

Supreme Court Developments in Intellectual Property Law

“The past year has brought with it many changes, and the tumultuous realm of intellectual property law is no exception. From a pair of holdings that made copyright claims more difficult when the government is involved on either side to an anticipated reexamination of an old doctrine of patent law, the pandemic has not prevented the Supreme Court from further refining the field of intellectual property law,” discusses Erick J. Poorbaugh in *Dunlap Bennett & Ludwig’s blog*.

“In a holding that hits particularly close to home for those of us in the legal profession, a five-justice majority ruled that annotations to statutory compilations are not copyrightable if they are drafted under a government entity. *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498 (2020). The Court held that even though these annotations were drafted by a private company (Lexis) and were not legally binding, the fact that they were commissioned and owned by the government brought them within the ambit of the ‘government edicts doctrine,’ which provides that official interpretations of the law are not copyrightable. In addition to its legal analysis, the Court also considered the practical effects of its decision. The Court found that charging money for government-commissioned annotations effectively creates two versions of the law—an ‘economy-class’ unannotated version that omits key information such as which statutes have been invalidated and a ‘first-class’ annotated version that contains this information. The Court concluded that this disparity puts the poor at a disadvantage in learning what the law actually requires. This holding drew two dissents that not only challenged the majority’s application of the law but also its practical analysis. Justice Thomas argued that the new rule will deter companies from producing government-commissioned

annotations, leaving only the more expensive fully-private annotations and thus increasing the disadvantage suffered by the poor. Having an experienced attorney on your side to address any questions about intellectual property can be beneficial.”

Read the article.