

Nat'l Acad. of TV Arts & Scis., Inc. v. Multimedia Sys. Design, Inc.
No. 20-CV-7269 (VEC), 2021 U.S. Dist. LEXIS 142733 (S.D.N.Y. July 30, 2021)

Year	2021
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiffs, the National Academy of Television Arts and Sciences, Inc. and the Academy of Television Arts & Sciences (collectively, the “Television Academies”), own the copyright for the design of a gold statuette of a winged figure holding an atom (the “Emmy Statuette”), which they use to present Emmy Awards to distinguished members in television programming. Defendant Multimedia System Design, Inc. (“MSDI”), which creates and posts content providing social and political commentary, posted a video to its YouTube channel as part of its “Crony Awards,” which celebrated countries that have downplayed the COVID-19 pandemic. The video—as well as its thumbnail and social media posts promoting it—used an image of the Emmy Statuette holding a model of the COVID-19 virus instead of an atom (the “Crony Graphic”). In response to a DMCA takedown notice, YouTube promptly took down the video. MSDI submitted a counter-notice claiming the use of the statuette was fair use. Plaintiffs filed suit asserting copyright infringement and other claims. Defendant moved to dismiss the copyright claim, arguing the use was either <i>de minimis</i> or fair use.
Issue	Whether the use of a modified version of a statuette used in an award show in connection with a different award show that provides political commentary is fair use.
Holding	Considering the first factor, the purpose and character of the use, the court found that the use was not transformative, which weighed against fair use. Although MSDI made some alterations to the Emmy Statuette, the “dominant and essential aesthetic elements” of the original design remained. The court further found that both the Emmy Statuette and the Crony Graphic were used for the same purposes: to “represent awards” and “promote . . . award shows.” The court also rejected MSDI’s claim that the Crony Graphic was a parody because it did not direct any criticism towards the Emmy Statuette or the Television Academies. The court found the use to be commercial because, while MSDI did not derive direct income from the YouTube video, it included links to portals where viewers could pay for the content. The second factor, the nature of the copyrighted work, weighed against fair use because MSDI conceded that the Emmy Statuette is “arguably creative.” The third factor, the amount and substantiality of the portion used, disfavored fair use as well because the two images were “identical other than the replacement of the atom with the COVID-19 virus,” and MSDI had not explained why it was necessary to use the Emmy Statuette specifically. The court found the fourth factor, the effect of the use upon the potential market for or value of the copyrighted work, also slightly disfavored fair use. While the markets for the Emmy Awards and for MSDI’s video do not “meaningfully overlap,” the court concluded that the Television Academies adequately alleged that they suffered actual and reputational harm by having the Emmy Statuette associated with misinformation about the COVID-19 pandemic. Balancing the factors, the court held that the use was not fair use as a matter of law and denied the motion to dismiss.
Tags	Film/Audiovisual; Internet/Digitization; Parody/Satire; Photograph; Sculpture
Outcome	Fair use not found