

Pickersgill v. Egotist, LLC
Case No. 22-cv-01037, 2022 U.S. Dist. LEXIS 166051 (D. Colo. Sept. 14, 2022)

Year	2022
Court	United States District Court for the District of Colorado
Key Facts	Plaintiff Eric Pickersgill is an art photographer who explores the social and psychological effects of cameras on individuals and society. In October 2018, Pickersgill published a collection of sixty-one photographs titled <i>Removed</i> that showed people in various poses appearing to be engrossed in electronic devices, but there are no devices in their hands. Pickersgill subsequently obtained copyright registration in the <i>Removed</i> collection. In September 2019, Defendant The Egotist, LLC published a web post that reproduced six of the photographs from the <i>Removed</i> collection along with a small amount of text. Pickersgill sued for copyright infringement. Egotist moved to dismiss, asserting fair use.
Issue	Whether using a subset of photographs, in the form of large, high-resolution images, from a larger collection and accompanied by unoriginal text in a web post constitutes fair use.
Holding	Under the first fair use factor, the purpose and character of the use, the court found that the Egotist’s use was non-transformative and commercial, and accordingly, the factor weighed against fair use. The court found that there was “little-to-nothing transformative” about the “article” because the “substantial majority” of post is the copied photographs and the text was copied verbatim from a YouTube description of Pickersgill’s TEDx talk. Even if the limited text had been original to the Egotist, the court found that it was “effectively nothing more than a descriptive caption for the expropriated photographic images” such that the article was effectively saying “Check out these cool pictures!” rather than providing meaningful commentary, criticism, or news reporting. Additionally, the court found that the Egotist’s use was commercial because it used the copyrighted photographs to “attract[] eyeballs” and generate advertising income without paying any licensing fee. Considering the second factor, the nature of the copyrighted work, the court found that, in both their conception and execution, Pickersgill’s images are “extremely creative” and concluded that the factor weighed “heavily” against fair use. The third factor, the amount and substantiality of the portion of the work used, also weighed against fair use. Noting that each photograph was a single copyrighted work and each was copied in its entirety, the court concluded that using six high-resolution images was an “excessive” amount of copying for an article purporting to comment on the artwork. Lastly, the court found that the fourth factor, the effect on the potential market for or value of the work, weighed against fair use, reasoning that “[i]n the mind of the reader,” seeing six high-resolution images on the internet “may well reduce interest” in seeing a gallery exhibit of the collection or purchasing a fine art copy of an image. Additionally, the court found that if the practice of republishing Pickersgill’s high-resolution images “with impunity” were to become widespread, then websites might republish his entire collections, further harming these markets. As all four factors weighed against fair use, the court recommended that the Egotist’s motion be denied. The district court judge subsequently affirmed and adopted the recommendation, concluding its analysis was “thorough and comprehensive” and “well-reasoned.”
Tags	Internet/Digitization; Photograph; Review/Commentary
Outcome	Fair use not found

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