

**Bain v. Film Indep., Inc.**

**No. CV 18-4126 PA (JEMx), 2020 U.S. Dist. LEXIS 141859 (C.D. Cal. Aug. 6, 2020)**

Year	2020
Court	United States District Court for the Central District of California
Key Facts	Plaintiff, Robin Bain, owns the copyright for the motion picture <i>Nowhereland</i> , which was also distributed as <i>Girl Lost</i> (the “Film”). Defendant Jessica Cesaro, professionally known as Jessica Haid, was an actor in the Film. After the Film was screened at festivals but before a commercial release, Haid retained Defendant LA Media Works, Corp. (“LA Media”) to edit scenes from the Film to create an acting reel she could use to showcase her skills to casting directors. Haid shared a watermarked version of the Film with LA Media through a Google Drive link. LA Media removed the watermark and produced two versions of the acting reel for Haid, each under 4 minutes long. Most of the approximately 40 clips were under 10 seconds long. One of the reels included a 1 minute and 9 second excerpt from a 2 minute and 37 second scene. Bain sued Haid, LA Media, and Film Independent, Inc. asserting, among other things, copyright infringement. The claims against Film Independent were dismissed and LA Media settled with Bain. On a motion for summary judgment, Haid contended that her use of the excerpts from the Film in her acting reel qualify as fair use.
Issue	Whether an actor’s use of film excerpts that show clips of her performance to create an acting reel for future casting endeavors after the film has aired in festivals but before commercial release is a fair use.
Holding	The court found that the first factor, the purpose and character of the use, strongly favored fair use. The court concluded Haid’s reel was transformative because its purpose is to further her career by showcasing her acting abilities to casting directors using “brief portions of selected scenes in a manner that conveys little information about the plot of the film” whereas the Film’s purpose is to tell a story. The second factor, the nature of the copyrighted work, disfavored fair use because the Film is a fictional work “entitled to broad copyright protection” and its release was limited to screening at six film festivals at the time of Haid’s use. The third factor, the amount and substantiality of the portion used in relation to the work as a whole, favored fair use. Haid’s reels each comprise less than 4% of the film’s 95 minute length and 38 of the 40 excerpts used lasted less than 10 seconds. The court noted that the longer excerpt from the 2 minute and 37 second “pivotal scene” of the Film presented a closer question, but concluded that Haid took no more than was necessary for her intended use of conveying her acting range. The fourth factor, the effect of the use upon the potential market or the value of the copyrighted work, also favored fair use. Although Haid hoped to be paid for future acting jobs as a result of this reel, the court found that there was no reasonable probability that distribution of a reel would interfere with the profitability of or market for the Film because the reel and the Film serve different market functions. Considering the factors together, the court found that Haid’s use was fair and granted summary judgment in Haid’s favor on the infringement claims.
Tags	Film/Audiovisual
Outcome	Fair use found