

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Richardson v. Townsquare Media, Inc.

No. 25-291-cv (2d Cir. Apr. 23, 2026) · No. 25-291-cv · Decided April 23, 2026

SUMMARY

The Second Circuit reviewed a judgment on the pleadings in a copyright infringement action involving Townsquare Media’s publication and embedding of videos created by Delray Richardson. The court held that fair use of the entire Jordan Video could not be resolved in Townsquare’s favor at the pleading stage and that the de minimis doctrine did not bar claims concerning recognizable screenshots. It affirmed dismissal of the claim concerning the embedded Melle Mel Video because YouTube’s Terms of Service granted a license covering Townsquare’s use, vacated in part, and remanded.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Gerard E. Lynch; Richard J. Nardini; Menashi
JURISDICTION	United States Court of Appeals for the Second Circuit
DECIDED	April 23, 2026
DOCKET	25-291-cv
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff appealed from the district court's grant of judgment on the pleadings to the defendant in a copyright infringement action.
STANDARD OF REVIEW	De novo review of a judgment on the pleadings under Federal Rule of Civil Procedure 12(c). The Rule 12(c) standard is identical to the Rule 12(b)(6) standard; the court draws all reasonable inferences in the plaintiff's favor and must vacate if the pleadings present issues of fact that, if proved, could permit a verdict for the nonmoving party.
PRECEDENTIAL VALUE	Published and precedential Second Circuit opinion
PARTIES	Delray Richardson v. Townsquare Media, Inc.

TOPICS

- copyright infringement
- copyright fair use
- appellate procedure
- standard of review
- commercial litigation

PRACTICE AREAS

copyright

intellectual property

appellate procedure

commercial litigation

QUESTIONS PRESENTED

1. Whether Townsquare was entitled to judgment on the pleadings on its fair-use defense concerning its republication of the entire Jordan Video.
2. Whether Townsquare's use of screenshots from the Jordan and Melle Mel Videos was nonactionable de minimis copying.
3. Whether the license contained in YouTube's Terms of Service authorized Townsquare's embedding of the Melle Mel Video.
4. Whether the Second Circuit should resolve, at the pleading stage, whether embedding content constitutes actionable copying under the Copyright Act.

HOLDINGS

1. Townsquare was not entitled to judgment on the pleadings based on fair use because its republication of the entire Jordan Video plausibly provided viewers with a substitute for the original video, and the fair-use factors did not decisively favor Townsquare on the limited pleading-stage record.
2. The de minimis doctrine did not establish noninfringement as a matter of law because Townsquare prominently displayed recognizable screenshots as the backgrounds of article headlines, making the copyrighted works central rather than incidental to the secondary works.
3. YouTube's Terms of Service granted Townsquare a license to access and use the Melle Mel Video through YouTube's embedding feature, so Richardson's copyright claim based on Townsquare's embedding of that video was foreclosed.

KEY QUOTATIONS

“Nevertheless, when evaluating the fair-use defense at the pleading stage, we must be mindful that in order to warrant dismissal of a complaint, the fair-use factors must point decisively in the defense’s favor.” (10-11)

“In sum, a determination of fair use of the Jordan Video at the pleading stage cannot be justified. To whatever extent Townsquare’s use of the Jordan Video is transformative (if at all), that fact is outweighed by Townsquare’s decision to republish the entire video.” (25-26)

“Whether a secondary use of a copyrighted work is de minimis depends on whether the secondary use would be recognizable to an “average lay observer,” an inquiry that necessarily turns not just on how much of the copyrighted work a potential infringer uses but also on how the work is presented.” (32)

“Both the license and sublicense included the ability to republish the video from YouTube by means of embedding.” (36)

FACTUAL BACKGROUND

Richardson, a professional videographer, recorded a forty-two-second video of Michael Jordan breaking up a fight and later recorded an interview in which rapper Grandmaster Melle Mel criticized Eminem. Townsquare reproduced the entire Jordan Video through an embedded social-media post, embedded the Melle Mel Video from YouTube in two articles, and used screenshots from each video as article-headline backgrounds. Richardson alleged that these uses infringed his copyrights.

PROCEDURAL HISTORY

Richardson sued Townsquare Media for reproducing or embedding his Jordan Video and Melle Mel Video and for using screenshots from those videos in article headlines. The Southern District of New York granted Townsquare judgment on the pleadings, concluding that the Jordan Video use was fair, the screenshots were de minimis, and the Melle Mel Video embedding was authorized by a YouTube license. The Second Circuit vacated the judgment as to the Jordan Video and both screenshots, affirmed as to the embedding of the Melle Mel Video, and remanded.

DISPOSITION

other

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion. The district court's judgment is vacated as to Townsquare's use of the Jordan Video and the screenshots from the Jordan and Melle Mel Videos, and affirmed as to Townsquare's embedding of the Melle Mel Video.

CASES CITED

- Goel v. Bunge, Ltd., 820 F.3d 554, 559 (2d Cir. 2016)
- Hunley v. Instagram, LLC, 73 F.4th 1060, 1062, 1064-65 (9th Cir. 2023)
- Lynk Media, LLC v. Independent Digital News & Media, LLC, No. 24-cv-583, 2025 WL 2771625, at *9 n.6 (S.D.N.Y. Sept. 29, 2025)
- Vega v. Hempstead Union Free School District, 801 F.3d 72, 78 (2d Cir. 2015)
- Lynch v. City of New York, 952 F.3d 67, 75 (2d Cir. 2020)
- Lively v. WAFRA Investment Advisory Group, Inc., 6 F.4th 293, 301 (2d Cir. 2021)
- Hachette Book Group, Inc. v. Internet Archive, 115 F.4th 163, 179, 187, 189 (2d Cir. 2024)
- Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 578-79, 586 (1994)
- Cariou v. Prince, 714 F.3d 694, 705 (2d Cir. 2013)
- TCA Television Corp. v. McCollum, 839 F.3d 168, 178 (2d Cir. 2016)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith, 598 U.S. 508, 525, 528-29, 532, 545 (2023)
- Romanova v. Amilus Inc., 138 F.4th 104, 115, 118-19 (2d Cir. 2025)
- Authors Guild, Inc. v. HathiTrust, 755 F.3d 87, 96 (2d Cir. 2014)

- Swatch Group Management Services Ltd. v. Bloomberg L.P., 756 F.3d 73, 83 (2d Cir. 2014)
- Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith, 11 F.4th 26, 45-46 (2d Cir. 2021)
- Katz v. Google Inc., 802 F.3d 1178, 1183 (11th Cir. 2015)
- Los Angeles News Service v. CBS Broadcasting, Inc., 305 F.3d 924, 940 (9th Cir. 2002)
- Bill Graham Archives v. Dorling Kindersley Ltd., 448 F.3d 605, 613 (2d Cir. 2006)
- Authors Guild v. Google, Inc., 804 F.3d 202, 214, 221 (2d Cir. 2015)
- Capitol Records, LLC v. ReDigi Inc., 910 F.3d 649, 662 (2d Cir. 2018)
- Fox News Network, LLC v. TVEyes, Inc., 883 F.3d 169, 179 (2d Cir. 2018)
- Nicklen v. Sinclair Broadcast Group, Inc., 551 F. Supp. 3d 188, 198 (S.D.N.Y. 2021)
- Brown v. Netflix, Inc., 855 F. App'x 61, 63-64 (2d Cir. 2021)
- Lombardo v. Dr. Seuss Enterprises, L.P., 729 F. App'x 131, 132-33 (2d Cir. 2018)
- Ringgold v. Black Entertainment Television, Inc., 126 F.3d 70, 72-77 (2d Cir. 1997)
- Yurman Design, Inc. v. PAJ, Inc., 262 F.3d 101, 110 (2d Cir. 2001)
- Sandoval v. New Line Cinema Corp., 147 F.3d 215, 216-18 (2d Cir. 1998)
- Gottlieb Development LLC v. Paramount Pictures Corp., 590 F. Supp. 2d 625, 632-33 (S.D.N.Y. 2008)
- Gayle v. Home Box Office, Inc., No. 17-cv-5867, 2018 WL 2059657, at *2-*3 (S.D.N.Y. May 1, 2018)
- Rogers v. Koons, 960 F.2d 301, 307 (2d Cir. 1992)
- Absolute Activist Value Master Fund Ltd. v. Ficeto, 677 F.3d 60, 71 (2d Cir. 2012)
- Graham v. James, 144 F.3d 229, 236 (2d Cir. 1998)
- Spinelli v. National Football League, 903 F.3d 185, 197 (2d Cir. 2018)
- Yamashita v. Scholastic Inc., 936 F.3d 98, 105 (2d Cir. 2019)
- Global Network Communications, Inc. v. City of New York, 458 F.3d 150, 157 (2d Cir. 2006)
- In re Sears Holdings Corp., 51 F.4th 53, 65 (2d Cir. 2022)
- MDY Industries, LLC v. Blizzard Entertainment, Inc., 629 F.3d 928, 939 (9th Cir. 2010)
- Farmers Insurance Exchange v. Knopp, 50 Cal. App. 4th 1415, 1421 (Cal. Ct. App. 1996)
- Sullivan v. Finn, No. 16-cv-01948, 2017 WL 1209933, at *5 (N.D. Cal. Apr. 3, 2017)
- Helzel v. Superior Court, 123 Cal. App. 3d 652, 663 (Cal. Ct. App. 1981)
- Antonelle v. Kennedy & Shaw Lumber Co., 140 Cal. 309, 319 (Cal. 1903)

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