

A “Side Note” About Ripeness

Article By:

G. Luke Burton

The Sixth Circuit recently decided [OverDrive Inc. v. Open E-Book Forum](#), a copyright case with an Article III twist. Pertinent here, the plaintiff argued that a potential transfer of assets—that might or might not occur in an impermissible way—would (if it occurred in that certain way) “violate the [Copyright] Act in the future.” That framing was bound to perk up the ears of any federal court, and the panel’s (Boggs, [Sutton](#), Nalbandian) application of the ripeness doctrine to the case at hand was straightforward; it concluded that the plaintiff was asking the federal courts to wade into a hypothetical dispute, riddled with “contingencies and speculation” that “obstruct federal ‘judicial review.’”

Notably, however, the panel offered a “side note” forecasting a *different* future dispute – this one about ripeness doctrine. The standard, two-question ripeness inquiry asks (1) “[d]oes the claim arise in a concrete factual context and concern a dispute that is likely to come to pass?” and (2) “[w]hat is the hardship to the parties of withholding court consideration?” The *OverDrive* panel notes that just “one negative answer creates a ripeness problem.” But could a court really ever answer “yes” to the first question, but then decline to exercise jurisdiction based on a “no” answer to the second? The *OverDrive* panel thinks that’s “doubtful,” pointing to recent Supreme Court precedent reminding federal courts that their “obligation to hear and decide cases within [their] jurisdiction is virtually unflagging.” *Kiser v. Reitz*, 765 F.3d 601, 606–07 (6th Cir. 2014) (internal quotation marks omitted) (quoting *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1386 (2014)). “For now,” the panel says that courts should continue to look at both questions, see *Trump v. New York*, 141 S. Ct. 530, 536 (2020) (considering both ripeness questions), though “[p]erhaps over time the second inquiry will merge into the first, merely offering a way of establishing concreteness, or its absence[.]” Of course, that determination will have to wait for a future dispute.

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