

Clark v. Transportation Alternatives, Inc.
18 Civ. 9985 (VM) (S.D.N.Y. Mar. 18, 2019)

Year	2019
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiff Dennis Clark is a photographer who owns a copyrighted photograph depicting a dockless bicycle parked at the edge of a sidewalk, which was featured in a <i>New York Post</i> (“ <i>Post</i> ”) article under the headline: “Dockless bikes are already clogging NYC sidewalks.” The next day, Defendant Transportation Alternatives (“TransAlt”), a nonprofit transit advocacy organization, used a screenshot of the article in a post on its “Daily Bike Forecast” blog, cropping the screenshot to show only the article’s headline, author byline, and Clark’s photograph and photographer credit. In the post, TransAlt commented that Clark’s photograph actually refutes the article’s proposition because the photograph shows a dockless bicycle that “appears to be parked rather considerately.” Clark brought suit alleging copyright infringement of his photograph. The parties submitted letters concerning a contemplated motion to dismiss by TransAlt, which the court found provided sufficient basis to decide a motion to dismiss without formal briefing.
Issue	Whether use of a photograph from a news article in a blog post that discusses the news article constitutes fair use.
Holding	The court found the first factor, purpose and character of the use, weighed in favor of fair use because TransAlt did not reproduce the photograph as a standalone image, but rather as part of a screenshot to satirize the <i>Post</i> ’s reporting by showing the “humorous incongruity” of the <i>Post</i> ’s headline juxtaposed with Clark’s photograph. The court rejected Clark’s argument that the use was not transformative because the blog post used the photograph to critique the <i>Post</i> ’s article rather than the photograph itself. The non-commercial purpose of the use, which was posted on a non-profit organization’s blog, also favored fair use. On the second factor, nature of the copyrighted work, the court noted that the photograph was “a ‘creative’ (rather than ‘factual’) work,” but added that this factor rarely plays a significant role in fair use determinations. Addressing the third factor, the amount and substantiality of the work used, the court found that although reproducing the entire photograph often cuts against fair use, TransAlt’s use of the full photograph was necessary to communicate its point that the photograph “undermined” the view expressed in the <i>Post</i> article. The court rejected Clark’s argument that TransAlt could have used a different photograph, finding that requiring TransAlt to do so would stifle TransAlt’s ability to critique. Lastly, the court found the fourth factor, the effect of the use on the potential market for or value of the work, weighed in favor of fair use because “the Screenshot does not compete against the Photograph in the enterprise of depicting dockless bicycles,” particularly because the screenshot contained text in addition to the photograph. Weighing the four statutory factors together, the court determined that TransAlt’s use of the photograph was fair and dismissed Clark’s complaint.
Tags	Second Circuit; Photograph; News reporting; Parody/Satire; Review/Commentary
Outcome	Fair use found

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