

Disney Enters., Inc. v. VidAngel, Inc.
No. 2:16-cv-04109-AB (C.D. Cal. Dec. 12, 2016)

Year	2016
Court	United States District Court for the Central District of California
Key Facts	Plaintiffs, Disney, along with three other film studios, own copyrights to movies and television shows, which they license to services that in turn sell access to consumers via streaming or downloading. Defendant, VidAngel, runs a for-profit service, which allows customers to stream “filtered” versions of movies and television episodes, <i>i.e.</i> , versions with “objectionable content” removed. Before a VidAngel customer can watch a particular “filtered” movie or television episode, the customer must purchase the physical DVD from VidAngel, at which point VidAngel allows the customer to: review a list of “potentially objectionable content,” “select[] the types of content he or she wishes to have silenced or deleted,” and then instantly stream the “filtered” content. VidAngel “filters” the content it offers by purchasing a physical copy of it, decrypting the content, “tag[ging] the [unencrypted] files for over 80 types of potentially objectionable content” and then storing those files in re-encrypted fragments in the cloud. “VidAngel software assembles the [“filtered”] segments” when a customer later requests to stream a movie or television show. VidAngel’s “filtered” versions are thus created independently from the physical DVDs it sells to its customers, which customers may “sellback” to VidAngel the next day for \$1 less than the purchase price.
Issue	Whether a service’s unauthorized reproduction and streaming of movies and television shows—after removing certain segments at the request of individual customers that own a physical copy of the content—is fair use.
Holding	The district court preliminarily enjoined VidAngel’s unauthorized video editing and streaming services, finding that the plaintiffs had demonstrated a likelihood of success on their copyright infringement claims, while “VidAngel [had] not met [its] burden” of “showing that they are making fair use of the . . . copyrighted works.” Specifically, the court found that all four fair use factors weighed against fair use. With regard to the first factor, purpose and character of the use, the court found that VidAngel’s for-profit “filtering” service was not transformative and weighed “heavily” against fair use because it did “not add anything” to the works and used them for their original “intrinsic entertainment” purpose. The second factor, nature of the work, also weighed against fair use because motion pictures “are closer to the core of intended copyright protection,” making fair use “more difficult to establish.” The court also found that the third factor, the amount of work used, weighed against fair use because “[d]espite the fact that VidAngel’s service omits portions of each work,” it still performs “the heart of the movie,” <i>i.e.</i> , “the essential storyline, cinematography, and acting portrayals.” Lastly, the court found that the fourth factor, the effect of the use on the market for the work, weighed against fair use because VidAngel’s own survey evidence showed that its service “serve[d] as an effective substitute for [p]laintiffs’ unfiltered works.”
Tags	Ninth Circuit; Film/Audiovisual; Format shifting/Space shifting
Outcome	Fair use not found; Preliminary ruling

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