

**Murphy v. Millennium Radio Grp. L.L.C.,
650 F.3d 295 (3d Cir. 2011)**

Year	2011
Court	United States Court of Appeals for the Third Circuit
Key Facts	Plaintiff Peter Murphy photographed two radio show hosts for local radio station WKXW, which was owned by defendant Millennium Radio Group, LLC. Plaintiff authorized <i>New Jersey Magazine</i> to use the photograph in a “Best of New Jersey” article that named the two hosts the “best shock jocks” in New Jersey. After the article’s publication in <i>New Jersey Magazine</i> , an unknown WKXW employee scanned the photograph, removed references to the “Best of New Jersey” article and other identifying information from the photograph, posted the modified version of the photograph on the WKXW website, and invited users to send WKXW photo-manipulated versions of the photograph. WKXW posted twenty-six photo-manipulated submissions on its website. Plaintiff alleged that defendants Millennium Radio Group and the two radio show hosts infringed his copyright in the photograph. Plaintiff appealed the district court’s judgment in favor of defendants.
Issue	Whether it was fair use for defendants to post plaintiff’s photograph on its website without permission and invite website guests to create derivative works using photo-manipulation software.
Holding	The court held that defendants’ unauthorized use of plaintiff’s photograph did not constitute fair use. The court rejected defendants’ argument that their use was transformative because it qualified as “news reporting” by using the image to report news of the award to the WKXW radio show hosts. The court reasoned that defendants’ use of the photograph in no way commented or critiqued the original, but merely amounted to an appropriation of the photograph to illustrate their announcement. The court also found that the use was essentially to promote the show, which was commercial in nature. The court then determined that defendants’ use adversely impacted the plaintiff’s market. Though defendants sought to persuade the court that because the radio hosts no longer worked as a team, the marketable nature of the photograph’s story in the magazine article was fleeting, the court considered that to be a speculative claim and noted that defendants must have valued the photograph enough to use it on the WKXW website. The court also found that both the creative nature of the work and the fact that the image was copied in its entirety weighed against a finding of fair use.
Tags	Third Circuit; News reporting; Photograph
Outcome	Fair use not found

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