

## Wesley Lewis Authors Article for Media Law Resource Center: Fish Sticks n' Fair Use

---

September 14, 2020

---

PRACTICES Copyright, Intellectual Property

---

This May, the United States District Court for the Southern District of New York issued its ruling in [Brown v. Netflix](#), a case involving the unlikely intersection of children’s music and seafood-themed erotic dancing.

In *Brown*, three co-owners of the copyright in the children’s song *Fish Sticks n’ Tater Tots* brought a suit for copyright infringement against Netflix, Amazon, and Apple arising from the documentary film *Burlesque: Heart of the Glitter Tribe*. The documentary, available for purchase, rental, and/or streaming on Defendants’ platforms, focuses on a group of burlesque dancers in Portland, Oregon, and includes footage of a dance routine set in part to *Fish Sticks n’ Tater Tots*.

In the scene in question, a burlesque dancer known as Babs Jamboree appears on stage as a “reverse mermaid,” exposing her human legs while donning a costume fish torso and head. Ms. Jamboree then disappears behind a curtain marked “HOT OIL!” only to emerge in a brown bikini top and leggings—signifying her metamorphosis into a fish stick. The performance is set to a medley of songs, including a clip of *Fish Sticks n’ Tater Tots*. In the documentary, an 8-second diegetic clip of Plaintiffs’ song can be heard during the live performance. As is typical of documentary filmmaking, the performance footage is interspersed with footage of Ms. Jamboree creating her “reverse mermaid” costume, as well as studio interviews and narrative voiceovers. The entire scene lasts less than three minutes.

Excerpted from MLRC *MediaLawLetter*. To read the full article, login to the MLRC website [here](#). (Subscription only)