

No. 17-\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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DRK PHOTO, a Sole Proprietorship,  
*Petitioner,*

v.

MCGRAW-HILL GLOBAL EDUCATION HOLDINGS, LLC  
and MCGRAW-HILL SCHOOL EDUCATION HOLDINGS, LLC,  
*Respondents.*

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**On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit**

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**PETITION FOR A WRIT OF CERTIORARI**

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February 2, 2018

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

## QUESTIONS PRESENTED

1. The Copyright Act provides that the “legal or beneficial owner” of copyright “is entitled” to institute an action for infringement, 17 U.S.C. § 501(b), but Section 501(b) does not say whether an assignee of an accrued infringement claim, who is not a copyright owner, has standing. The Ninth Circuit in this case held that Petitioner, a stock photography agency authorized to issue licenses for use of photographs and share licensing revenue, is not a copyright owner and therefore lacks standing to sue its licensee for infringing copyright. The Ninth Circuit so held even though 74 of Petitioner’s contributing photographers executed assignments granting it “all copyright rights and complete legal title in the Images” at issue, together with accrued infringement claims.

The first question is: Whether an assignee of an accrued claim who is not a legal or beneficial owner of copyright has standing to sue for infringement, as the Fifth Circuit ruled in *Prather*,<sup>1</sup> or does not have standing, as the Ninth Circuit ruled in *Silvers*?<sup>2</sup>

2. The second question is: Whether an unequivocal transfer of copyright ownership, together with accrued claims, is effective to give the transferee the statutory right to sue as legal owner of copyright, even when the purpose of the transfer is to facilitate an infringement action?

3. The third question is: Whether “beneficial owner” – which the Copyright Act does not define – extends to an assignee of accrued claims who has pre-existing interests in the copyright and is injured by infringement?

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<sup>1</sup> *Prather v. Neva Paperbacks, Inc.*, 410 F.2d 698 (5th Cir. 1969).

<sup>2</sup> *Silvers v. Sony Pictures Entm’t, Inc.*, 402 F.3d 881 (9th Cir. 2005).

**PARTIES TO THE PROCEEDING AND  
CORPORATE DISCLOSURE**

There are no parties to the proceedings other than those listed in the caption. Petitioner DRK Photo was plaintiff in the district court and appellant in the court of appeals. Respondents McGraw-Hill Global Education Holdings, LLC and McGraw-Hill School Education Holdings, LLC were defendants in the district court and appellees in the court of appeals.

Petitioner DRK Photo, a sole proprietorship, is not subject to the corporate disclosure requirements of S. Ct. Rule 29.6.

## TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE .....	ii
TABLE OF AUTHORITIES.....	vi
OPINIONS BELOW .....	1
JURISDICTION .....	1
STATUTORY PROVISIONS INVOLVED.....	1
INTRODUCTION.....	2
STATEMENT OF THE CASE .....	5
A. Statutory Background .....	5
B. The fragmented decision in <i>Silvers</i> and the bare-right-to-sue rule .....	6
C. The parties and the transfers of copyright ownership and accrued claims at issue....	9
D. The District Court proceedings .....	11
E. The Ninth Circuit proceedings .....	12
1. The panel decision .....	12
2. Judge Berzon's concurrence .....	16
3. Denial of rehearing <i>en banc</i> .....	18
REASONS FOR GRANTING THE WRIT .....	18

## TABLE OF CONTENTS—Continued

	Page
I. THE PETITION SHOULD BE GRANTED TO RESOLVE A CIRCUIT-SPLIT REGARDING ASSIGNABILITY OF COPYRIGHT INFRINGEMENT CLAIMS TO A NON-OWNER OF COPY-RIGHT, AND THE ASSIGNEE’S STANDING TO PURSUE THEM .....	19
A. <i>Silvers</i> conflicts with decisions of the Fifth and Second Circuits .....	19
B. The Ninth Circuit’s bare-right-to-sue rule is erroneous, and conflicts with the statutory text and this Court’s precedents .....	24
II. THE PETITION SHOULD ALSO BE GRANTED TO RESOLVE CONFUSION ABOUT TRANS-FERS OF COPYRIGHT OWNERSHIP, AND THE EXTENT OF “BENEFICIAL OWNER-SHIP” OF COPYRIGHT.....	30
A. The bare-right-to-sue rule leads to wasteful litigation invalidating crystal clear transfers of copyright ownership for purposes of litigation .....	30
B. The Court should take this opportunity to examine the important question of who qualifies as “beneficial owner” of copy-right under the 1976 Copyright Act.....	33

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