

Philpot v. Media Research Center Inc.
No. 1:17-cv-822 (E.D. Va. Jan. 8, 2018)

Year	2018
Court	United States District Court for the Eastern District of Virginia
Key Facts	Plaintiff Larry Philpot is a professional photographer who takes photographs of musicians in concert. Defendant Media Research Center is a non-profit organization that “publishes news and commentary regarding issues of public debate in order to expose and critique media bias against American Judeo-Christian beliefs.” This case involves Plaintiff’s copyright interests in two photographs: (1) a photograph of Kenny Chesney performing in concert, and (2) a photograph of Kid Rock performing in concert. Plaintiff uploaded the photographs to Wikimedia, where they were available for use, subject to a Creative Commons attribution license. Defendant used the Chesney photograph in an article about pro-life celebrities and the Kid Rock photograph in an article about his bid for Senate, without attributing either photograph to Plaintiff. Plaintiff brought a copyright infringement action against Defendant, who filed a motion for summary judgment, in relevant part arguing that its use of the photographs was fair.
Issue	Whether Defendant’s use of plaintiff’s photographs of musicians in articles concerning the musicians’ political beliefs constitute fair use of the photographs.
Holding	After conducting the four-step analysis, the court concluded that Defendant’s use of the photographs constituted fair use and granted the Defendant’s motion for summary judgment. As to the first factor, the purpose and character of the use, the court found the use of the photographs was transformative since “[D]efendant’s use of the [p]hotographs [in the articles] is plainly different from [P]laintiff’s intended use of the [p]hotographs.” Defendant used the photographs “for the purposes of news reporting and commentary,” compared with Plaintiff’s intent to “depict the musicians in concert.” The court also found that the use of the photographs was essentially non-commercial since Defendant received only minor amounts of revenue and donations from the articles. With regard to the second factor, the nature of the copyrighted work, the court found that the factor was neutral since the photographs “are likely both factual and creative” in that they depict celebrities but Plaintiff made creative choices in taking the photographs. As to the third factor, the amount and substantiality of the use, the court found that “[D]efendant used all of [the] Chesney Photograph and only slightly cropped [P]laintiff’s photograph of Kid Rock.” Therefore, this factor favored Plaintiff. Lastly, the fourth factor, the effect on the potential market for the copyrighted work, weighed in favor of the Defendants, because “there is no showing on this record of any impact on any economic market for the Chesney or Kid Rock [p]hotographs.” Thus, the court held the use was fair.
Tags	Fourth Circuit; Photograph; Review/Commentary; Internet/Digitization
Outcome	Fair use found

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