

COPYRIGHT & LEGAL ISSUES

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Written Assignment 2 – Fair Use in the News

Part 1.

The dispute I decided to analyze is the one that occurred between Paramount Pictures Corp. and Annie Leibovitz.

Annie Leibovitz is a professional photographer specialized on fashion portrait who published a photograph of Demi Moore, the mainstream cinema actress, while she was seven month of pregnancy.

The photograph was named with the title *More Demi Moore* and it was published on the front cover of the magazine Vanity Fair on August 1991. This particular photograph had achieved significant fame and popularity on mass media. The film producer corporation, Paramount Pictures, took advantage of that notoriety and chose Leibovitz's photograph to create a parody in 1993 as part of a promotional campaign for its new film *Naked Gun 33 1/3: The Final Insult*.

The photographer designated by Paramount Pictures Corp. used a similar lighting and body positioning as Leibovitz's original work to create the parody.

In the advertisement picture of Paramount, Leslie Nielsen's face is superimposed over the body of a pregnant woman, shot and digitally manipulated in such a way as to closely resemble Leibovitz' photograph of Demi Moore.

Paramount ran the promotional campaign nationally, and Annie Leibovitz sued the corporation for copyright infringement.



Image taken from: <https://i.imgur.com/0yFW2Nd.png>

Then let's examine the case through the four fair use factors.

The first factor on fair use is purpose. Although the purpose of Paramount's promotional picture was obviously commercial publicity, the use of Leibovitz's photo was definitely transformative. In spite of the photographer drawing heavily from Leibovitz' composition, the purpose of Paramount pictures was to create a parody for comedy effects and ridicule. On the other hand, the intentionality of Annie Leibovitz working for Vanity Fair is to highlight modern values as the beauty and sensuality of the contemporary woman. Then from the perspective of the purpose factor, the case could probably be a fair use.

Furthermore, while the general composition, the styling and posing of the models in both pictures is the same, other elements are different. For instance, the lighting between the two photos is slightly different: in the Paramount photo the lighting is more garish, including greater contrasts and brighter colors while in the Leibovitz photo the lighting is warmer and more subdued. Other aspect to consider is that in the Paramount photo the ring on the model's right-hand is, again, garish, and much larger than the ring Demi Moore is wearing on her right hand. All those aesthetic and artistic decisions on the part of designers pursue the impact of parody. Also the expression on the model's faces has also a significant difference: while Demi Moore has a serious expression, Leslie Nielsen is smiling. The ultimate contrast, to consider a transformative use, is that of a healthy pregnant woman, compared with an older man's face superimposed onto a woman's body.

The second factor is the nature of the work. Clearly both images have different goals and different target audiences because Leibovitz's photo is design to capture the attention through the beauty and provocative sensuality of Demi Moore. In the other hand, the attractiveness of the Paramount image is humor with a ridiculous effect. Also, the nature of the media is different, one belongs to a magazine and the other promotes a film. Taking these considerations into account, this factor is probably positive a fair use.

The third factor is the amount of work that had been copied. In this case Paramount remade the photo session with another model looking for a strong similitude to recreate and make recognizable Annie Leibovitz photograph. The changes made are significant and evident so the case could be considered fair use on this factor too.

The fourth factor is market. As it is mentioned before both images are functional to different kind of product and has very different target audiences. For this reason I don't think the image produced by Paramount could have an economical impact on Leibovitz's market. As far as I can understand, the case seems to be very positive for fair use.

Part 2.

One common situation in film archives is the utilization of still frames from the movies to illustrate a film catalog. Although, most of the time these images are used with cultural, educational, informational and non-commercial purposes, there is not copyright exception for this case.