

Reiner v. Nishimori
No. 3:15-cv-00241 (M.D. Tenn. Apr. 28, 2017)

Year	2017
Court	United States District Court for the Middle District of Tennessee
Key Facts	Plaintiff TC Reiner is a photographer who entered into an independent contractor agreement with SuperStock, Inc. (“SuperStock”), a stock photo company, which paid Reiner to create photographs for its use. SuperStock owned the copyrights to any photographs created under the agreement. Reiner created a photograph called “Casablanca” which he provided to SuperStock during the time period covered by the agreement, but lacked documentation as to who paid the expenses for the shoot. In 2008, a graphic design professor at Defendant Watkins Institute (“Watkins”) included Casablanca among photographs given to students, including Defendant Ryon Nishimori, who were assigned to create mock advertisements using the images. Nishimori uploaded a mock advertisement using Casablanca to his Flickr account to archive it. Watkins did not use Casablanca or Nishimori’s mock advertisement for advertising or promotional purposes, and did not introduce it into any market. Reiner filed suit for direct and contributory copyright infringement against Watkins, copyright infringement against Nishimori, and a violation of section 1202 of the DMCA against both.
Issue	Whether use by a university and student for an academic assignment of a photograph constitutes fair use.
Holding	On Defendants’ motion for summary judgment, the court held that there was a disputed issue of fact as to ownership, as Reiner and SuperStock disagreed as to whether Reiner had transferred his copyright in Casablanca to SuperStock. But regardless, Defendants were not liable for infringement because their uses were fair. With respect to the claims against Watkins, as to the first factor, purpose and character of the use, the court held the use was for “nonprofit educational purposes,” because the photograph was not being offered as material for the students to learn, but rather to use to learn how to make mock advertisements. The court held that the second factor, the nature of the copyrighted work, weighs slightly against fair use, because Casablanca is “more creative than factual.” As to the third factor, the amount of work used, the court held that it weighs against fair use because Watkins used the entire photograph. Lastly, as to fourth factor, the effect on the market for the copyrighted work, the court found Reiner did not establish any market harm because he did not prove “that widespread use of photographs in the manner of Watkins or Nishimori would adversely affect any potential market for his work.” As to Nishomori, the court analyzed his use of the photograph for his mock advertisement, and on his Flickr account for storage. Its analysis was largely the same, though noting that Nishimori transformed Casablanca into an advertisement. Ultimately, the court held that “[t]he fourth factor weighs strongly in favor of fair use” as to Nishimori. Summary judgment was therefore appropriate for Defendants, which rendered the contributory infringement claim moot. The court granted summary judgment on the DMCA claims as well, because, as to Nishimori, he did not know or have reasonable grounds to know that removing Reiner’s information would “induce, enable, facilitate, or conceal an infringement of the federal copyright laws”; as to Watkins, it had no financial interest in the infringement.
Tags	Sixth Circuit; Photograph; Education/Scholarship/Research
Outcome	Fair use found

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