

BWP Media USA, Inc. v. Gossip Cop Media, Inc.
No. 13-cv-7574-KPF (S.D.N.Y. Jul. 20, 2016)

Year	2016
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiff, BWP Media, owns copyrights to photographs of celebrities that it licenses to print and online publications. Defendant, Gossip Cop Media, runs a “for-profit website that presents celebrity gossip news” and evaluates the truthfulness of gossip stories published by third-parties. Gossip Cop licenses many of the celebrity photographs on its website, but, in this instance, it copied—without authorization—three photographs from third-party “celebrity gossip websites,” “posted ‘screen grabs’ of the photos on its own site,” and added “an assessment of whether the story that accompanied the photo on the third-party website was ‘real’ or ‘rumor.’”
Issue	Whether a celebrity gossip website’s unauthorized use of three photographs from other gossip websites in order to “comment on or critique the stories that originally accompanied those photographs” is fair use.
Holding	Following a bench trial, the court ruled that Gossip Cop’s unauthorized, commercial use of three photographs did not constitute fair use either as a transformative use or as news reporting because the photographs were “taken to be used by celebrity news outlets” and Gossip Cop used the photographs “for the precise reason[s they were] created.” While the court did hold that the second statutory factor, the nature of the work, weighed “slightly in [d]efendant’s favor” because the photographs were taken “to document their subjects rather than to serve as art pieces,” the court held the remaining three factors to weigh against fair use. Specifically, with regard to the first factor, purpose and character of the use, the court reasoned that Gossip Cop’s use—rating the validity of the stories as opposed to the photographs—“cannot be said to constitute transformative news reporting” because it “adds no new meaning or expression to the images.” Rather, the court held that Gossip Cop “used the photographs to illustrate its stories, which is precisely the same use as that made by the source websites” which paid to display the photographs. The court also held that the third factor, the amount of work used, weighed against fair use because the defendant “copied the entirety of the three images” and used the images for the same purpose as the other gossip websites. Lastly, the court found that the fourth factor, the effect of the use on the potential market for the work, also weighed against fair use because Gossip Cop’s use of the photos to “attract interest in [its] accompanying stories . . . is . . . the same use for which [BWP] routinely licenses out its photos.”
Tags	Second Circuit; Photograph; News reporting; Review/Commentary
Outcome	Fair use not found

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