

**Berlin v. E.C. Publ'ns, Inc.,
329 F.2d 541 (2d Cir. 1964)**

Year	1964
Court	United States Court of Appeals for the Second Circuit
Key Facts	Plaintiffs, popular songwriters including Irving Berlin, alleged that defendants, publishers, employees, and distributors of <i>Mad Magazine</i> , infringed the copyrights in twenty-five of their popular songs by publishing satirical parody lyrics to those songs. As evidence, they pointed to the satirical songs' titles, meters and occasional phrases taken from the plaintiffs' original lyrics. Defendants invoked the fair use doctrine. The district court ruled in favor of defendants regarding twenty-three of the twenty-five songs. Plaintiffs appealed.
Issue	Whether defendants' satires and parodies of plaintiffs' songs, which were limited to copying brief phrases without reproducing any of the copyrighted musical compositions, constituted fair use.
Holding	The court held that defendants' parodies of plaintiffs' songs were not infringing. Noting that the extent to which a parodist may borrow from the original work is unsettled, the court's analysis focused on the "substantiality" test—the quantitative and qualitative amount taken from plaintiffs' songs. According to the court, a parodist must be allowed to take as much as necessary to "recall or conjure up" the original. Defendants' use satisfied this test because disparities in theme, content, and style between the original lyrics and the parodies were extensive. Brief phrases taken from plaintiffs' songs were not greater than necessary to recall or conjure up the originals. Furthermore, the court held that the parodies clearly were not intended to fulfill demand for the originals, nor did they have such effect.
Tags	Second Circuit; Music; Parody/Satire
Outcome	Fair use found

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