

**Warner Bros., Inc. v. Am. Broad. Cos., Inc.,
720 F.2d 231 (2d Cir. 1983)**

Year	1983
Court	United States Court of Appeals for the Second Circuit
Key Facts	Plaintiffs, Warner Bros., Inc. and D.C. Comics, Inc., owned copyrights for the character “Superman” and works embodying Superman, including comic books, animated and live-action television series, and a motion picture. Defendant, ABC, Inc., created a television series called <i>The Greatest American Hero</i> which starred the fictional superhero “Ralph Hinkley.” Plaintiffs alleged that defendant’s Ralph Hinkley character and related promotional campaign materials infringed its Superman copyrights. Plaintiffs appealed the district court’s ruling that public confusion as to the origin of defendant’s superhero was unlikely as a matter of law.
Issue	Whether the parties’ superhero characters were sufficiently similar so that plaintiffs’ copyright claims should not be dismissed without a jury trial.
Holding	The court found that the characters Superman and Ralph Hinkley were not so substantially similar that consideration by a jury was required. Although the fair use defense was not raised or at issue, the court briefly addressed “fragmented literal similarity,” which was the duplication of exact, or nearly exact, wording of a fragment of the protected work. The court noted that with respect to such claims, the fair use defense can be raised. The court pointed out that it can be expected that phrases and other fragments of expression contained in successful works will become part of the national language, but that does not mean that such expression loses all protection. On the other hand, although the author of a well-known copyrighted phrase “is entitled to guard against its appropriation to promote the sale of commercial products,” original works of authorship with elements of parody have a stronger fair use defense against unauthorized use. The court emphasized that “[i]t is decidedly in the interests of creativity, not piracy, to permit authors to take well-known phrases and fragments from copyrighted works and add their own contributions or commentary or humor. After all, any work of sufficient notoriety to be the object of parody has already secured for its proprietor considerable financial benefit.” This discussion did not have any bearing on the outcome of the case, but provides insight on the role of parody in a fair use analysis. <i>Note: See also Warner Bros., Inc. v. ABC, Inc., 654 F.2d 204 (2d Cir. 1981).</i>
Tags	Second Circuit; Film/Audiovisual; Parody/Satire
Outcome	Preliminary ruling, mixed result, or remand

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