

MidlevelU, Inc. v. ACI Info. Grp.
989 F.3d 1205 (11th Cir. 2021)

Year	2021
Court	United States Court of Appeals for the Eleventh Circuit
Key Facts	MidlevelU, Inc., the operator of a revenue-generating website that provides resources for healthcare providers, publishes a free blog, which it makes available via an RSS feed. Newstex, doing business as ACI Information Group (“ACI”), is an aggregator of news publications. ACI created a subscription-based Scholarly Blog Index (the “Index”) that included summaries of licensed content and unlicensed content that ACI obtained by subscribing to RSS feeds, as well as bibliographic information and links to the original posts. Each Index entry also included an “iFrame”—a browsable, full-text “live snapshot” of the content that did not redirect to the original website. After discovering that ACI produced and published entries for 823 of MidlevelU’s articles, MidlevelU sent ACI a cease-and-desist letter, and MidlevelU removed the content that same day. However, entries for the content crediting ACI as the source and directing users to ACI’s site continued to appear in website repositories of subscribers. MidlevelU sued for copyright infringement and ACI, as part of its defense, asserted fair use. At trial, the jury found 43 instances of infringement and that ACI’s actions did not constitute fair use. ACI appealed.
Issue	Whether using online articles to create an index that includes article summaries and a full-text version of each article constitutes fair use.
Holding	The court concluded that the jury could have reasonably found that the use was not fair, so ACI was not entitled to judgment as a matter of law. The first factor, the purpose and character of the use, weighed against fair use because a jury could have found the Index was not transformative and the purpose was commercial. The court observed that “making copyrightable material searchable does not alone change the purpose of the material” and the iFrame of each article served the same purpose as the original. The court considered the second factor, the nature of the copyrighted work, to be “at most” neutral. Although most of MidlevelU’s articles were largely factual, others were “more creative and speak from the author’s personal experience.” As to the third factor, the amount and substantiality of the use, the court noted that ACI essentially provided its subscribers with access to the full-text content through the iFrames and “[e]ven disregarding the iFrames, reasonable minds can differ as to whether [ACI] used more of MidlevelU’s content than necessary” in creating the Index summaries. On the fourth factor, the effect of the use on the potential market for or value of the copyrighted work, the court observed that although MidlevelU’s articles were available for free and there no evidence of lost readership, a jury could view the Index as a market substitute for the articles as well as a “threat” to MidlevelU’s reputation due to the “low quality” of the Index summaries. In sum, the jury could have reasonably concluded that the use was not fair use.
Tags	Education/Scholarship/Research; Internet/Digitization
Outcome	Fair use not found

Source: U.S. Copyright Office Fair Use Index. For more information, see <https://www.copyright.gov/fair-use>.