

**N. Jersey Media Grp., Inc. v. Pirro**  
**74 F. Supp. 3d 605 (S.D.N.Y. 2015)**

Year	2015
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiff North Jersey Media Group, Inc., owner of the Thomas E. Franklin photograph of firemen raising the American flag at the ruins of the World Trade Center site on September 11, 2001, claimed copyright infringement when defendant Fox News Network's employee posted an image on Facebook that juxtaposed plaintiff's firefighter photograph with the World War II photograph of Marines raising the flag on Iwo Jima. The Facebook page on which the combined image appeared belonged to Fox's <i>Justice with Judge Jeanine</i> program, hosted by co-defendant Jeanine Pirro.
Issue	Whether defendants' reproduction of plaintiff's photograph on a Facebook page was fair use.
Holding	The court determined it could not conclude as a matter of law whether defendants' reproduction of plaintiff's photograph was fair use. The court found that, although defendant's use was not transformative, material questions of fact existed concerning the purpose of the use. It further found that the fourth fair use factor, the effect of the use upon the potential market for or value of the copyright work, weighed against a finding of fair use. In assessing that factor, the court noted that plaintiff "maintains an active licensing program for the photograph, including by licensing the [photograph] to media entities for editorial use, precisely the type of use [d]efendants urge they intended here."
Tags	Second Circuit; Internet/Digitization; Photograph
Outcome	Preliminary ruling, mixed result, or remand

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