

Elvis Presley Enters., Inc. v. Passport Video,
349 F.3d 622 (9th Cir. 2003),
overruled on other grounds by eBay, Inc. v. MercExchange, LLC, 547 U.S. 388 (2006)

Year	2003
Court	United States Court of Appeals for the Ninth Circuit
Key Facts	Plaintiffs were companies and individuals holding copyrights in various materials related to Elvis Presley. Defendants, Passport Entertainment and its related entities, produced and sold <i>The Definitive Elvis</i> , a 16-hour video documentary on Elvis Presley's life. Plaintiffs' video clips made up at least 5% to 10% of <i>The Definitive Elvis</i> , often overlaid with narration or commentary. The commentary was not always directly related to the video clips. The documentary also featured significant portions of Presley's appearances on various 1950s and 1960s television shows, shown without voiceover. Defendants did not obtain licenses to use the copyrighted material. Plaintiffs sued for copyright infringement. The district court found that the use of plaintiffs' copyrighted materials was likely not fair use and granted a preliminary injunction. Defendants appealed.
Issue	Whether the unauthorized incorporation of Elvis Presley video clips, photographs, and music into a documentary about his life constituted fair use.
Holding	The court held that the district court did not abuse its discretion in finding that defendants' use of plaintiffs' materials did not qualify as fair use. Concerning the purpose of the use, the court noted that <i>The Definitive Elvis</i> was clearly commercial in nature, and was not a scholarly critique or historical analysis. Nor was the use consistently transformative, as the film clips were used in excess of the purpose of citing them as historical reference points in Elvis' life. The court also found that, though the nature of the works used did not cut clearly in either party's favor, the district court did not abuse its discretion in finding that the second factor weighed in plaintiffs' favor. Regarding the amount and substantiality of the works used, the court noted that many clips were repeated multiple times, some long, and some were the heart of the work. Here again the court concluded that the district court did not abuse its discretion. Finally, the court noted that because the use was commercial in nature, market harm could be presumed. The market for licensing television clips would be undermined with widespread use of this type. The market for still photos and music, however, would probably not be undermined, as <i>The Definitive Elvis</i> was not a substitute. The court concluded that the district court did not abuse its discretion in finding adverse market effect.
Tags	Ninth Circuit; Education/Scholarship/Research; Film/Audiovisual; Music; Photograph; Review/Commentary
Outcome	Fair use not found

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