

**Infinity Broad. Corp. v. Kirkwood,  
150 F.3d 104 (2d Cir. 1998)**

Year	1998
Court	United States Court of Appeals for the Second Circuit
Key Facts	Plaintiff Infinity Broadcasting Corp. owned the copyrights to numerous radio broadcast programs. Defendant Wayne Kirkwood operated Media Dial-Up (Dial-Up), which allowed customers to listen to “contemporaneous radio broadcasts in remote cities” over the telephone for a fee. Plaintiff filed an infringement suit claiming Dial-Up was illegally retransmitting its copyright protected broadcasts. Plaintiff appealed the district court’s ruling that defendant’s unauthorized use of plaintiff’s broadcasts was fair.
Issue	Whether defendant’s retransmission of plaintiff’s copyright protected broadcasts to allow customers to listen to contemporaneous radio broadcasts in remote cities, for a fee, constituted fair use.
Holding	On appeal, the court held that defendant’s retransmission was not fair use, finding that “all four statutory factors point toward infringement.” In conducting its fair use analysis, the court found that the possible benefits that defendant’s customers could derive from defendant’s retransmissions of the copyrighted broadcasts were “outweighed by the total absence of transformativeness” in the retransmissions themselves, which left “the character of the original broadcasts unchanged.” Specifically, the court noted that “a change of format, though useful, is not technically a transformation.” The court also found that defendant’s service potentially allowed for the retransmission of entire copyrighted broadcasts; that defendant’s retransmissions could replace plaintiff as the supplier in the market; and that plaintiff was exclusively entitled to exploit the broadcasts in the market.
Tags	Second Circuit; Format shifting/Space shifting; Music
Outcome	Fair use not found

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