

Castle v. Kingsport Publ’g Corp.
2:19-CV-00092-DCLC, 2020 U.S. Dist. LEXIS 233919 (E.D. Tenn. Dec. 14, 2020)

Year	2020
Court	United States District Court for the Eastern District of Tennessee
Key Facts	This suit involves an aerial photograph taken of the proposed build site for a new high school in Sullivan County, Tennessee (the “Photograph”). The decision to build a new high school was met with controversy, due to a debate over whether or not the school was being built over sinkholes. Plaintiff, Brian Castle, used his drone to take the Photograph, which he believed proved the presence of sinkholes on the build site. Castle provided a blown-up version of the Photograph to a member of the Sullivan County School Board for presentation at a school board meeting and handed out copies, none of which included attribution or copyright notices. Castle also posted the Photograph on his Facebook page and unsuccessfully attempted to license it to local news outlets. Defendant, Kingsport Publishing Corporation (“Kingsport”), received one of the copies of the Photograph handed out at the school board meeting and published it in an article about the public debate over the high school construction, focusing on the remarks of an engineer at the meeting who rebutted the sinkhole allegations and offered an alternate explanation for what the Photograph showed. Castle asserted a claim of copyright infringement and Kingsport moved for summary judgment, asserting a fair use defense.
Issue	Whether use of an unlicensed photograph that was taken and distributed to visually support one perspective in a public controversy in a news article reporting on a rebuttal of that perspective is a fair use.
Holding	The court found that the first factor, the purpose and character of the use, favored a finding of fair use. Kingsport’s use of the Photograph was transformative because the news article “did not merely reprint the Photograph in a different medium with nothing more” or use it as an “illustrative aid”; rather, it brought new meaning to the work by reporting on a contrary view from the engineer that “directly challenged . . . [Castle]’s interpretation of the Photograph.” Although Kingsport received about \$15.20 in ad revenue based on web traffic from article views, the transformative purpose diminished any significance of its commerciality. The second factor, the nature of the copyrighted work, favored fair use because the court found that the Photograph was more informative than creative in nature, and had already been published. The third factor, the amount and substantiality of the portion used in relation to the copyrighted work as a whole, did not weigh against fair use because although the Photograph was used in its entirety, that was reasonable in the context of the news reporting on the engineer’s “explanation for the anomalies shown in the Photograph.” The fourth factor, the effect of the use upon the potential market for or value of the copyrighted work, also weighed in favor of fair use. The court found that Castle had not shown there was a potential market for the work and that his unsuccessful attempts to license the Photograph suggested there was no such market. The transformative purpose for which Kingsport used the Photograph reduced the likelihood Kingsport’s use would be a substitute for the original. Thus, the court concluded the factors taken together favored fair use.
Tags	News Reporting; Photograph
Outcome	Fair use found

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