

***VIDEO PIPELINE, INC. v. BUENA VISTA HOME
ENTERTAINMENT, INC.***

342 F.3d 191 (3d Cir. 2003)

The Third Circuit held that the use of two minutes of copyrighted movie material in an online “clip preview” was not fair use. The court found the relevant factors balanced against fair use, rejected the defense that the copyright holder’s license agreements interfered with copyright policy, and held that the copyright holder would likely suffer irreparable harm if the preview was not enjoined.

Video Pipeline, Inc. collects and sells movie trailers. “Trailers” are movie previews which include short scenes from the movie along with additional creative aspects such as narration, music, and editing. Video Pipeline collected trailers onto videocassettes and sold them to home video retailers for in-store display. In 1997, Video Pipeline expanded onto the web, where it operated databases of trailers for use by consumers and for sale to online retailers. Video Pipeline had a license agreement with Disney (owned by defendant Buena Vista) for the distribution of trailers on videocassettes. The license agreement did not permit online display, and Video Pipeline complied with Disney’s request to remove Disney trailers from the online database. Video Pipeline replaced some of the Disney trailers with “clip previews,” which generally included one or two scenes from the first half of each movie. The district court entered a preliminary injunction prohibiting Video Pipeline from displaying clip previews of Disney films because it likely infringed Disney’s copyrights.

Video Pipeline appealed. The Third Circuit found Buena Vista likely to prevail on its copyright infringement claims and upheld the preliminary injunction, holding that three of the four fair use factors weighed against fair use. The court also rejected Video Pipeline’s defense that Disney’s license agreements interfered with copyright policy and found that Disney was likely to suffer irreparable harm if the clip previews were allowed to continue.

The court analyzed the four § 107 fair use factors: purpose and character of the use; nature of the copyrighted work; amount and substantiality of the portion used; and effect of the use upon the potential market. The court found the first factor weighed against fair use. The clip previews were not transformative so the commercial nature weighed more heavily, making the first factor balance strongly against fair use. Under the second factor, the copyrighted material was creative expression and not factual information, so this factor also weighed against fair use, even though the copyrighted material was widely available to the public. Contrary to the finding of the district court, the Third Circuit found that the clip previews did not copy the “heart of the original,” therefore the third factor weighed in favor of fair use. The appellate court also disagreed with the district court on the fourth factor, finding that the correct context for market harm was the loss of value the clip previews caused to Disney *trailers*, not Disney *movies*. In this context the court found the fourth factor to balance against fair use because the Disney trailers did lose value, even if they were not directly for sale.

The court held that although Disney’s licensing agreements did limit where trailers could be displayed, the agreements did not interfere with creative expression at a level that significantly impacted copyright policy, and so Video Pipeline was not likely to succeed on its copyright misuse defense.