

Disney Enterprises, Inc. v. VidAngel, Inc.
No. 2:16-CV-04109 (9th Cir. Aug. 24, 2017)

Year	2017
Court	United States Court of Appeals for the Ninth Circuit
Key Facts	Defendant VidAngel, Inc. operates an online streaming service that removed objectionable content from movies and television shows. Defendant would purchase multiple physical discs containing a copyrighted work, and then decrypt each disc to create a digital copy on a computer so that the work could be tagged for 80 types of inappropriate content, including nudity, profanity, drug use, sex, and violence. Defendant would then upload the tagged copy to cloud storage in segments, and permit customers to purchase that particular copy from Defendant’s inventory. The customer could then select at least one type of filter to apply, and stream that copy via apps Defendant developed for Roku, Apple TV, Amazon Fire, and Android, among others. No full copy of any individualized, filtered movie existed in fixed form because the filters would be applied as the stream was accessed. Customers could then sell their “discs” back, which would yield them store credit equal to the purchase price of their disc less \$1 per day for each day of ownership. Thus, most customers would “rent” their copy for \$1 per day. Plaintiffs Disney Enterprises, Inc., Lucasfilm Ltd, LLC, Twentieth Century Fox Film Corp., and Warner Brothers Entertainment, Inc. produce and distributed copyrighted films and television shows. Defendant purchased, transferred to a computer, and streamed to customers approximately 80 works owned by Plaintiffs. Plaintiffs filed suit for copyright infringement and circumvention of technological measures in violation of 17 U.S.C. § 1201; they moved for a preliminary injunction, and VidAngel raised as defenses the Family Movie Act and fair use. The court granted Plaintiffs’ motion for the injunction, and VidAngel appealed.
Issue	Whether Defendant’s sanitizing service that digitizes physical copies of and removes objectionable material from copyrighted works constitutes fair use.
Holding	After conducting the four-step analysis, the court agreed with the district court and affirmed its grant of a preliminary injunction. In assessing the likelihood of Plaintiffs’ success on the merits, the court assessed Defendant’s fair use defense, and found that the use was not fair. The court concluded that it was not clearly erroneous for the district court to find that the first factor, purpose and character of the infringing work, weighed against Defendant because removing objectionable content “does not necessarily add something new or change the expression, meaning, or message of the film,” and is “not transformative.” The court held that the district court correctly found that the second factor, nature of the copyrighted work, and the third factor, amount and substantiality of the portion used, “weigh against finding fair use,” and Defendant did not challenge these findings. The court held that the district court did not err in finding that the final factor, effect of the use upon the potential market, weighed against a finding of fair use as well, because Defendant’s service “is an effective substitute” for Plaintiffs’ unfiltered works. Further, the court noted that space-shifting—the act of shifting media from one platform to another by copying a protected work and transferring it to another electronic device—is not a fair use; case law “unanimously reject[s]” the argument that space-shifting is a fair use, especially because Defendant’s “service is not personal and non-commercial space-shifting.” The court also affirmed the district court’s judgment related to the Family Movie Act and section 1201 defenses and claims, as well as the entry of a preliminary injunction.
Tags	Ninth Circuit, Film/Audiovisual, Format shifting/Space shifting, Internet/Digitization
Outcome	Fair use not found, preliminary ruling

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