

Estate of Anthony Barré and Angel Barré v. Carter, et al.
No. 17-1057 (E.D. Lou. July 25, 2017)

Year	2017
Court	United States District Court for the Eastern District of Louisiana
Key Facts	Plaintiff Anthony Barré was a well-known performance comedian and music artist in New Orleans who published his performances on YouTube; in 2010 he created a video entitled “Booking the Hoes from New Wildings,” in which he said the phrase, “What happened at the New Orleans,” and a video entitled “A 27 Piece Huh?”, featuring him saying, “Oh yeah baby, I like that” and “Bitch I’m back by popular demand.” Later that year, Barré was murdered; his sister, Angel, was appointed administrator of his estate and registered copyright claims in both videos. In 2016, Defendants, including Beyoncé Knowles Carter and her co-writers, performers, producers, record labels, distributors and publishers, released the song “Formation” on the album “Lemonade,” in which ten seconds of audio of Anthony Barré’s voice is featured saying the above three phrases. Defendants sold over 543,000 copies of “Formation” in the U.S., and the “Formation World Tour” (where, at least in some performances, Anthony Barré’s voice was used) resulted in revenues of over \$250 million. Plaintiffs filed suit for copyright infringement, among other claims, alleging that Defendants used Anthony Barré’s voice from the two videos without authorization or compensation. Defendants moved to dismiss Plaintiffs’ copyright claim for failure to state a claim.
Issue	Whether Defendants’ use of short clips of someone’s voice in a song and in live musical performances constitutes fair use.
Holding	After conducting the four-step analysis, the court could not find that the Defendants’ use was fair as a matter of law, and denied Defendants’ motion to dismiss. The court concluded that the first factor, purpose and character of the infringing work, “could ultimately weigh against a finding of fair use” because “Plaintiffs plausibly allege that Defendants did not add something new, with a further purpose or different character, but rather used unmodified audio clips from [the] videos,” rendering the use not transformative. Additionally, the court held the use was commercial. The second factor, nature of the copyrighted work, “could ultimately weigh against a finding of fair use” because Plaintiffs’ works are “creative and published.” The third factor, amount and substantiality of the portion used, weighed in favor of Plaintiffs because “even assuming . . . that the amount of Plaintiffs’ copyrighted works used is quantitatively small, the Court finds that Plaintiffs have plausibly alleged at this stage of litigation that the portions used by Defendants were qualitatively significant.” As to the final factor, effect of the use upon the potential market, the court stated that “Plaintiffs do not appear to make any allegations [in the complaint] that Defendants’ uncompensated appropriation of YouTube videos would adversely affect the market or potential market for Plaintiffs’ copyrighted works.” In briefing the motion to dismiss, however, Plaintiffs asserted that there was a “vibrant sampling licensing market” for YouTube videos and that Defendants “recognized the necessity of obtaining a license” to the videos; the court noted that the complaint could be amended. At any rate, because “no one factor in the four factor fair use test is dispositive,” the court found that “Plaintiffs have sufficiently alleged enough facts on the first three factors at this stage to overcome Defendants’ fair use defense on this motion to dismiss.” Accordingly, the court denied Defendants’ motion to the extent it sought to dismiss Plaintiffs’ copyright infringement claim on fair use grounds.
Tags	Fifth Circuit, Film/Audiovisual, Music
Outcome	Preliminary ruling, fair use not found

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