

**Penguin Grp. (USA), Inc. v. Am. Buddha,
No. 4:13-cv-02075-JGZ (D. Ariz. May 11, 2015)**

Year	2015
Court	United States District Court for District of Arizona
Key Facts	Plaintiff Penguin Group (USA), Inc. (“Penguin”) owned the publication rights to the following four works: <i>Oil!</i> by Upton Sinclair; <i>It Can’t Happen Here</i> , by Sinclair Lewis; E.J. Kinney’s translation of <i>The Golden Ass</i> , by Apuleius; and R.E. Lantham’s translation of <i>On the Nature of Things</i> , by Lucretius (collectively, “the Works”). American Buddha digitized and published the text of each Work, in its entirety, on its various websites. The text American Buddha included on its websites was identical to the Penguin-controlled text, but contained formatting alterations such as bold print, links and images. Penguin filed an action in the United States District Court for the District of Arizona, seeking to enjoin American Buddha from directly or indirectly infringing its copyrights in the Works. This decision pertains to the district court’s disposition of Penguin’s motion for summary judgment on its claim for injunctive relief.
Issue	Whether American Buddha’s digitization and publication of Penguin’s copyright protected works on its websites was fair use.
Holding	The court held that American Buddha’s digitization and publication of Penguin’s Works was not fair use. In reaching its conclusion, the court determined all four statutory fair use factors weighed in Penguin’s favor. The court found that the formatting changes American Buddha made to the Works, as they appeared on the American Buddha websites, were not sufficiently transformative to weigh in favor of a finding of fair use. The court also found that the Works at issue (fiction writings and translations) were creative in nature, that American Buddha essentially repackaged and reproduced the Works in their entirety, and that American Buddha’s unauthorized copying had the potential to impact both Penguin’s ability to control the quality of the distribution of the Works and the market for sale of the Works.
Tags	Ninth Circuit; Internet/Digitization; Textual work
Outcome	Fair use not found

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