

**Fox News Network, LLC v. TVEyes, Inc.,
No. 13 Civ. 5315 (AKH) (S.D.N.Y. Aug. 25, 2015)**

Year	2015
Court	United States District Court for the Southern District of New York
Key Facts	<p>Defendant TVEyes, Inc. (TVEyes) is a media-monitoring service that enables its subscribers to search for and track when keywords or phrases of interest are uttered on television or radio. TVEyes records the content of more than 1,400 television and radio stations and creates a searchable database of that content. TVEyes displays search and tracking results to subscribers by providing them with thumbnail images, snippets of transcripts, and short video clips. TVEyes does not store content longer than thirty-two days, but subscribers can independently archive video clips that appear in response to their search queries to a personal digital library on TVEyes' server, edit the video clips, and download the video clips to their personal computers for offline use and permanent storage. Subscribers can also email the clips directly to others, including non-subscribers. Additionally, TVEyes allows subscribers to access live-streams of television and radio programming as they are recorded. TVEyes makes its services available only to businesses and government agencies and is not open to the general public.</p> <p>Plaintiff Fox News Network, LLC (Fox) claimed TVEyes infringed the copyrights to nineteen of Fox's programs by copying the programs, importing them into a searchable database, and making them available to TVEyes' subscribers to play, edit, archive, download, and share. In a 2014 opinion, the United States District Court for the Southern District of New York found that TVEyes' copying of Fox's content for search, tracking and indexing purposes as well as its distribution of clips and snippets in search results was a fair use. In reaching this conclusion, the court determined that TVEyes' use of protected programming was transformative, finding that the "media-monitoring" service was akin to a database that converted copyrighted works into a "research tool," that subscribers used the service's search and tracking results primarily for "research, criticism, and comment," and that it was unlikely that the TVEyes service would adversely affect the market for the copied programming. <i>See Fox News Network, LLC v. TVEyes, Inc.</i>, 43 F. Supp. 3d 379 (S.D.N.Y. 2014).</p> <p>In the instant case, the court was asked to rule on whether the features of the TVEyes service that allowed subscribers to archive, download, email and share search and tracking results were protected by fair use. It was also asked to rule on whether a feature of the TVEyes service that allowed subscribers to search for television clips by date and time—as opposed to by keyword—was a fair use.</p>
Issue	Whether defendant's copying and distribution of plaintiff's copyright-protected programming in the context of a media-monitoring service that allowed users to archive videos, download videos, share videos by e-mail, and search for content by date and time was protected under the fair use doctrine.
Holding	<p>The court found the following: (i) TVEyes' archiving feature qualifies as fair use; (ii) TVEyes' downloading and date and time search features do not qualify as fair use; and (iii) TVEyes' e-mailing and sharing feature may qualify as fair use, "but only if TVEyes develops and implements adequate protective measures."</p> <p>Regarding the archiving feature, the court found that the ability to archive and store video clips in order to "facilitate successive reference" is "integral to TVEyes' service and its transformational purpose of media monitoring." Regarding the downloading</p>

	feature, the court found that allowing users to “download unlimited clips to keep forever and distribute freely” is a non-essential feature, poses undue danger to content-owners’ copyrights, and goes “well beyond TVEyes’ transformative services of searching and indexing.” Regarding the date and time search features, the court found that offering users the ability to search for videos by date and time “is not integral to TVEyes’ core service” and likely to have an adverse impact on the market for the licensing of Fox’s programming. Regarding the emailing and sharing feature, the court found that TVEyes “must develop protocols to reasonably assure that, when subscribers share video clips, they do so consistent with [the fair use doctrine]” and that “[u]ntil the development of reasonable and adequate protections and a satisfactory showing thereof, TVEyes’ e-mailing function cannot be considered fair use.” For example, the court suggested TVEyes should develop precautions to prevent indiscriminate sharing of video clips on social media and through email.
Tags	Second Circuit; Education/Scholarship/Research; Film/Audiovisual; Internet/Digitization; News Reporting
Outcome	Preliminary ruling, mixed result, or remand

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