

Yang v. Mic Network
No. 18-CV-7628 (AJN), 2019 U.S. Dist. LEXIS 163453 (S.D.N.Y. Sept. 24, 2019)

Year	2019
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiff Stephen Yang (“Yang”) licensed a photograph he took of Dan Rochkind (“Rochkind”) to the <i>New York Post</i> , which ran the photograph in an article about Rochkind entitled “Why I Won’t Date Hot Women Anymore” on April 12, 2017. The next day, Defendant Mic Network, Inc. (“Mic”) posted its own article entitled “Twitter is skewering the 'New York Post' for a piece on why a man ‘won’t date hot women’.” The Mic article included a screenshot of the <i>Post</i> article that captured the headline, author’s name, date, and roughly the top half of Yang’s photograph. Mic did not obtain a license to use the photograph, nor did it have Yang’s authorization to publish it. In response, Yang sued Mic for copyright infringement, and Mic moved to dismiss asserting fair use.
Issue	Whether using a screenshot from an article, including part of a photograph, to report on and criticize the article constitutes fair use of the photograph.
Holding	The court decided that the first factor, the purpose and character of the use, strongly weighed in favor of Mic. First, the court held that Mic transformed the screenshot by using it to identify, report on, and critique the <i>Post</i> article, which was a subject of controversy. In addition, Mic reframed the message of the work by using the photograph to place its subject in a negative light, as opposed to the original use that placed him in a positive, or at least neutral, light. This transformation outweighed Defendant’s use of the work for a commercial benefit and arguable bad faith in cropping the portion of the photograph crediting the photographer. On the second factor, the nature of the copyrighted work, the court determined the factor slightly favored the Plaintiff because the “straightforward depiction of Rochkind . . . as a posed portrait . . . ‘evinces at least a modicum of artfulness’,” though the fact that it was previously published favored the Defendant. The court found the third factor, the amount and substantiality of the work used, again favored Mic because it used a significantly cropped version of the photograph to achieve the purpose of both identifying the object of controversy and satirizing the <i>Post</i> article, and other alternatives to achieve the same transformative effect were “implausible.” Lastly, the court determined the fourth factor, the effect of the use on the potential market for or value of the work, favored Mic as well. Because the entire photograph did not appear on its own in Mic’s article, but in a cropped manner that also included a headline and author, it was implausible to think that potential purchasers would opt to use Mic’s screenshot rather than license the original photograph from Yang. Weighing the factors together, the court concluded that Mic had established its use fair use defense, and granted its motion to dismiss.
Tags	Second Circuit; Photography, News Reporting
Outcome	Fair use found.

Source: U.S. Copyright Office Fair Use Index. For more information, see <http://copyright.gov/fairuse/index.html>.