**Stebbins v. Alphabet Inc.**
**No. 22-cv-00546, 2025 WL 2233208 (N.D. Cal. July 2, 2025)**

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| Year | 2025 |
| Court | United States District Court for the Northern District of California |
| Key Facts | Plaintiff David A. Stebbins, performing under the pseudonym "Acerthorn," is the registered copyright owner of a 90-minute video entitled "Fallout: New Vegas Retrospective" (the "Retrospective") which features in-game video clips of the Bethesda Softworks video game "Fallout: New Vegas" overlayed with Stebbins's commentary, digital art, and occasional text. In September 2021, a YouTuber known as "Creetosis" and others livestreamed videos during which they watched and reacted to the Retrospective for over 14 hours (the "Livestreams"). During the Livestreams, Creetosis played the Retrospective for several seconds then paused to comment, criticize, or mock Stebbins's transitions between video clips, volume control, color modifications, self-corrections, and opinions. Viewers sent hundreds of dollars to Creetosis via "super chats" during the Livestreams. In January 2022, Stebbins issued DMCA takedown notices to YouTube who refused to take down the Livestreams. Stebbins sued Alphabet Inc., YouTube and multiple "John Does" for copyright infringement. YouTube moved to dismiss, asserting fair use. |
| Issue | Whether "reaction" livestreams in which commentators watch, pause, and rewind videos to provide commentary and criticism constitute fair use. |
| Holding | The first factor, the purpose and character of the use, "weighs sharply in favor of fair use." The court noted that Stebbins conceded the use was "highly transformative" and "cannot now reverse positions in order to save his claims." The court concluded "watching the Livestreams is a fundamentally different experience than watching the Retrospective." While the Retrospective critiqued the video game, the Livestreams critiqued the Retrospective. Although the Livestreams were commercialized through viewer payments in "super chats," the court found that the Retrospective was "incidental" to that revenue because many patrons did not discuss Stebbins's content; and ultimately, the highly transformative nature outweighed any commerciality. Noting that even whether the Retrospective was sufficiently creative to be copyrightable was a "close call," the court found that the second factor, the nature of the copyrighted work, favored fair use because the Retrospective was more informational than creative. The court rejected Stebbins's argument that the work was unpublished, concluding that "[i]n placing the Retrospective on YouTube, [Stebbins] disseminated the video to be 'share[d] and re-share[d].'" The court found the third factor, the amount and substantiality of the portion used, to be "neutral or to only slightly weigh against" fair use. It rejected Stebbins's claim that the Retrospective was copied in its entirety because Creetosis skipped portions and omitted clips from the Retrospective, including portions that seemed unlawfully copied. The court concluded that the substantial copying was necessary to further the transformative purpose because "[w]ithout featuring the original clips, the Livestreams would have lost utility as critical commentary." Finally, the fourth factor, the effect on the potential market for or value of the work, favored fair use. The Livestreams were not a market substitute for the Retrospective because the criticism served a different purpose and viewing experience than watching the Retrospective itself. The court found "the fair use factors weigh strongly in favor of fair use," and granted the motion to dismiss. |
| Tags | Film/Audiovisual; Internet/Digitization; Review/Commentary |
| Outcome | Fair use found |

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