decision will prevent parties in Copyright Act cases from inflating their recoveries with broad, unbounded awards of litigation expenses, such as expert witness fees, e-discovery expenses, and jury consulting fees. Parties will instead be limited to recovering the specific categories of expenses explicitly authorized by Congress in Sections 1821 and 1920, along with attorneys’ fees.
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Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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