

**Comerica Bank & Trust, N.A. v. Habib**  
**No. 17-12418-LTS, 2020 U.S. Dist. LEXIS 1343 (D. Mass. Jan. 6, 2020)**

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| Year      | 2020                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Court     | United States District Court for the District of Massachusetts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Key Facts | Defendant, Kian Andrew Habib, (“Habib”), video recorded portions of live musical performances by Prince Rogers Nelson (“Prince”), and subsequently uploaded five excerpts from these recordings to his YouTube channel. These five recordings contained recognizable portions of six musical compositions that Prince had registered with the U.S. Copyright Office. Habib descriptively titled the videos as “[a]mazing” and “rare” Prince performances and encouraged YouTube users on his page to “subscribe and comment you won’t regret it!”, but did not otherwise comment on or criticize the videos. YouTube removed the videos after receiving takedown notices alleging that the works infringed Prince’s copyrights. Habib responded with counter-notifications claiming that these videos were fair use. After receiving the counter-notifications, Plaintiff, Comerica Bank & Trust (“Comerica”), on behalf of Prince’s estate, sued Habib for copyright infringement and violations of the anti-bootlegging statute. Both parties moved for summary judgment on fair use.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Issue     | Whether uploading unauthorized audiovisual recordings of live performances of musical compositions constitutes fair use of the compositions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Holding   | The court determined that the first factor, the purpose and character of the use, decisively weighed against fair use. First, the court rejected Habib’s argument that he transformed the work by shooting the videos from a specific vantage point while alternating between shots of Prince and the audience. Further, the court found that Habib failed to transform the videos because he did not alter the music in any way. Additionally, the court disagreed with Habib’s contention that his use was noncommercial because he received non-monetary benefits by posting these videos to gain more YouTube subscribers and increase traffic on his channel. The second factor, the nature of the copyrighted work, also weighed against fair use because Prince’s musical compositions were highly creative works that are at the core of copyright protection, even though they had been previously published. The court found the third factor, the amount and substantiality of the work used, also weighed against fair use because Habib captured significant and valuable portions of the six musical compositions, which were essentially the “heart” of the works. Lastly, the court determined the fourth factor, the effect of the use on the potential market for or value of the work, weighed against fair use as well. The court held that Habib’s videos diverted traffic away from Prince’s authorized YouTube channel, which deprived his estate of advertising revenue. Further, the poor quality videos harmed the estate’s interest in protecting and policing the integrity of secondary uses of Prince’s compositions. As all four factors weighed against fair use, the court granted Comerica’s motion and denied Habib’s motion for summary judgment on fair use. |
| Tags      | First Circuit; Film/Audiovisual; Music                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Outcome   | Fair use not found.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

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