

Matt Hosseinzadeh v. Ethan Klein and Hila Klein
No. 16-CV-3081 (S.D.N.Y. Aug. 23, 2017)

Year	2017
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiff Matt Hosseinzadeh is a filmmaker who created a video posted on YouTube, a short, five-minute skit about his character “Bold Guy” pursuing a woman. Defendants Ethan Klein and Hila Klein created a fourteen-minute “reaction video” commenting on Plaintiff’s video, and also posted it to YouTube; in so doing, Defendants showed portions (about three minutes) of Plaintiff’s video. Plaintiff sent YouTube a takedown notification, and YouTube removed the video. Defendants then sent a counter notification challenging the takedown on the basis that their video was, <i>inter alia</i> , fair use and noncommercial. Plaintiff filed an action alleging copyright infringement and seeking section 512(f) damages due to Defendants’ having made alleged misrepresentations in their counter notification. Defendants then posted another video discussing the lawsuit, after which Plaintiff amended his complaint to include a defamation claim. Both parties filed motions for summary judgment.
Issue	Whether Defendants’ “reaction video,” showing a large portion of Plaintiff’s copyrighted video, constitutes fair use.
Holding	After conducting the four-step analysis, the court found that the Defendants’ use was fair as a matter of law, and granted their motion. The court concluded that the first factor, purpose and character of the infringing work, “weigh[ed] heavily in defendants’ favor,” because their video is “quintessential criticism and comment.” The second factor, nature of the copyrighted work, favored Plaintiff because the work was “entirely scripted and fictional.” The third factor, amount and substantiality of the portion used, was neutral because “to comment on and critique a work, clips of the original may be used,” and their use of clips was “plainly necessary” and “reasonable to accomplish the transformative purpose of critical commentary,” but at the same time, “a great deal of plaintiff’s work was copied.” The final factor, effect of the use upon the potential market, weighed in favor of Defendants because their video “does not serve as a market substitute” for Plaintiff’s video since it “responds to and transforms [Plaintiff’s] video from a skit into fodder for caustic, moment-by-moment commentary and mockery.” Accordingly, the court found Defendants’ use was fair, and granted their motion for summary judgment. The court also dismissed Plaintiff’s claim for damages under section 512(f) because it had found that the use was fair (and therefore Defendants’ argument was true and not a misrepresentation), but also because they need only have had a subjective “good faith belief” that their use was fair to avoid such damages.
Tags	Second Circuit, Review/Commentary, Internet/Digitization
Outcome	Fair use found

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