

Dr. Seuss Enterprises, L.P. v. ComicMix LLC
No. 16CV2779-JLS (BGS) (S.D. Cal. Dec. 7, 2017)

Year	2017
Court	United States District Court for the Southern District of California
Key Facts	Plaintiff Dr. Seuss Enterprises is the assignee and owner of several copyright registrations for works by the late Theodor S. Geisel, also known as Dr. Seuss, including the book <i>Oh, the Places You'll Go!</i> (“ <i>Go!</i> ”). Defendants created an allegedly infringing book called <i>Oh, the Places You'll Boldly Go!</i> (“ <i>Boldly</i> ”). <i>Boldly</i> combines various aspects of Dr. Seuss’s works with elements from the science fiction entertainment franchise <i>Star Trek</i> . In a Kickstarter campaign to fund their work, Defendants included a disclaimer stating that <i>Boldly</i> is a parody that falls within the boundaries of fair use, citing Section 107 of the Copyright Act of 1976. Upon learning of <i>Boldly</i> , Plaintiff and Defendants exchanged letters, Plaintiff sent a takedown notice to Kickstarter, and ultimately filed suit, claiming that <i>Boldly</i> misappropriates key elements from <i>Go!</i> and four other Dr. Seuss books. Defendants moved to dismiss the claim, arguing that <i>Boldly</i> was permitted under the fair use doctrine. The court denied Defendants’ motion as to the copyright infringement claim, holding that it could not find that the Defendants’ use was fair as a matter of law, and granted Plaintiff leave to amend its complaint. Thereafter, Plaintiff filed an amended complaint, and Defendants again moved to dismiss the claim under fair use.
Issue	Whether Defendants’ combined use of elements from copyright protected works in a book for commercial use constitutes fair use.
Holding	The court, reasoning that the Plaintiff provided new information only as to the fourth fair use factor in its amended complaint, stated that there was no “reason to alter its analysis regarding the first three factors.” Previously, the court found that factor one (purpose and character of the use) weighed in favor of Defendants. Although <i>Boldly</i> was found to not be a parody, but rather a “mash-up” that combines <i>Go!</i> ’s style and format with <i>Star Trek</i> ’s tropes for commercial purposes, the court found that the unique world created in <i>Boldly</i> was sufficiently transformative and did not supplant the market for the Dr. Seuss works. In addition, factor two (nature of the copyrighted work) weighted slightly in favor of Plaintiff, and factor three (amount and substantiality of the portion used) did not weigh against Defendants. Therefore, the court analyzed factor four (effect of use upon the potential market), which it had previously found weighed in favor of Plaintiff. The court observed that “Plaintiff’s current literary licensing program involves allowing other authors to publish books based off of Plaintiff’s books and even use Plaintiff’s characters.” Although licensed works had not included mash-ups of the same type as <i>Boldly</i> , the court found “there is a potential market for literary mash-up[s] involving Plaintiff’s books[, and] . . . Defendant[s]’ production of <i>Boldly</i> may result in an adverse impact on Plaintiff’s derivative market” Consequently, the court concluded “there is potential harm to the market for Plaintiff’s derivative works” and the fourth factor weighed in favor of Plaintiff. Therefore, the court held “Defendants’ fair use defense fails as a matter of law.”
Tags	Ninth Circuit; Parody/Satire; Textual work

Outcome	Preliminary ruling, fair use not found
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Source: U.S. Copyright Office Fair Use Index. For more information, *see* <http://copyright.gov/fairuse/index.html>.