

**Nunez v. Caribbean Int'l News Corp.,  
235 F.3d 18 (1st Cir. 2000)**

Year	2000
Court	United States Court of Appeals for the First Circuit
Key Facts	Plaintiff Sixto Nunez, a professional photographer, took several nude and nearly nude photographs of Joyce Giraud, who was Miss Puerto Rico Universe 1997, for her modeling portfolio. Following standard practice, he distributed them to members of the modeling community. Controversy ensued over whether nude and semi-nude photographs were appropriate for a pageant winner. After the photos were displayed on television, defendant's newspaper, <i>El Vocero</i> , published three of plaintiff's photos without permission, alongside several articles about the controversy. Plaintiff appealed the district court's ruling that defendant's publication of the photographs was a fair use.
Issue	Whether the unauthorized reproduction and publication of photographs that are themselves newsworthy constituted fair use.
Holding	The court determined that defendant's publication of plaintiff's photographs was fair use. Although the photos were placed on the newspaper's cover in an attempt to increase sales, the court found that the purpose and character of use still favored fair use: the photos were informative and illustrative of the story; the purpose of the use was transformative from the original intended use as a modeling portfolio; and defendant used the photos in good faith. The court decided the nature of the work was a neutral factor since it was difficult to categorize the photos as either creative or factual. The court further stated that the newspaper did not threaten plaintiff's right of first publication because he had previously distributed them, they were shown on the television before the newspaper printed them, and they were intended for public dissemination. The court also found that the market was not negatively affected because plaintiff used the photos for publicity purposes, not to make money, by distributing them to the modeling community for free. Additionally, the court determined that the relatively poor reproduction by the newspaper cover should not affect demand for the portfolio, but instead could increase it.
Tags	First Circuit; News reporting; Photograph
Outcome	Fair use found

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