

**Rosen v. eBay, Inc.,
No. 2:13-cv-06801-MWF-E (C.D. Cal. Jan. 16, 2015)**

Year	2015
Court	United States District Court for the Central District of California
Key Facts	Plaintiff photographer Barry Rosen filed a lawsuit alleging that defendant eBay, Inc. (eBay) infringed the copyrights in several of his works, including a set of photographs that plaintiff licensed for use in physical magazines. Plaintiff claimed that eBay violated his copyrights in the set of photographs by: (1) hosting user generated listings for the resale of the physical magazines that displayed digital pictures of physical prints of his photographs as they originally appeared in the magazines, and (2) relying on servers maintained by a content delivery network (CDN) to facilitate the display of the digital pictures of his photographs to eBay's end users. Defendant eBay claimed its use of the photographs was protected under the fair use doctrine.
Issue	Whether defendant's use of digital reproductions of copyright protected photographs to advertise the resale of physical products containing those photographs, including automated copying and distribution of those images over CDNs, constituted fair use.
Holding	The court concluded that "copies made of a magazine containing depictions of a copyrighted work, for the purpose of selling that magazine under the first sale doctrine, do not violate the Copyright Act under the fair use doctrine." In reaching its conclusion that the digital display of the works was fair use, the court found that "looking holistically at the purpose of copyright protection and the use to which the photographs are being put," the copies in question clearly did not displace the market for the original work, were used for a fundamentally different purpose than the original photographs, and promoted the development of "a robust legal secondary market." Regarding eBay's use of a CDN to facilitate the display of the images to end users, the court found that such distribution is "an inevitable and necessary part of using the internet, and ultimately a trivial activity that falls within the protections of the fair use doctrine" without reference to the fair use factors.
Tags	Ninth Circuit; Internet/Digitization; Photograph
Outcome	Fair use found

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