**Directions**: Read this article and then complete the worksheet on the next page to understand how this case was decided

BILL GRAHAM ARCHIVES V.
DORLING KINDERSLEY FAQ

**What is the background of this case?**

In the final ruling on *Bill Graham Archives v. Dorling Kindersley*, on May 9, 2006, the US Court of Appeals for the Second Circuit upheld the decision of a lower court, finding the use of seven images of Grateful Dead posters and tickets published in an illustrated biography and *obtained without permission* from the copyright holder to be a fair use.

**What happened?**

In this case, a publisher, Dorling Kindersley, used seven images of Grateful Dead concert posters and tickets without permission in the book, *Grateful Dead: The Illustrated Trip* (2003). The seven pictures were among over 2000 images that were incorporated into collages and mixed with graphic art, commentary and other written text along an illustrated historical timeline of the band’s activities. Before the book was published, Dorling Kindersley attempted to negotiate permissions for the images with the copyright holder, Bill Graham Archives. However, Dorling Kindersley considered Bill Graham Archives’ fees to be unreasonably high, and licensing agreements were never reached. Instead, Dorling Kindersley decided to publish the images *without permission* under the protection of the fair use doctrine. After the book was published, Bill Graham Archives sued for copyright infringement. The Second Circuit Court, like the lower court before them, ruled that the images of Grateful Dead posters and tickets, reproduced in reduced size, surrounded by new content, and reprinted in a biographical context was, in fact, a fair use.

**What makes this case a fair use?**

In fair use cases, courts usually consider four factors: **(1)** the purpose and character of the use; **(2**) the nature of the copyright work; **(3)** the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and **(4)** the effect of the use upon the potential market for or value of the copyrighted work. The Second Circuit court found that the purpose and character of the use of the Grateful Dead images was fair because the use was *transformative:* the images were used in a collage along a timeline for historical purposes rather than for their original intent, which was concert promotion. Additionally, regarding the third factor, amount and substantiality of portion used, the court noted that even though entire images were used, their reduced size was consistent with transformative use. The court also found that reprinting concert tickets and posters in this type of historical biography did not infringe on Bill Graham Archives’ market. Therefore, even though Dorling Kindersley used entire images without permission – and for a commercial project – these materials were used in an entirely different context for an entirely different purpose, which the court considered to be a fair use.

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Period:\_\_\_\_\_\_\_\_\_\_\_

**Transforming Magazine Images: A Case of Fair Use**

**Directions**: Think about the case you just read. Write below how Fair Use was determined by completing the chart below.

|  |  |
| --- | --- |
| **What was the Purpose of Original Work?** | **What was the Purpose of New Work?**  |
| **What was the Context of Original Work ?** | **What was the Context of New Work ?** |
| **What was the Audience for Original Work?** | **What was the Audience for New Work?** |