

On April 26, 2016 Matt Hosseinzadeh filed a lawsuit against Ethan Klein and Hilla Klein. Matt is suing for copyright infringement, and the Kleins are claiming fair use. On February 15, 2016, The Kleins published a video on their YouTube channel, h3h3productions, called “The Big, the BOLD, and Beautiful”. Ethan and Hilla have been publishing comedy videos on their YouTube channel for over three years. Matt has also been publishing videos on YouTube on his channel called MattHossZone for over five years. Matt describes his channel as “cinematic comedy, action, humor, and fantasy short films with electronic dance music. The Kleins are known for their comedy videos. Matt created a video called “Bold Guy vs. Parkour Girl” that was published in 2013. The video is about Matt and a woman flirting back and forth with each other. Three years later, the Kleins publish a video where they are critiquing Matt’s video as they watch it while they record themselves. The lawsuit has been recently filed and will soon be looked over by a judge. In order to determine or predict what the outcome of this lawsuit will be, the four factors from Section 107 of the Copyright Act will provide a thorough analysis of who will the judge rule in favor of.

Factor number one weighs in the purpose and character of the work. It is clear that the Kleins’ video was created for the sole purpose of commercial gain. Since they are founders of h3h3productions, and do profit from their YouTube videos, one can conclude that this video was published for commercial use. The video does not hold an educational purpose, but a commercial gain, since they are profiting and attempting to reach more audiences. The second part to this factor examines if the work brings in something new to the original work. In this case, the Kleins are just critiquing the video in a comedic manner. The video in question is a parody that is making fun of the original. The original is a short film about sexual chemistry between a man and a woman, which seems as though it is not meant to be funny, where as the Kleins’ video

is meant to be seen as a comedy. Furthermore, the Kleins are just sitting in front of a camera, watching Matt's video, and critiquing it. In weighing out factor number one, it seems as though it favors Matt because the work in question is for commercial use, although it's not always a final factor in the ruling, and it is not transforming the original work in any form nor is it adding any value.

The second factor weighs in the nature of the copyrighted work. The Kleins are taking Matt's work and are critiquing it. They are finding a comedic outlet to comment on Matt's work. The factors that weigh in on the Kleins favor is that they are highlighting that Matt is the sole writer of this short film. Therefore, their critique on the actress is ultimately a critique on Matt. They also are pointing out that in writing the script, Matt is ultimately setting himself up to deliver certain phrases or innuendos. This factor leads to favor the Kleins.

The third factor looks at the amount that was used from the original work. In this case, the viewer does not see the entire original video, but there is a substantial amount of the original video on it. The original video is about five minutes, and the Kleins use about three minutes of the original video, therefore, a substantial amount is being used. But, the Kleins utilized edit cuts so the viewer sees a clip of Matt's, then it cuts back to the Kleins. The Kleins did use a substantial amount of Matt's video, but in viewing the video the cuts between the Kleins and the original work allows the Kleins to make their critique on Matt so the viewer can see what they are critiquing, thus, without the clips, then the Kleins' video would make little sense to an audience that has never seen the original work. In weighing out the third factor, one could argue that the judge would favor the Kleins, due to the video being about fifteen minutes, and three of those minutes are the original work.

Finally, factor number four weighs if the work has caused a market effect on the original. Both channels have a pretty large following. If anything, they both benefited from the video because it led others to know about Matt's channel, therefore, bringing in more subscribers to his YouTube channel. It would appear that the judge would favor the Kleins on this factor.

In examining the four factors in this lawsuit, that is just about to go to trial, one could make a thorough prediction of what a judge may rule. In breaking down the four factors, it would appear that the judge may favor the Kleins. The Kleins are critiquing Matt's video, which is no different than an article critiquing a movie. A movie review would provide narrative and technical information in order to make a claim about the film, thus the Klein are doing the same, but just through a different medium. In addition, Matt did not like how his video was being used, which they basically poke fun at his work. The Copyright Act law utilizes freedom of speech in order to provide outlets to create tangible materials, and in taking away the Kleins right to critique a video runs the risk of taking their freedom of speech because someone does not like what they are saying. In this case, it appears that the judge may grant fair use.

A film archive would be able to claim fair use for an anonymous work that goes beyond weighing in on the four factors. The raw clip would be featured in a brief five-minute movie that would be featured on the archive's website. In other words, the raw clip would be a mini five-minute movie that would have the raw clip as a means to illustrate the archive's history and feature goals. In weighing in the four factors, factor number one, purpose, would be educational. This would favor the archive because they provide material for researchers and scholars. Purpose number two, the nature of the work would not be doing anything new with the material, except being edited with

other footage as a means to illustrate the archive's history and feature goals. I would argue that the court would not favor fair use on this factor. Factor number three, the archive used the entire raw clip, and so this would also go against the archive. And four, the market value would favor the archive because it's promoting their collections, and there is no evidence to factor in on the author's market value because it's an anonymous work. Therefore, this would favor the archive. But, the fact that the work is anonymous leads me to argue that this would be the determining factor that would favor the archive's fair use. Moreover, with the anonymous work this would also seem to suggest that there would be no need to really weigh in on the four factors. In having a five-minute movie, about the archive, which has edited in a work by an anonymous author, would justify the archive's fair use.

Work Cited

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