

United States v. Am. Soc’y of Composers, Authors and Publishers
599 F. Supp. 2d 415 (S.D.N.Y. 2009),
***vacated*, 627 F.3d 64 (2d Cir. 2010)**

Year	2009
Court	United States District Court for the Southern District of New York
Key Facts	AT&T Mobility, LLC (AT&T) applied to the American Society of Composers, Authors and Publishers (ASCAP) for a blanket license to publicly perform musical works represented by ASCAP. When the parties could not independently negotiate licensing fees for AT&T’s use of the works, ASCAP petitioned the court to set a rate for both interim and final licensing fees.
Issue	Whether AT&T’s previews of ringtones and ringback tones in their mobile store constituted fair use of protected works represented by ASCAP.
Holding	The court ruled that previewing the tones did not constitute fair use. The court determined that the previews were not a transformative use because they are exact copies of the music and did nothing to add a new expression, meaning, or message. Furthermore, the court reasoned that using the previews increased sales revenue, which meant the use had a commercial purpose. The court also weighed its determination that the works were creative, original works of music in ASCAP’s favor. Additionally, the court held that the previews were verbatim reproductions that copied the works’ expressive and qualitative value, further weighing against AT&T. Finally, since AT&T’s use was not found to be transformative, but to supersede the original work, the court ruled that market harm would likely occur, and that ASCAP and its members already had an established market for licensing previews.
Tags	Second Circuit; Internet; Music
Outcome	Fair use not found

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