
SECTION 3.

BILL GRAHAM ARCHIVES V. DORLING KINDERSLEY FAQ

WHAT IS THE BACKGROUND OF THIS CASE?

In the final ruling on *Bill Graham Archives v. Dorling Kindersley*, on May 9, 2006, the US Court of Appeals for the Second Circuit upheld the decision of a lower court, finding the use of seven images of Grateful Dead posters and tickets published in an illustrated biography and *obtained without permission* from the copyright holder to be a fair use.

WHAT HAPPENED?

In this case, a publisher, Dorling Kindersley, used seven images of Grateful Dead concert posters and tickets without permission in the book, *Grateful Dead: The Illustrated Trip* (2003). The seven pictures were among over 2000 images that were incorporated into collages and mixed with graphic art, commentary and other written text along an illustrated historical timeline of the band's activities. Before the book was published, Dorling Kindersley attempted to negotiate permissions for the images with the copyright holder, Bill Graham Archives. However, Dorling Kindersley considered Bill Graham Archives' fees to be unreasonably high, and licensing agreements were never reached. Instead, Dorling Kindersley decided to publish the images *without permission* under the protection of the fair use doctrine. After the book was published, Bill Graham Archives sued for copyright infringement. The Second Circuit Court, like the lower court before them, ruled that the images of Grateful Dead posters and tickets, reproduced in reduced size, surrounded by new content, and reprinted in a biographical context was, in fact, a fair use.

What makes this case a fair use?

In fair use cases, courts usually consider four factors: (1) the purpose and character of the use; (2) the nature of the copyright work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work. The Second Circuit court found that the purpose and character of the use of the Grateful Dead images was fair because the use was *transformative*: the images were used in a collage along a timeline for historical purposes rather than for their original intent, which was concert promotion. Additionally, regarding the third factor, amount and substantiality of portion used, the court noted that even though entire images were used, their reduced size was consistent with transformative use. The court also found that reprinting concert tickets and posters in this type of historical biography did not infringe on Bill Graham Archives' market. Therefore, even though Dorling Kindersley used entire images without permission – and for a commercial project – these materials were used in an entirely different context for an entirely different purpose, which the court considered to be a fair use.

WHAT ARE THE IMPLICATIONS OF THIS CASE FOR EDUCATORS?

Teachers and educators can use this case to understand that using entire images is not necessarily prohibited when images are used *transformatively*. In this case, the use was considered *transformative* because the images were reduced in size and remixed with graphic art, additional text, and other images. Educators should also note that the opinion in this case also supports the view that permission is not always needed, *even when licensing is available*. The opinion overall supports using other's work in compositions or remixes, especially those that synthesize many works and/or include new material from the author.

Source:

Rife, M.C. (2006). Remix as "Fair Use": Grateful Dead posters' re-publication held to be a transformative, fair use. *National Council of Teachers of English*. Available at: <http://www.ncte.org/cccc/gov/committees/ip/127373.htm>

NAME: _____

CLASS: _____

W3: TRANSFORMING MAGAZINE IMAGES

Assignment: After developing a poster that uses images and text from mass media and popular culture to make a new work adding value or repurposing them, reflect on the context, purpose and audience of the original copyrighted material and the new creative work.

Purpose of Original Work	Purpose of New Work
Context of Original Work	Context of New Work
Audience for Original Work	Audience for New Work