

**Monsarrat v. Newman**  
**28 F.4th 314 (1st Cir. 2022)**

Year	2022
Court	United States Court of Appeals for the First Circuit
Key Facts	In 2010, Plaintiff Jonathan Monsarrat created a post on a community forum discussion thread hosted on the Russian-owned social networking platform, LiveJournal. Monsarrat’s post responded to allegedly defamatory posts about him on the thread by threatening to report the other users for violations of LiveJournal’s harassment policy, which he quoted and linked to in the post. Monsarrat subsequently registered his post with the U.S. Copyright Office in 2012. In 2017, LiveJournal revised its terms of service to comply with Russian law, which permitted censorship. As a result, Defendant Ron Newman moved the forum, including Monsarrat’s registered post, to another platform, Dreamwidth, by copying the forum’s discussion threads and reposting them on Dreamwidth. Monsarrat sued for copyright infringement and Newman moved to dismiss the claim, asserting fair use. The district court held that Newman’s reproduction of the post as part of the discussion thread was fair use. Monsarrat appealed.
Issue	Whether copying a post from one social networking platform to another is fair use.
Holding	Considering the first fair use factor, the purpose and character of the use, the court found that Newman’s reproduction was “at least marginally” transformative because Newman “reproduced Monsarrat’s work for a fundamentally different reason than that which led to its creation.” The court noted that Monsarrat’s original purpose was to “encourage users . . . to immediately stop harassing him,” which could not have been Newman’s purpose in reproducing the post several years later. The court also found that Newman’s use was noncommercial as there was no indication that Newman reproduced the post “to accrue any profit,” a conclusion supported by Monsarrat’s “repeated concession” that the post had no commercial value. Although favoring fair use, the court gave the first factor little weight. The second factor, the nature of the copyrighted work, weighed strongly in favor of fair use because the public post was “factual and informational,” consisting primarily of a verbatim quote from the LiveJournal harassment policy and “brief workaday prose.” The third factor, the amount and substantiality of the portion used, favored neither side. The court, while acknowledging that copying the entire post could weigh against fair use, found that in this case it would have made “scant sense” for Newman to selectively copy only part of the post as that would have “misrepresented” what Monsarrat wrote. The court found the fourth factor, the effect of the use upon the potential market for or value of the copyrighted work, weighed strongly in favor of fair use. The court relied in part on Monsarrat’s admission that there was no potential market for the post. And although the court recognized that a work’s value is not limited to monetary terms, it rejected Monsarrat’s argument that the copyright itself bestowed the work with intrinsic value because “such a value would be present in every case, and thus prove to be largely beside the point in differentiating one case from another.” Balancing the factors, the court found fair use and affirmed the judgment dismissing Monsarrat’s claim.
Tags	Internet/Digitization; Textual Work
Outcome	Fair use found

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