

Dr. Seuss Enters., L.P. v. ComicMix LLC
983 F.3d 443 (9th Cir. 2020)

Year	2020
Court	United States Court of Appeals for the Ninth Circuit
Key Facts	Plaintiff owns the copyrights of works authored and illustrated by the late Theodor S. Geisel (a/k/a Dr. Seuss), including the book <i>Oh, the Places You'll Go!</i> and two other works at issue in this case (collectively, " <i>Go!</i> "). Plaintiff publishes the works and licenses the works for use in other entertainment products. Defendants combined elements of <i>Go!</i> and the sci-fi franchise <i>Star Trek</i> to create the mash-up book <i>Oh, the Places You'll Boldly Go!</i> (" <i>Boldly</i> "). Defendants copied liberally from <i>Go!</i> to parallel its visual style and textual structure. In a public Kickstarter funding campaign, Defendants contended that <i>Boldly</i> was a fair use of <i>Go!</i> . Plaintiff brought suit alleging copyright infringement of <i>Go!</i> After twice denying motions to dismiss Plaintiff's copyright claim, the district court granted Defendants' summary judgment motion, concluding that <i>Boldly</i> was a fair use of <i>Go!</i> Plaintiff appealed.
Issue	Whether the use of graphic, literary, and other elements from copyrighted works, where combined with elements from other works to create a "mash-up," is fair use.
Holding	The panel found the first factor, the purpose and character of the use, weighed against fair use because <i>Boldly</i> 's commercial use of Seussian elements was not a parody or otherwise transformative. The court concluded that <i>Boldly</i> did not critique or comments on <i>Go!</i> as a parody would; rather, <i>Boldly</i> mimicked <i>Go!</i> and "paralleled <i>Go!</i> 's purpose." On the second factor, the nature of the copyrighted work, the creative nature of <i>Go!</i> weighed against fair use. The third factor, the amount and substantiality of the work used, weighed "decisively" against fair use because <i>Boldly</i> closely replicated "the exact composition, the particular arrangements of visual components, and the swatches of well-known illustrations." The court also observed that Defendants used the "heart" of the works and rejected an argument to evaluate the amount taken relative to the "entire corpus of the author." The fourth factor, the effect of the use on the potential market for or value of the work, also weighed against fair use. The court held that, because fair use is an affirmative defense, Defendants had the burden of presenting favorable evidence about relevant markets and failed to do so. The court further observed that <i>Boldly</i> "intentionally targeted and aimed to capitalize on the same graduation market as <i>Go!</i> " and would likely curtail <i>Go!</i> 's existing and potential market for derivative works. Considering the four factors together, the court concluded that all factors weigh against fair use as <i>Boldly</i> was "a non-transformative commercial work that targeted and usurped <i>Go!</i> 's potential market." Accordingly, the panel reversed the district court's grant of summary judgment on fair use and remanded the case.
Tags	Painting/Drawing/Graphic; Parody/Satire; Textual work
Outcome	Fair use not found

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