

**Seltzer v. Green Day, Inc.,
725 F.3d 1170 (9th Cir. 2013)**

Year	2013
Court	United States Court of Appeals for the Ninth Circuit
Key Facts	Plaintiff Derek Seltzer alleged that defendants infringed <i>Scream Icon</i> , his drawing of a screaming, contorted face that appeared as street art in Los Angeles and elsewhere. Defendant Roger Staub, a photographer and video designer, photographed <i>Scream Icon</i> on a brick wall in Los Angeles. Staub then incorporated a slightly modified version of the image into a video backdrop that was prominently featured during several concerts for defendant rock band, Green Day. Plaintiff appealed the district court’s ruling in defendants’ favor.
Issue	Whether a rock band’s unauthorized use of an artist’s illustration in the video backdrop of a stage show was fair use.
Holding	The court held that the band’s use of <i>Scream Icon</i> was fair use. The court found the use transformative because defendants’ used the original as “raw material” in the construction of a four-minute video backdrop in a way that was not simply a quotation or republication of <i>Scream Icon</i> . The court further held that defendants’ modifications to the image conveyed new information, aesthetics, insights, and understandings distinct from the original piece. The court also held that the prior public dissemination of the illustration—via plaintiff’s wide dissemination of the image as street art—weighed in favor of fair use and that defendants’ use of the drawing was not excessive in light of its transformative purpose. Finally, the court found that the use did not affect the value of the illustration or of plaintiff’s artwork in general.
Tags	Ninth Circuit; Film/Audiovisual; Painting/Drawing/Graphic; Photograph
Outcome	Fair use found

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