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The Copyright Case That Threatens Creatives Everywhere

The copyright industry is rallying behind leading image protection service Pixsy, and specialist Lawyer David Deal - as they fight a controversial court ruling.

[Thursday, July 5th, 2018, Walnut, CA] When Virginia Judge Claude M Hilton ruled a blatant copyright infringement “fair use,” there was an outcry from creatives and copyright lawyers across the globe. Last week, the court set a dangerous precedent in deciding that it is acceptable to take and use someone else’s creative work at will, and without consequence.

Photographer Russell Brammer first discovered the use of the image with the help of Pixsys reverse image search software. His photograph had been taken from his Flickr account. It was cropped and used by Violent Hues on the website of the Northern Virginia Film Festival. With the help of Pixsy specialist lawyer David Deal, Brammer sued for copyright infringement after the festival claimed fair use.

Under United States law (17 U.S. Code § 107) the “fair use” test is applied using four main factors. (1) the purpose and character of the use (including whether it’s “transformative” and commercial vs. non-commercial) (2) the nature of the copyrighted work (3) how much of the work is used, and (4) how much the use affects the value of the work.

Having applied the U.S. Fair Use Test to the use of the image. Judge Claude M Hilton ruled in favor of the festival - “Because each of the four fair use factors favors Violent Hues, the Court finds that Violent Hues use was fair use and that there was no copyright infringement.” He ruled that the image was used on a commercial website, in a non-commercial way. He also ruled that the image was more informative than creative.

Crucially, the judge also deemed that the fact the image had been cropped worked in favor of the defendant. Despite the fact that creating a stand-alone work from an original using this method is still a breach of copyright. In fact, under copyright lawmaking modifications to an original should carry heavy penalties.

The court's decision that the use of the image was “in good faith” (as it was found online, and no indication was available that the work was copyrighted) has rightly incensed photographers and other creatives as well as those of us who work to protect their rights. It is for this reason that copyright law exists, and the message must be sent that it is unacceptable to use other people’s work without proper permission.

Taking the decision that Brammer had in no way been financially harmed by the “fair use” of his image for “informative” purposes sends a message to creatives everywhere that their work has

no value. The fact the image was sourced and then used on a commercial website would seem to prove otherwise.

Pixsy & David Deal are taking a firm stance - in response to this bizarre and unexpected outcome.

“To state the obvious, this came as a shock to me given the factual circumstances. I consider the court's reasoning quite dangerous for authors, and more importantly, our clients. Accordingly, I have made the decision to appeal the ruling”. Says David Deal.

He goes on to explain that the case is disappointing for many reasons, including the introduction of factors that have traditionally never played a role in the determination of whether an alleged infringement is considered fair use.

Pixsy & Mr. Deal are now closely working with Brammer to overturn the decision and have already filed an appeal. Pixsy represents more than 30,000 artists all of whom would be affected should outcomes such as this become common in copyright infringement cases.

Leading Copyright lawyers from across the US have stepped forward to offer their support.

About Pixsy:

Pixsy is one of the leading copyright legal-tech services for online image protection. Founded in 2014 by Daniel Foster, Pixsy is an award-winning startup with over 30,000 photographers & artists in its community. Pixsy has processed over 45,000 copyright infringement cases and works with more than 26 partner law firms across the globe.

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Sources:

Pixsy Inc: www.pixsy.com
The Law Office of David C. Deal: www.daviddeal.com

Court Ruling:

<https://www.scribd.com/document/383050982/Brammer-v-Violent-Hues-Productions>