

**Kelly v. Arriba Soft Corp.,
336 F.3d 811 (9th Cir. 2003)**

Year	2003
Court	United States Court of Appeals for the Ninth Circuit
Key Facts	Plaintiff Leslie Kelly, a professional photographer, alleged that defendant Arriba Soft Corp.'s search engine infringed Kelly's photographs. Defendant operated a visual search engine that "crawled" the internet searching for images that it copied and then generated as smaller, lower-resolution "thumbnail" copies for display on a search results page. Defendant reproduced thirty-five of plaintiff's photographs and displayed them as thumbnails in response to search requests. Plaintiff appealed the district court's ruling that defendant's use of plaintiff's photographs in its search engine was fair use.
Issue	Whether defendant's display of thumbnail versions of copyright protected images on an internet visual search engine constituted fair use.
Holding	The court held that defendant's reproduction of plaintiff's photos as thumbnail images was fair use. The court deemed the use transformative because the thumbnails served an entirely different function than the original images. While plaintiff's images were artistic works, the court found that defendant's use of them was "unrelated to any aesthetic purpose" and that the search engine instead "functions as a tool to help index and improve access to images on the internet and their related web sites." The court also found that the lower-resolution thumbnail images did not harm the market for or value of plaintiff's images.
Tags	Ninth Circuit; Internet/Digitization; Photograph
Outcome	Fair use found

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