



A2P2 ISSUE BRIEF: *GREAT MINDS V. OFFICE DEPOT*

JANUARY 2020

ABOUT *GREAT MINDS V. OFFICE DEPOT*

Great Minds v. Office Depot is a case recently decided by the Ninth Circuit Court of Appeals. Great Minds, an educational-based non-profit, created a math curriculum called Eureka Math. In addition to selling Eureka Math in print form, it released a digital version online under a CC BY-NC-SA license. At issue in this case is the interpretation of the “NC” element of the CC license, which limits reproducing and sharing to noncommercial purposes only.

Office Depot provides copy services for public schools and school districts and makes copies of Eureka Math materials for school use in exchange for a fee. In 2017, Great Minds filed suit against Office Depot, alleging copyright infringement and a breach of contract for its commercial reproduction of Eureka Math. Great Minds asserts that the noncommercial restriction in the CC license requires print shops like Office Depot to negotiate a license and pay royalties to Great Minds if they wish to reproduce Eureka Math for their own profit.

In December 2019, the Ninth Circuit held that Office Depot did not itself become a licensee of the CC BY-NC-SA license or otherwise infringe on the Great Minds’ copyright when it made copies of Eureka Math materials for a profit on behalf of schools.

Read More: [Great Minds v. Office Depot, Inc.](#), No. 18-55331 (9th Cir. 2019)

WASN’T THERE A SIMILAR CASE IN ANOTHER JURISDICTION?

Yes. In a ruling affirmed by the Court of Appeals for the Second Circuit, the district court in *Great Minds v. FedEx Office and Print Services* held that a noncommercial CC license could not “be read to preclude a licensee from hiring someone to make copies of [Eureka Math] so the licensee can use them for a ‘noncommercial’ purpose.” In fact, prior to the *Great Minds v. Office Depot* case, Great Minds and Office Depot had a licensing agreement whereby Great Minds permitted Office Depot to make copies in exchange for a royalty payment. Office Depot terminated this royalty agreement after the district court decision in the *FedEx* case.

Read More: [Great Minds v. FedEx Office and Print Services](#), 886 F.3d 91 (2d Cir. 2018)

WHAT WAS THE COURT'S REASONING?

The Ninth Circuit examined the issue of whether Office Depot became a licensee when the schools used it to exercise their rights under the CC license for Great Minds' materials. The court decided that it does not. Instead, the court held that as licensees, the schools could hire a third-party contractor, including one acting for commercial gain, to help further the licensee's own licensed rights, and the license shelters Office Depot's commercial copying of Eureka Math on their behalf. It stated that to hold otherwise would contravene the intent of the license and undermine its utility.

Similarly, in the case against FedEx the Second Circuit reasoned that, in view of the absence of any clear language to the contrary, licensees (like schools) can use third-party agents (like print shops) in furtherance of their own permitted noncommercial uses. In that case, the court held that FedEx was a mere agent of the school districts when it reproduced Great Minds' materials, and because the school districts were using the materials for permissible purposes, FedEx's activities did not breach the license.

Read More: [*Appeals Court Issues Important Opinion for Open Access Community and Licensees of Creative Commons Non-Commercial Licenses*](#), Elizabeth Yandell for Authors Alliance
[*U.S. Appellate Court Enforces CC's Interpretation of NonCommercial*](#), Diane Peters, Creative Commons
[*A Creative Commons-Licensed Work Walks into a Copy Shop – Great Minds v. Office Depot*](#), Thomas Key, IPKat

WHAT DO THESE CASES MEAN FOR STUDENTS AND EDUCATORS?

The Ninth and Second Circuit rulings provide additional clarity for students and educators who want to reproduce and use works licensed under CC licenses which include a NC restriction. Instead of limiting reproduction to at-cost services, these decisions indicate that noncommercial users can employ third-party agents to reproduce material to facilitate their noncommercial uses.