

**Lish v. Harper’s Magazine Found.,
807 F. Supp. 1090 (S.D.N.Y. 1992)**

Year	1992
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiff Gordon Lish, a well-known writer of fiction novels and professor of an infamous creative writing class, composed a letter to forty-nine prospective students introducing them to his class. Defendant Harper’s Magazine Foundation (Harper’s), publisher of a monthly literary magazine, included an edited version of the letter in its magazine (about 48% of the original) under the title <i>A Kind of Magnificence</i> . Lish alleged that Harper’s infringed his copyright by publishing the letter.
Issue	Whether a scholarly magazine’s unauthorized publication of an abridged version of a letter written by a well-known author/professor who limited the letter’s distribution to prospective students qualified as fair use.
Holding	The court held that the unauthorized publication of plaintiff’s letter did not constitute fair use. For the first fair use factor, the court found that defendant copied plaintiff’s letter without providing additional commentary, copied more than was necessary, and used it for commercial gain, all weighing against finding fair use. For the second factor, the court determined that defendant’s use of unpublished, predominantly creative material further weighed against fair use. For the third factor, the court ruled that defendant’s use of a “substantial portion” of the letter, constituting the “heart” of the work, weighed against fair use. Finally, the court concluded that the fourth factor weighed in favor of fair use because plaintiff failed to demonstrate any adverse market impact resulting from the use. The court stated that it did not believe that, even if plaintiff were to later publish a book of his writings including the letter, a potential buyer would be dissuaded from buying the book because defendant had previously published the letter.
Tags	Second Circuit; News Reporting; Review/Commentary; Textual work; Unpublished
Outcome	Fair use not found

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