
Agee v. Paramount Communications, Inc., 59 F.3d 317, 1995 WL 377379 (2d Cir. 1995)

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CASE SUMMARIES

Agee v. Paramount Communications, Inc.,

59 F.3d 317, 1995 WL 377379 (2d Cir. 1995).

INTRODUCTION

A sound recording copyright owner brought an action against a television studio and television stations for copyright infringement, Lanham Act violations and unfair competition in connection with the unauthorized use of his sound recording in the television program *Hard Copy*. The United States District Court for the Southern District of New York granted summary judgment in favor of the defendants on the copyright claim and dismissed the Lanham Act and unfair competition claims. The United States Court of Appeals for the Second Circuit affirmed in part and reversed in part, holding that the unauthorized incorporation of portions of a copyrighted sound recording into the soundtrack of a commercial television production constituted an infringement of the copyright owner's exclusive right of reproduction.

FACTS

Michael L. Agee ("Agee") owned the copyright in sound recordings of Laurel and Hardy's music. Three songs were copied by Paramount Communications, Inc. ("Paramount") without Agee's permission for use in the soundtrack of a segment of its daily television program, *Hard Copy*, which is taped and transmitted to independently owned television stations ("television stations") for nationwide broadcast. Paramount incorporated the music into a segment called "Caught on Tape" by synchronizing portions of the duplicated sound recording to visual images of two men attempting a burglary. The completed segment was then integrated into the *Hard Copy* program for transmission to the television stations for next-day airing. Portions of the segment, including Agee's sound recording, were included in the program's credits as well as in a promotional commercial produced by Paramount. However, neither the program's credits nor the commercial included any references to Agee. The television stations copied and aired both the program and the promotional commercial.

The plaintiff, Agee, brought a copyright infringement action against the defendants, Paramount and the television stations, for the unauthorized copying and synchronization of the sound recordings, creation of a derivative work, and distribution of that work to the public. Agee further alleged that Paramount had violated the Lanham Act and that defendants had engaged in unfair competition.

The district court dismissed Agee's Lanham Act and unfair competition

claims for failure to state a cause of action and granted summary judgment against Agee on his copyright infringement claim after concluding that none of Agee's exclusive rights had been infringed. The district court held that since his sound recording copyright did not extend to the underlying musical compositions, Agee's right of reproduction did not include the exclusive right to synchronize his recording with visual images in an audiovisual work.¹ Agee appealed.

LEGAL ANALYSIS

The Second Circuit began with a review of Agee's copyright infringement claim in light of his exclusive rights under the Copyright Act. A sound recording copyright holder's exclusive rights under the Copyright Act include the right (1) to reproduce the sound recording; (2) to prepare derivative works based upon the sound recording; and (3) to distribute copies of the sound recording to the public.²

The court first determined whether Paramount's unauthorized incorporation of Agee's sound recording into a commercial audiovisual production infringed his exclusive right of reproduction under the Copyright Act. The court considered the statutory reproduction right conferred upon sound recording copyright owners, which includes the exclusive right "to duplicate the sound recording in the form of . . . copies of motion pictures and other audiovisual works."³ It held that the statutory language included a "synchronization right" which would proscribe the unauthorized use of a copyrighted sound recording in a commercial audiovisual production.

The court explained that the primary legislative purpose for granting sound recording copyright owners exclusive reproduction rights was to prevent record piracy.⁴ Nevertheless, Congress also specifically intended to prohibit the unauthorized reproduction of sound recordings in soundtracks of audiovisual works.⁵ Therefore, the court concluded that a "synchronization right" is not an enlargement of the reproduction right conferred upon a sound recording owner under the Copyright Act; it is, instead, a simple illustration of that right.

The court noted that the Copyright Act expressly permits only noncommercial entities to incorporate copyrighted sound recordings into the soundtracks of educational programs.⁶ Therefore, commercial entities, such as Paramount, may not reproduce copyrighted recordings on the soundtracks of audiovisual works, re-

1. The district court recognized, however, that a music publisher's exclusive reproduction right has been held to include a "synchronization right." See *Angel Music, Inc. v. ABC Sports, Inc.*, 631 F. Supp. 429, 433 n.4 (S.D.N.Y. 1986).

2. See 17 U.S.C. §§ 106, 114(a), 114(b) (1993) (scope of exclusive rights in sound recordings).

3. 17 U.S.C. § 114(b).

4. See H.R. REP. NO. 487, 92nd Cong., 1st Sess. at 1 (1971).

5. H.R. REP. NO. 487 at 106 (the copyright holder's exclusive reproduction right is infringed when a sound recording is reproduced "in the soundtrack or audio portion of a motion picture or other audiovisual work.").

6. 17 U.S.C. § 114(b).

ardless of whether or not the reproduction involves synchronization. Thus, the court held that Paramount's unauthorized use of Agee's sound recording in its commercial television production infringed his exclusive right to reproduce his work.

Second, the appellate court questioned whether Paramount infringed Agee's exclusive right to prepare derivative works based upon his sound recording. The use of a sound recording qualifies as a derivative work only if the "actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality."⁷ The court held that Paramount's synchronization of Agee's recording with visual images did not significantly rearrange, remix or alter the actual sounds in the recording. While Paramount did, in fact, edit Agee's recording for use in its program, the appellate court refrained from determining the materiality of the changes because it had already found an infringement in the reproduction of Agee's sound recording.

Third, the appellate court analyzed Agee's claim that Paramount infringed his exclusive distribution right when it transmitted *Hard Copy* via satellite to the television stations for nationwide broadcast. It stated generally that the mere broadcasting of a copyrighted sound recording does not constitute a "distribution." To hold otherwise would be to grant sound recording owners an exclusive performance right, which is explicitly withheld by the Copyright Act.⁸ Accordingly, the court held that Paramount's transmission of Agee's sound recording to the television stations for broadcast to the public was not a distribution, rather a performance of the sound recording. As such, the court concluded that the transmission did not violate Agee's exclusive distribution right.

Similarly, the appellate court exempted the television stations from liability for broadcasting the reproduction of Agee's recording because the broadcasts were merely performances of Agee's work. The television stations were entitled to additional protection from liability under the ephemeral recording exemption,⁹ which permits broadcasters to make one copy of a copyrighted work to assist their broadcast, provided certain preconditions are met.¹⁰

CONCLUSION

The Second Circuit held that Paramount infringed Agee's exclusive reproduction right by its unauthorized use of his copyrighted sound recording in its television program. However, Paramount's synchronization of the recording with visual images in the program did not significantly alter the actual sounds in the recording and therefore, did not create an infringing derivative work. Similarly, Paramount's transmission of the program to the television stations for public broadcast, along with the television stations' broadcast of the program, did not

7. 17 U.S.C. § 114(b).

8. 17 U.S.C. § 114(a).

9. See 17 U.S.C. § 112(a).

10. Finally, the court briefly discussed and affirmed the dismissal of Agee's Lanham Act and unfair competition claims.

violate Agee's exclusive distribution right because such transmission and broadcast merely constituted performances of the sound recording.

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