

Fox News v. TVEyes Shows Fair-Use Defense Remains Risky Business

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“It seems to me that if there were any logic to our language, trust would be a four letter word.” TVEyes must have felt just like Tom Cruise’s character in *Risky Business* after trusting that the Second Circuit, which had recently found that Google’s Google Books platform constituted copyright fair use, would find that TVEyes’ distribution of copyrighted television clips was likewise a fair use. In Fox News Network’s suit against the media-monitoring service, TVEyes argued that its searchable database for television programming was “the audio-visual analog to [] Google Books,” and that its fair-use defense should succeed for the same reasons Google’s had in the Second Circuit’s Authors Guild, Inc. v. Google, Inc. decision (hereinafter Google Books). But the Second Circuit reached the opposite conclusion, holding that TVEyes’ service was not a fair use of Fox’s protected content. The Court’s holding confirms that fair use is unpredictable, and can be a risky—and expensive—defense for an accused infringer to rely on. But it also demonstrates that fair use does have limits, which is good news for content owners.

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