

**Soc’y of the Holy Transfiguration Monestary, Inc. v. Gregory,  
689 F.3d 29 (1st Cir. 2012)**

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| Year      | 2012   |
| Court     | United States Court of Appeals for the First Circuit   |
| Key Facts | Plaintiff Society of the Holy Transfiguration Monastery, Inc. owns English translations of seven ancient Greek religious texts, some of which were unpublished. Plaintiff distributed copies of the translations to other parishes that used them for liturgies conducted in English. Defendant Archbishop Gregory, a former member of the monastery, posted a portion of the translations on his website. The Archbishop appealed the district court’s ruling against finding fair use.   |
| Issue     | Whether defendant’s posting on his website of plaintiff’s English translations of ancient religious texts constituted fair use.  |
| Holding   | The court held that defendant’s unauthorized reproduction was not a fair use. The court did not find his reproduction to be transformative because it was “essentially verbatim or near-verbatim copies” of plaintiff’s works, and his use was for the same purpose and benefit as the original works—to further religious practice and education. For the same reason, the court found that defendant’s use was likely to harm the potential market value for the works. Further, the court found that if such use was deemed fair, the market for translations of ancient religious texts would be affected, and institutions would be discouraged from investing resources in creating such works, rendering ancient texts inaccessible to potential users. Noting that the commercial-noncommercial distinction in a fair use analysis is not only limited to financial gain, the court also found that defendant benefited by providing the works to the public and gaining “at least some recognition” in the religious community for providing electronic access to translations of the ancient works. While some of plaintiff’s translations were published, others were not; therefore defendant’s online posting “effectively commandeered the Monastery’s control over if, when, and how any such release of these Works to the public would take place.” |
| Tags      | First Circuit; Internet/Digitization; Textual work; Unpublished  |
| Outcome   | Fair use not found   |

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