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Ninth Circuit Finds Stock Photo Company Has Standing To Sue Under Copyright Act

By [Andrew Avsec](#)

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On July 29, the Ninth Circuit held that a stock photo company qualifies as an exclusive licensee and therefore has standing to sue under the *Copyright Act*. *Minden Pictures, Inc. v. John Wiley & Sons, Inc.*, No. 14-15267 (9th Cir. July 29, 2015).

Minden, a stock photo company, acts as a licensing agent for photographers. Under the terms of its agreements with the photographers, Minden holds the exclusive right to sublicense the photographs to third-parties. However, the photographers retain the right to (1) use the photographs themselves; and (2) license the photographs to third-parties.

Defendant John Wiley published as part of a textbook photographs licensed from Minden. Minden alleges that John Wiley committed copyright infringement by exceeding the scope of John Wiley's license for photographs that Minden sublicensed on behalf of numerous photographers. Specifically, Minden alleges that John Wiley published hundreds of thousands of textbooks containing the licensed photographs, while only paying for the reproduction of the photographs in 20,000 textbooks.

John Wiley moved to dismiss Minden's infringement claim on the ground that Minden is not the owner of the copyrighted works and therefore did not have standing to bring a copyright infringement claim. Under 17 U.S.C. § 501(b) of the Copyright Act, only "[t]he legal or beneficial owner of an exclusive right under a copyright" can institute a lawsuit for copyright infringement. The district court agreed with John Wiley and found that Minden did not own an exclusive right in the asserted copyrights and dismissed the claim. Minden appealed.

The Copyright Act confers on the copyright owner a bundle of exclusive rights, and an owner is entitled under 17 U.S.C. § 201(d)(2) to transfer any of the exclusive rights comprised in a copyright, including any subdivision of those rights. Indeed, the Ninth Circuit provided the example of an author of a novel who might convey the right to reproduce a hardcover edition of the novel to one person and convey the right to create a derivative work, such as a movie, to another. Based on this principle, the Ninth Circuit reversed the district court decision.

The court found that although the photographers retain certain licensing rights, Minden should still be considered an exclusive licensee. Specifically, the photographers have granted to Minden the exclusive right to sublicense the work. The essence of an exclusive license, the Court concluded, is that the copyright holder permits the licensee to use the protected materials for a specific use and promises that the same permission will not be given to others. Accordingly, the Court held that Minden owns exclusive rights and therefore has standing to sue under the Copyright Act.

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If you have any questions about the Court's decision or how it may impact your business, please contact one of our [Copyright Attorneys](#).