

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Overview Books, LLC and Lev Tsitrin,

v.

No. 05-775 C

The United States

COMPLAINT

Plaintiffs, Overview Books, LLC and Lev Tsitrin, by their attorney Norman J. Finkelshteyn, complaining of the defendants, allege upon personal knowledge and information and belief as follows:

1. That the jurisdiction of this court over the herein controversy is based on the Tucker Act, 28 U.S.C. § 1491 and the takings clause of the Fifth Amendment of the US Constitution.
2. That from April of 2004 the plaintiff, Overview Books, LLC (“Overview Books”), was and still is a limited liability company duly formed and operating under the laws of the State of New York as a book publishing business and having its principle office in Brooklyn, New York.
3. That plaintiff, Lev Tsitrin (“author”, “writer”), under the pseudonym Vel Nirtist, is the author of the book “The Pitfall of Truth” and that this book was published by Overview Books in 2005.
4. That the Library of Congress is an agency of the legislative branch of the U.S. government and that James H. Billington is at this time, and has been from 1987, the Librarian of Congress, the chief officer of the Library of Congress.
5. That the Library of Congress operates the Cataloging in Publication (“CIP”) Program, through which a bibliographic record is prepared by the Library of Congress for a book that has not yet been published. When the book is published, the publisher includes the CIP data on the copyright page thereby facilitating book processing for libraries and book dealers. Participation in the CIP Program is free.
6. That the CIP process begins when a publisher transmits a completed CIP Data Application form and the full text or, at minimum, core required materials to the Library of Congress.
7. That the CIP Division staff review the application and text for completeness and eligibility, assign a Library of Congress Control Number (LCCN) and forward the application to the cataloging division with the appropriate subject expertise.
8. That Catalogers then complete the descriptive cataloging (establishing new name authority records in the Library's name authority files as appropriate), assign subject headings (establishing new headings in the Library's subject authority file as appropriate), and assign full Library of Congress and Dewey decimal classification numbers. Then the completed CIP data is returned to the publisher, for printing on the verso of the title page.

9. That at the same time, a machine-readable version of the record is distributed to large libraries, bibliographic utilities, and book vendors around the world.
10. That afterwards, upon receipt from the publisher of the published book by the CIP Division, Library staff add other data elements to the catalog record (such as pagination and size) and ensure that the data elements in the record accurately describe the published work. Changes in title, subtitle, series, author, or subject may be made at this time.
11. That after verification, the machine-readable version of the record is again distributed to large libraries, bibliographic utilities, and book vendors around the world.
12. That this final verification stage is particularly important to book vendors and libraries with automated systems. The latter expect the Library of Congress to verify the CIP record immediately after the book is published. Otherwise, each library would be required to individually update and verify these records.
13. That book vendors also require the verified record because many libraries that purchase their books from a vendor expect them to be shipped with catalog card sets that reflect the final verified CIP record.
14. That all of the above described services are provided for free by the United States Government to all publishers who meet the CIP eligibility requirements for all of the books they submit.
15. That in September of 2004, Overview Books applied for a CIP record for “The Pitfall of Truth”.
16. That the Library of Congress rejected “The Pitfall of Truth” not because of any issues with the book but because one eligibility requirement for the CIP program is that the book be published by a publisher who has published the books of three or more authors.
17. That, as a book which was ineligible for CIP because the publisher is too small, or had the author chosen to publish without contracting a publisher, the only registration option is the Preassigned Control Number (“PCN”) program, an alternative, second class manner in which the Library of Congress assigns the LCCN.
18. That under the PCN program, while an initial bibliographic record is created, the book is not placed on any of the lists of the CIP program nor is information distributed to any of the channels that it would be distributed to under the CIP.
19. That, once registered under the PCN program, the book is no longer eligible to be registered under CIP.
20. That, without being catalogued in the CIP system, a book will not be picked up by the large number of libraries and vendors who require CIP catalogue listing.

21. That the distinction drawn by the CIP regulations between bona fide publishers who have published books by three authors and those who have published books by fewer than three authors is arbitrary.
22. That the distinction drawn by the CIP regulations between books published by publishers who have published books by three or more authors and books which the author chose to publish himself or with a smaller publisher is arbitrary.
23. That the Library of Congress thus assures that books published by small, new publishers and written by those writers who chose to reject the big publisher system either by going with a small publisher or by attempting to reap the rewards of their work themselves are kept out of large libraries and any number of book stores and vendors who, as a matter of convenience have chosen to use CIP cataloging data.
24. That the Library of Congress regulations thus substantially and impermissibly burden the First Amendment expression of such writers.
25. That the Library of Congress regulations thus likewise substantially and impermissibly burden the First Amendment expression of such small publishers inasmuch as a company's choice to publish a given work is an exercise of First Amendment privilege.
26. That, inasmuch as publishers routinely make judgments to accept or reject books based on criteria that would be forbidden to a government actor by the First Amendment, and inasmuch as only the established publishers have access to the CIP system and therefore only books published by them are able to enter the library system, the Library of Congress has in effect passed to such publishers the governmental power to prevent access to the "public square" represented by the libraries. The CIP regulations have therefore caused the vast majority of editorial decisions on the part of established publishers to become an illegal governmental infringement of the First Amendment expression of authors impacted by such decisions.
27. That the Library of Congress regulations thus substantially discourage writers from signing with the small, new publishers – as the books of such writers will be permanently ineligible for CIP cataloging and thus permanently kept out of libraries and away from any vendors who use the CIP catalogue.
28. That by assuring that the books of small, new publishers are not picked up by large libraries and other vendors who require the CIP catalogue listing, the Library of Congress denies these small publishers a substantial market, while at the same time subsidizing marketing by large, established publishers.
29. That the Library of Congress regulations thus substantially and impermissibly drive and control the publishing market by propping up the growth of established publishers while assuring that the small, new publishers are deprived of a fair shot at income from the substantial library market and substantially disadvantaged in their efforts to attract writers and expand their catalogue and their business.
30. That the Library of Congress regulations thus, in effect force all but the bravest (and perhaps most foolhardy) writers to sign contracts with large, established publishers.

31. That the Library of Congress regulations thus substantially and impermissibly burden the rights of Association of writers and publishers.

32. That the Library of Congress regulations thus substantially and impermissibly burden the rights of freedom of Contract of writers and publishers.

33. That thus, by denying the benefits of the CIP program to plaintiff, Lev Tsitrin as punishment for his choice to opt out of the big-publisher system and retain control and reap the financial rewards of his intellectual property, the Library of Congress regulations have effected a taking of property rights of plaintiff, Lev Tsitrin.

34. That thus, by denying the benefits of the CIP program to plaintiff, Overview Books, as punishment for its choice to enter into the business of publishing and attempt to compete with the big-publisher system, the Library of Congress regulations have effected a taking of property rights of plaintiff, Overview Books.

WHEREFORE, plaintiffs respectfully request that this court grant judgment against the United States in the amount of Five Hundred Thousand Dollars (\$ 500,000.00), invalidating that portion of the CIP regulations which discriminate between books published by publishers who have previously published books by three or more authors and those published by smaller publishers or the authors themselves, and such other and further relief as this court may deem just and proper, including costs and expenses that the plaintiffs incur in pursuing the matter.

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Lev Tsitrin and  
Overview Books, LLC (by Lev Tsitrin, principal)

Dated: July 18, 2005