

**Duffy v. Penguin Books USA, Inc.,
4 F. Supp. 2d 268 (S.D.N.Y. 1998)**

Year	1989
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiff Mary Duffy authored two out-of-print fashion books titled <i>The H-O-A-X Fashion Formula</i> and <i>The Complete Petite</i> . Defendants Susan Nanfeldt and Penguin Books USA, Inc. wrote and published <i>Plus Style: The Plus-Size Guide to Looking Great (PSGLG)</i> . While researching and writing <i>PSGLG</i> , Nanfeldt visited a library and made unauthorized photocopies of portions of at least one of plaintiff's two out-of-print books. Plaintiff alleged that defendant Nanfeldt infringed by making unauthorized photocopies.
Issue	Whether photocopying an unidentified portion of an out-of-print book for purposes of research to create a book on the same topic constituted fair use.
Holding	The court ruled that Nanfeldt's reproduction of portions of Duffy's work qualified as fair use. While the court held that the third factor weighed in plaintiff's favor, because evidence of the amount copied was disputed, the other three factors favored defendants. For the first factor, although <i>PSGLG</i> was intended to be marketed commercially, Nanfeldt only copied plaintiff's work for research purposes. Additionally, the second factor favored defendants because plaintiff's works were published and therefore should be afforded narrower protection than unpublished works. The court also ruled that, because plaintiff's works were out-of-print at the time, she did not lose any commercial benefits as a result of the photocopying.
Tags	Second Circuit; Education/Scholarship/Research; Format shifting/Space shifting; Textual work; Unpublished
Outcome	Fair use found

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