

**Peteski Productions, Inc. v. Leah Rothman**  
**No. 5:17-CV-00122 (E.D. Tex. Aug. 30, 2017)**

Year	2017
Court	United States District Court for the Eastern District of Texas
Key Facts	Defendant Leah Rothman worked for Plaintiff Peteski Productions as a Segment Director for The Dr. Phil Show from 2003 to 2015. In 2015, she sued Plaintiff and Dr. Phil for false imprisonment, intentional infliction of emotional distress, retaliation, and wrongful termination. Relating to that lawsuit, Defendant recorded with her iPhone a nine-second clip of Dr. Phil from a larger archive of unaired footage from his television show, in an attempt to document an example of his conduct for her lawsuit. This recording was counter to the terms of Defendant’s employment, which required her to never disclose any unaired footage or statements by Dr. Phil. In 2017, Plaintiff obtained a registered copyright in that nine seconds of video Defendant had captured, and filed suit for copyright infringement. Defendant filed a motion to dismiss, or alternatively for summary judgment, arguing that her copying was a fair use.
Issue	Whether Defendant’s use of unaired footage for use in a legal proceeding regarding Defendant’s employment with that television show constitutes fair use.
Holding	After conducting the four-step analysis, the court found that the Defendant’s use was not fair as a matter of law, denied her motion, and granted <i>sua sponte</i> summary judgment for Plaintiff on the issue. The court noted at the outset that fair use can be available even where a defendant gained access to the copyrighted work in bad faith. The court concluded that the first factor, purpose and character of the infringing work, weighed “strongly, though not dispositively” against a finding of fair use because Defendant “stole the underlying work in violation of various employment and confidentiality agreements” “for a purely self-serving purpose,” not to advance a public interest. The first factor further weighed against fair use because, while the use was noncommercial, it was “not highly transformative” since she “made no alteration to the work nor did she use it as part of a commentary or criticism.” The second factor, nature of the copyrighted work, “weigh[ed] strongly against fair use” because while the work depict an actual event before filming an episode of the television show, and therefore “possesses a mixed nature of fact and creativity,” it is also “strictly confidential” and unpublished. The third factor, amount and substantiality of the portion used, weighed against fair use as well because Defendant “copied the entire work by recording the nine-second video” from the archives. The final factor, effect of the use upon the potential market, weighed in favor of fair use because, while Plaintiff “is entitled to protect its <i>opportunity</i> to sell the video even if it does not wish to do so now,” “it has failed to identify evidence from which a jury could conclude that [Defendant’s] copying impacted that market at all.” Accordingly, the court found Defendant’s use was not fair.
Tags	Fifth Circuit, Film/audiovisual, Used in government proceeding
Outcome	Fair use not found, Preliminary ruling

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