

Marano v. Metro. Museum of Art
No. 19-CV-8606 (VEC), 2020 U.S. Dist. LEXIS 122515 (S.D.N.Y. July 13, 2020)

Year	2020
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiff Lawrence Marano, a professional photographer, took a photograph of Eddie Van Halen playing his “Frankenstein” guitar at a concert (the “Photograph”). The Metropolitan Museum of Art (the “Met”), a nonprofit museum that displays works of art to the public, included the Photograph in an online catalogue for a physical exhibition on rock and roll instruments. The catalogue included 185 pages representing the exhibit objects on physical display. The Photograph was displayed as a thumbnail image on the page discussing the “Frankenstein” guitar, along with a large photograph of the guitar, two thumbnail images, and two paragraphs of text describing the guitar’s history and technical specifications. Online visitors could click on the Photograph’s thumbnail to view a larger version of it. Marano sued the Met for willful copyright infringement and the court ordered him to show cause why this action should not be dismissed under the fair use doctrine.
Issue	Whether posting a photograph in a museum exhibit’s online catalogue to depict an object shown in the photograph is a fair use.
Holding	The court concluded the Met’s online display of the Photograph constitutes fair use and dismissed Marano’s complaint. The first factor, the purpose and character of the use, strongly favored fair use. Marano took the Photograph to show what Van Halen looked like while performing and to convey Van Halen’s significance as a musician, while the Met used the Photograph in a scholarly context as a historical artifact to contextualize the “Frankenstein” guitar. Further, the Photograph is an inconsequential part of the online catalogue and of the guitar’s page itself because the Photograph is a single thumbnail image, existing on a page with other images and text, several pages within the catalogue. Though the court noted more discovery could shed light on whether the Met benefited financially from use of the Photograph, it concluded it would not place much weight on any potential financial gain due to the transformative nature of the use. The second factor, the nature of the work, “weighed minimally, if at all, against fair use.” While the published Photograph is creative, the purpose of the Met’s use was to highlight the Photograph’s historical, rather than creative, value. The third factor, the amount and substantiality of the work used, did not weigh against fair use because although the Met used the Photograph in its entirety, the use was reasonable in light of its purpose. Moreover, the Met reduced the Photograph’s size, and other surrounding images and text limited its visual impact. The fourth factor, the effect of the use upon the potential market for or value of the work, favored fair use because the Met’s use falls into a “transformative market,” not affecting the Photograph’s original market for photograph collectors of rock and roll legends or of Van Halen.
Tags	Education/Scholarship/Research; Internet/Digitization; Photograph
Outcome	Fair use found

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