

Yang v. Mic Network Inc.

Nos. 20-4097-cv(L), 20-4201-cv (XAP), 2022 U.S. App. LEXIS 8195 (2d Cir. Mar. 29, 2022)

Year	2022
Court	United States Court of Appeals for the Second Circuit
Key Facts	Plaintiff Stephen Yang (“Yang”) licensed a photograph he took of Dan Rochkind (“Rochkind”) to the <i>New York Post</i> , which ran the photograph in an article about Rochkind entitled “Why I Won’t Date Hot Women Anymore.” Defendant Mic Network, Inc. (“Mic”) posted its own article entitled “Twitter Is Skewering the ‘New York Post’ for a Piece on Why a Man ‘Won’t Date Hot Women’.” The Mic article included a screenshot of the <i>Post</i> article that captured the headline and a portion of Yang’s photograph. Mic did not obtain a license to use the photograph. In response, Yang sued Mic for copyright infringement, and Mic moved to dismiss, asserting fair use. The district court granted Mic’s motion, concluding that its use of Yang’s photograph was fair use. Yang appealed the order and judgment.
Issue	Whether using a screenshot from an article, including part of a photograph, to report on and criticize the article constitutes fair use of the photograph.
Holding	On appeal, the court decided that the first factor, the purpose and character of the use, weighed in favor of fair use. As an initial matter, the panel held that it was not error for the district to decide transformativeness on a motion to dismiss in this case because the only two pieces of evidence needed were the original and secondary works. The court held that, in addition to identifying the subject of Mic’s criticism, Mic, also transformed the photograph by critiquing and providing commentary on the <i>Post</i> article. Mic did not use the photograph “merely as an illustrative aid,” and thus its use was for different purpose than the original. The second factor, the nature of the copyrighted work, had limited weight in the court’s analysis after it held that the use was transformative and thus “d[id] not counsel against a finding of fair use.” Likewise, the third factor, the amount and substantiality of the work used, did not disfavor fair use as the court agreed with the district court’s conclusion that Mic’s use of the image was reasonable to satirize the <i>Post</i> article. The court determined that the fourth factor, the effect of the use on the potential market for or value of the work, also favored fair use. The court concluded that Mic’s screenshot was not a competing substitute for Yang’s work because Mic did not simply republish the photograph, but instead used a screenshot consisting of a “significantly” cropped version of the work along with the <i>Post</i> headline. Further, Yang failed to plausibly allege that a market exists for “photographs that happen to be featured in news articles criticizing the original article in which the photograph appeared.” Weighing the factors together, the court concluded that the district court properly dismissed Yang’s copyright infringement claim on fair use grounds.
Tags	News Reporting; Photography
Outcome	Fair use found

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