

Katz v. Google, Inc.
No. 14-14525 (11th Cir. Sept. 17, 2015)

Year	2015
Court	United States Court of Appeals for the Eleventh Circuit
Key Facts	Plaintiff Katz, a “commercial real estate tycoon,” owns the copyright in a photograph of himself that he has characterized as “compromising” and “embarrassing.” Defendant Chevaldina, “a disgruntled former tenant in one of Katz’s shopping centers,” found the photograph through a Google image search and reproduced it in several blog articles “devoted to sharply criticizing Katz” and his business practices. Katz initiated an infringement action, alleging direct infringement against defendant Chevaldina and contributory infringement against Google Inc. (Katz later dropped his claim against Google). At the district court level, the United States District Court for the Southern District of Florida ruled that Chevaldina’s reproduction of the photograph was fair use and entered summary judgment against Katz.
Issue	Whether defendant’s unauthorized reproduction of a photograph in blog posts critical of the photograph’s subject qualifies as fair use.
Holding	The Eleventh Circuit ruled that Chevaldina’s reproduction of the photograph in her blog posts was fair use. The court found that the first factor, the purpose and character of the use, weighed in Chevaldina’s favor. It held that Chevaldina’s reproduction was non-commercial, “primarily educational,” and served the transformative purpose of criticizing and satirizing Katz’s character. The court also weighed the second factor, the nature of the work, in defendant’s favor, finding the photograph to be “primarily a factual work,” explaining that it was “merely a candid shot in a public setting” and there was no evidence that the photographer “attempted to convey ideas, emotions, or in any way influence Katz’s pose, expression, or clothing.” The court found that the third factor, the amount of the work used, was neutral. Despite Chevaldina having reproduced the entire photograph in many of her blog posts, the court held that copying any less of the photograph “would have made the picture useless to [Chevaldina’s] story.” For the fourth factor, the effect of the use on the potential market for the work, the court found that “[s]ince there is no evidence Chevaldina’s use of the [p]hoto had or would have any impact upon any actual or potential market, the fourth factor weighs in favor of fair use.”
Tags	Eleventh Circuit; Education/Scholarship/Research; Photograph; Review/Commentary
Outcome	Fair use found

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