

**SOFA Entm't, Inc. v. Dodger Prods., Inc.,
709 F.3d 1273 (9th Cir. 2013)**

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| Year | 2013 |
| Court | United States Court of Appeals for the Ninth Circuit |
| Key Facts | Defendants, Dodger Productions, Inc. and Dodgers Theatricals, Ltd., produced <i>Jersey Boys</i> , a musical stage dramatization based on the 1960s rock and roll band the Four Seasons. Plaintiff, SOFA Entertainment, Inc. owns the rights for the entire run of <i>The Ed Sullivan Show</i> , a television program that ran from 1948-1971, and included a Four Season's performance on January 2, 1966. Defendants' musical includes seven seconds of an unlicensed clip from that episode showing the host, Ed Sullivan, introducing the Four Seasons. After the clip is shown, the actors in the musical launch into a Four Seasons song. Plaintiff appealed the district court's ruling that defendants' use of the clip was fair. |
| Issue | Whether defendants' unauthorized use of the seven-second clip from <i>The Ed Sullivan Show</i> in the musical <i>Jersey Boys</i> was fair use. |
| Holding | The court held that defendants' reproduction of the clip was fair. In its analysis, the court found that defendants' use of the clip as a "biographical anchor" to mark an historical point in the Four Seasons' career was transformative. The court further found that its use conveyed "mainly factual information" regarding who was about to perform on <i>The Ed Sullivan Show</i> and was not "qualitatively significant" for the same reason. Finally, the court held that defendants' use of the clip in the musical advanced "its own original creation without any reasonable threat to SOFA's business model" and did so without "usurping whatever demand there is for the original clip." The court reasoned that <i>Jersey Boys</i> was not a substitute for <i>The Ed Sullivan Show</i> —the short clip only appeared once in the musical—and the musical was not reproduced on DVD, so viewers could not view the clip repeatedly. |
| Tags | Ninth Circuit; Film/Audiovisual |
| Outcome | Fair use found |

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