

Musical Artists Having A “Party and Bulls***” After Copyright Infringement Suit Dismissed

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Several musical artists, producers, publishers and songwriters, including the estate of the Notorious B.I.G and Rita Ora, are celebrating after a U.S. District judge for the Southern District of New York dismissed a copyright infringement lawsuit against them.

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In 1968, poet Abiodun Oyewole published the song “When the Revolution Comes.” The song warns of a coming revolution involving the black nationalist movement and ends with the lyrics: “But until then you know and I know n*****s will party and bulls***

and party and bulls*** and party and bulls*** and party and bulls*** and party...”

In 2016, Oyewole filed a copyright infringement suit against several parties who performed, produced, published or wrote several songs that included the phrase “party and bulls***.” These songs included “Party and Bulls***” by The Notorious B.I.G. and “How We Do (Party)” by Rita Ora. Oyewole stated that he brought the suit because the songs contravened the meaning of the phrase “party and bulls***.” In response, most of the named defendants filed motions to dismiss alleging, among other things, that the alleged infringement constitutes fair use (two of the defendants filed a motion to dismiss for insufficient service of process).

The court held that the defendants’ use of the phrase “party and bulls***” constituted fair use, focusing its analysis on “the purpose and character of the use” of Oyewole’s poem and the defendants’ songs. The court determined that Oyewole’s poem warned its listeners “to prepare for the revolution, appreciate its gravity, and commit themselves to

it; [the poem] explain[s] that only things of substance will survive the revolution.” As such, the court found that Oyewole’s use of the phrase “party and bulls***” condemned the partying lifestyle since such a lifestyle does not prepare one for the revolution. Meanwhile, the defendants’ songs use the phrase “party and bulls***” to embrace the partying culture. The court accordingly found that the defendants’ use of the phrase “party and bulls***” transformed the phrase “from something shunned to something glorified.”

The court also found that Oyewole’s complaint supported the court’s determination that the defendants’ use of the phrase “party and bulls***” constituted fair use. For example, the court stated that “Oyewole acknowledges that the B.I.G. and Rita Ora Defendants use the phrase ‘party and bulls***’ in contravention’ of Oyewole’s original purpose, which was to encourage people to NOT waste time with party and bulls***. Thus, even Oyewole recognized that Defendants’ songs change the meaning and purpose of the phrase party and bulls***.” (Internal quotations omitted).

The court also quickly analyzed the other three factors of fair use (the nature of the copyrighted work, the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and the effect of the use upon the potential market for or value of the copyrighted work). However, the court appeared to give significantly less weight to these three factors than the purpose and character of the use factor.

This decision demonstrates that the purpose and character of the copyrighted work and the allegedly infringing material is a very important consideration in the fair use analysis. It also serves as a cautionary note to parties to be careful in drafting pleadings to avoid providing statements that support the opposing party’s position.