

Marano v. Metro. Museum of Art
844 F. App'x 436 (2d Cir. 2021)

Year	2021
Court	United States Court of Appeals for the Second Circuit
Key Facts	Plaintiff Lawrence Marano, a professional photographer, took a photograph of Eddie Van Halen playing his “Frankenstein” guitar at a concert (the “Photograph”). The Metropolitan Museum of Art (the “Met”), a nonprofit museum that displays works of art to the public, included the Photograph in an online catalogue for a physical exhibition on rock and roll instruments. The catalogue included 185 webpages representing the exhibit objects on physical display. The Photograph was displayed as a thumbnail image on the webpage discussing the “Frankenstein” guitar, along with a large photograph of the guitar, two thumbnail images, and two paragraphs of text describing the guitar’s history and technical specifications. Online visitors could click on the Photograph’s thumbnail to view a larger version of it. Marano sued the Met for willful copyright infringement, and the district court found that the Met’s use of the Photograph was a fair use. Marano appealed.
Issue	Whether posting a photograph in a museum exhibit’s online catalogue to depict an object shown in the Photograph is a fair use.
Holding	The appellate panel held that the first factor, the purpose and character of the use, strongly favored fair use. The Met’s exhibition transformed the Photograph by foregrounding the instrument rather than the musician playing it. The Met used the Photograph to highlight the unique design of the Frankenstein guitar and its significance in the development of rock and roll instruments. In contrast, Marano’s purpose was to show what Van Halen looked like while performing. Further, the Photograph appears alongside other photographs of the guitar and text discussing the guitar’s genesis, specifications, and impact on rock and roll music. The panel found the Met’s use not to be for a commercial purpose even though the museum charges an entry fee for some visitors because the Met’s “free and publicly available” website extends its “cultural and academic reach.” The second factor, the nature of the work, weighed in favor of Marano because the Photograph is a “creative work of art,” but the court held this factor was of “limited usefulness” given that the Met used the Photograph for a transformative purpose. The third factor, the amount and substantiality of the work used, did not weigh against fair use because, although the Met used the Photograph in its entirety, this was necessary to its purpose: serving “as one of many ‘historical artifacts’ in the exhibition.” The fourth factor, the effect of the use upon the potential market for or value of the work, favored fair use. There was no indication that the Met’s use of the Photograph on a web page describing the Frankenstein guitar could impair any other market for use of the Photograph. Rejecting Marano’s argument that a fair use holding in this case would effectively grant museums a blanket exemption from copyright infringement of photographs, the panel concluded the district court had specified that fair use determinations are case-specific; and its own analysis of the factors indicated that the Met’s specific use of the Photograph was a fair use.
Tags	Education/Scholarship/Research; Internet/Digitization; Photograph
Outcome	Fair use found

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