

**Salinger v. Random House, Inc.,
811 F.2d 90 (2d Cir. 1987)**

Year	1987
Court	United States Court of Appeals for the Second Circuit
Key Facts	Defendants Ian Hamilton and Random House, Inc. collaborated to publish a biography of well-known author, plaintiff J.D. Salinger. Defendants reproduced, quoted or paraphrased several of Salinger's unpublished letters, which their recipients had contributed to library collections. When Salinger learned that defendants used the letters, he registered them and filed a lawsuit seeking a preliminary injunction. Salinger appealed the district court's ruling that defendants' use of the letters was fair use.
Issue	Whether defendants' unauthorized reproduction, quoting and paraphrasing of Salinger's unpublished letters for use in a biography of Salinger's life was fair use.
Holding	Reversing the lower court, the appeals court ruled that defendants' unauthorized infringing acts were not permissible fair use. Because the letters were unpublished, the court found that a more limited scope of fair use was required, relying on <i>Harper & Row, Publishers, Inc. v. Nation Enters.</i>, 471 U.S. 539 (1985). Considering the nature of the works, the court ruled that being unpublished weighed strongly in Salinger's favor. For the amount and substantiality of the portion used, the court determined that defendants' use favored a finding against fair use because it was excessive for unpublished letters. For the effect on the marketplace, the court agreed with Salinger that paraphrasing and quoting could have a significantly adverse impact on the market for the letters, especially since defendants copied "virtually all of the most interesting passages of the letters." <i>Note:</i> 17 U.S.C. § 107 was amended in 1992 to add the following sentence: "The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors."
Tags	Second Circuit; Textual work; Unpublished
Outcome	Fair use not found

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