

**Pac. & S. Co. v. Duncan,
744 F.2d 1490 (11th Cir. 1984)**

Year	1984
Court	United States Court of Appeals for the Eleventh Circuit
Key Facts	Plaintiff Pacific & Southern Co., Inc.'s television station broadcast four local news programs a day and sold tapes of its news broadcasts. Defendant Carol Duncan operated TV News Clips, which made unauthorized tape recordings of news reports and sold the tapes to parties who were mentioned in the news segments. Plaintiff brought a copyright infringement action after defendant recorded and sold one of plaintiff's news reports. Defendant appealed the district court's ruling that copying and selling the news reports was not a fair use.
Issue	Whether defendant's unauthorized recording and sale of a television station's news clips to the subjects of the news reports constituted fair use.
Holding	The court held that defendant's unauthorized recording and sale of plaintiff's news broadcasts did not constitute fair use. It determined that the commercial purpose and character of the use weighed heavily in plaintiff's favor. Additionally, the court found that the nature of defendant's use was neither productive nor creative; it merely involved the copying and selling of plaintiff's news broadcasts without any analysis or improvement to the work. Commenting on the significance of productive and creative uses, the court explained that, while the U.S. Supreme Court in <i>Sony Corp. of Am. v. Universal City Studios, Inc.</i> , 464 U.S. 417 (1984) did not establish being "productive" as an absolute prerequisite, the Supreme Court did recognize that the unproductive nature of a defendant's use was a legitimate consideration that could balance the equities against fair use. In this case, the court found that defendant's unproductive nature affected the balance against a fair use finding. The court also determined that defendant's use adversely affected the potential market for plaintiff's recordings since defendant's commercial activity overlapped with plaintiff's.
Tags	Eleventh Circuit; Film/Audiovisual; News reporting
Outcome	Fair use not found

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