IN THE

Supreme Court of the United States

TVEYES, INC.,

Petitioner,

 \mathbf{v}

FOX NEWS NETWORK, LLC,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In copyright law, the defense of fair use covers the transformative use of a work for research, comment, criticism and parody. Whether a use is "fair" depends upon four nonexclusive statutory factors, the fourth of which is "the effect of the use upon the potential market for or value of the copyrighted work." 17 U.S.C. 107(4). This Court has held that, in assessing this fourth factor, market harm cannot be presumed from a transformative use's commercial success and that harm arising from use of the copyrighted work for the purpose of criticism is not cognizable. See Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 590-92 (1994). But in the decision below, the Second Circuit held that the fourth factor presumptively weighs against a finding of fair use if a transformative use is commercially successful and thwarts the author's desire to prevent analysis or criticism of its work. The question presented is:

Can the transformative use of a copyrighted work cause a cognizable market harm under 17 U.S.C. 107(4) if it is used in connection with a commercially successful business that the author is unlikely to enter or authorize?

RULE 29.6 STATEMENT

TVEyes, Inc. has no parent corporation, and no publicly held company owns 10% or more of its stock.

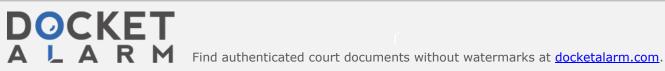


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