

**Fox Broad. Co. v. Dish Network, LLC,
No. 2:12-cv-04529-DMG-SH (C.D. Cal. Jan. 12, 2015)**

Year	2015
Court	United States District Court for the Central District of California
Key Facts	<p>Defendant Dish Network, LLC (Dish) developed and distributed the <i>Hopper</i>, a digital video recorder (DVR) with video on-demand capabilities. At the same time, Dish introduced a feature called PrimeTime Anytime with AutoHop. PrimeTime Anytime allowed subscribers to set a single timer to record primetime programming on major broadcast networks, including plaintiff Fox Broadcasting Co.’s (Fox’s) programs. Dish subscribers had to enable the service, and copies were stored on the DVR for a number of days pre-selected by Dish. AutoHop allowed subscribers to automatically skip commercials, after the time points of those commercials were indexed by Dish, using “quality assurance” copies of Fox’s works.</p> <p>Fox alleged direct and contributory infringement, and the Ninth Circuit affirmed the district court’s denial of a preliminary injunction because Fox had not established a likelihood of success on the merits of its claims. <i>Fox Broad. Co. v. Dish Network LLC.</i>, 723 F.3d 1067 (9th Cir. 2013) <i>amended and reh’g en banc denied</i>, 747 F.3d 1060 (9th Cir. 2014). In this subsequent district court proceeding, the parties filed motions for summary judgment which addressed, among other issues, whether Dish’s PrimeTime Anytime with Autohop features constituted fair use.</p>
Issue	Whether it was fair use for Dish to copy Fox’s programming for its PrimeTime Anytime service and to make separate copies of said programing for quality assurance purposes.
Holding	<p>Consistent with the Ninth Circuit’s fair use determination, which relied heavily on <i>Sony Corp. of Am. v. Universal City Studios, Inc.</i>, 464 U.S. 417 (1984), the district court held that the copying of Fox’s programming facilitated via Dish’s PrimeTime Anytime and AutoHop technology was fair use. Quoting the Ninth Circuit, the district court stated “[i]f recording an entire copyrighted program is fair use, the fact that viewers do not watch the ads not copyrighted by Fox cannot transform the recording into a copyright violation.” 723 F.3d at 1075.</p> <p>The district court further held that the copies Dish made for “quality assurance” purposes in indexing the times of commercials for the AutoHop functionality were infringing and not protected under the fair use doctrine. In reaching its conclusion, the court found that “quality assurance” copies were not transformative, were made for a commercial purpose, and had the potential to impair Fox’s ability to enter into similar licensing agreements with other future technology creators seeking to make analogous use of its works.</p>
Tags	Ninth Circuit; Film/Audiovisual; Format shifting/Space Shifting; Internet/Digitization
Outcome	Preliminary ruling, mixed result, or remand

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