

**Nihon Keizai Shimbun, Inc. v. Comline Bus. Data, Inc.,
166 F.3d 65 (2d Cir. 1999)**

Year	1999
Court	United States Court of Appeals for the Second Circuit
Key Facts	Plaintiff Nihon Keizai Shimbun, Inc. (Nikkei) published financial, business, and industry newspapers in both English and Japanese. Nikkei sold and licensed its newspapers and articles throughout the world in both Japanese and in translation. Defendants, Comline Business Data, Inc. and associated private parties, gathered news articles from a variety of sources and sold “abstracts” of them, which they sometimes translated into English. Of the 17,000 abstracts published by defendants in 1997, approximately one-third were derived from plaintiff’s news sources. Defendants appealed the district court’s decision that they were not entitled to a fair use defense.
Issue	Whether defendants’ copying and translation of plaintiff’s news articles constituted fair use.
Holding	The appeals court ruled that defendants’ abstracting and translating plaintiff’s works for sale to its customers was not fair use. Acknowledging that defendants’ abstracts were for the purpose of news reporting, the court nonetheless found that the purpose and character of its use went against a finding of fair use because it was “not in the least ‘transformative’” since the abstracts were for the most part direct translations with little or no new expression added. The court found that, qualitatively and quantitatively, defendants’ abstracts took a substantial portion of plaintiff’s works because they were often word-for-word translations with the exact same structure and organization as plaintiff’s articles. The court further found that defendants’ abstracts competed with and superseded plaintiff’s articles in the marketplace, and concluded that the negative effect on the potential market for plaintiff’s works was great.
Tags	Second Circuit; News reporting; Textual work
Outcome	Fair use not found

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