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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

F. MARC SCHAFFEL PRODUCTIONS, )  
LLC, )

Plaintiff, )

v. )

FOX NEWS NETWORK, LLC, et al., )

Defendants. )  
\_\_\_\_\_ )

NO. CV 10-00117 SJO (AGRx)

**ORDER DENYING DEFENDANTS FOX  
NEWS NETWORK AND NEWS  
CORPORATION'S MOTION TO DISMISS  
THE FIRST AMENDED COMPLAINT  
PURSUANT TO FED. R. CIV. P. 12(b)(1)  
AND FED. R. CIV. P. (12)(b)(6)  
[Docket No. 17]**

19 This matter is before the Court on Defendants Fox News Network, LLC ("Fox") and  
20 News Corporation's ("News Corp") (collectively, "Defendants") Motion to Dismiss the First  
21 Amended Complaint pursuant to Federal Rules of Civil Procedure ("Rule(s)") 12(b)(1) and  
22 12(b)(6), filed January 12, 2010. Plaintiff F. Marc Schaffel Productions, LLC ("Plaintiff") filed an  
23 Opposition, to which Defendants replied. The Court found this matter suitable for disposition  
24 without oral argument and vacated the hearing set for May 3, 2010. See Fed. R. Civ. P. 78(b).  
25 For the following reasons, Defendants' Motion is DENIED.

26 I. BACKGROUND

27 On January, 7, 2010, Plaintiff filed its Complaint alleging the following cause of action:  
28 (1) copyright infringement pursuant to 17 U.S.C. §§ 101 *et seq.* (Compl. ¶ 4.) On

1 January 12, 2010, Plaintiff filed its First Amended Complaint, which alleges the same cause of  
2 action, based on the facts below. (See *generally* First Am. Compl. ("FAC"))

3 Plaintiff owns an audio-visual work entitled, "Debbie Rowe Interview Produced and Directed  
4 by F. Marc Schaffel in Calabasas, California [(the "Interview")]." (FAC ¶¶ 6, 11.) Fox conducts  
5 business in Los Angeles, California as a subsidiary of News Corp. (FAC ¶ 7.) Plaintiff also  
6 alleges that News Corp exercises complete control of Fox, such that Fox is a "mere shell,  
7 instrumentality, and conduct [sic] through which News Corp carries on its business." (FAC ¶ 8.)

8 In 2003, portions of the Interview were broadcast around the world, with Plaintiff's  
9 permission, as part of another one of Plaintiff's audio-visual works entitled, "The Michael Jackson  
10 Interview: The Footage You Were Never Meant to See." (FAC ¶ 11.) On July 5, 2009, portions  
11 of the Interview were broadcast in promotions for and as part of the Fox television show,  
12 "Geraldo at Large." (FAC ¶ 12.) Plaintiff did not consent to or license this use of the Interview to  
13 Fox. (FAC ¶ 12.) Following Defendants' airing of the Interview, Plaintiff asserted its rights to the  
14 Interview and demanded that Fox: (1) cease and desist from further broadcasting of the Interview;  
15 and (2) provide information regarding all Fox broadcasts of the Interview in order that Plaintiff  
16 might determine its damages and remedies. (FAC ¶ 13.)

17 On March 5, 2010, Defendants filed the instant Motion, arguing that: (1) Plaintiff lacks  
18 standing because Plaintiff does not own the copyright to the Interview; (2) Defendants' use of  
19 portions of the Interview qualifies as non-actionable fair use pursuant to 17 U.S.C. § 107; and  
20 (3) Plaintiff's allegations with regards to News Corp's liability are overly speculative.  
21 (Defs.' Mot. to Dismiss Pl.'s FAC ("MTD") 6, 10, 16.)

## 22 II. DISCUSSION

### 23 A. Standing

24 Defendants argue that Plaintiff lacks standing because Plaintiff either did not own the  
25 copyright at the time of the infringement, or does not own the copyright at all. (MTD 1, 7-9.) In  
26 order to have standing and establish a case or controversy under Article III of the United States  
27 Constitution, Plaintiff must show the following: (1) injury in fact; (2) causation; and  
28 (3) redressability. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). All three

1 requirements are met here, as Plaintiff has alleged: (1) Plaintiff is the sole owner of all right, title,  
2 and interest in the copyrights of the Interview and Defendants have commercially used the  
3 Interview without Plaintiff's permission; (2) as a result of Defendants' infringing activities, Plaintiff  
4 has suffered injury in an amount not yet known, but to be determined according to proof at trial;  
5 and (3) damages and/or other remedies are available pursuant to 17 U.S.C. § 501 for the wrongful  
6 broadcasting of the Interview. (FAC ¶¶ 15-20.) Accordingly, it is clear that Plaintiff has standing  
7 to pursue its claims against Defendants, pursuant to *Lujan*. See *Lujan*, 504 U.S. at 560-61.

#### 8 B. Fair Use

9 Defendants also argue that Plaintiff's FAC fails because Defendants' use of the Interview  
10 is a fair use that is not actionable as infringement. (MTD 10.) Section 107 of the Copyright Act  
11 allows "fair use" of copyrighted work for purposes such as criticism, comment, news reporting,  
12 teaching, scholarship, or research.<sup>1</sup> See 17 U.S.C. § 107. A court may only conduct fair use  
13 analysis as a matter of law on a motion to dismiss, however, when no material facts are in dispute.  
14 See *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 530 (9th Cir. 2008). In the instant  
15 Motion, a material fact is in dispute, as Plaintiff alleges that it owned the copyright to the Interview  
16 at the time of the infringement, while Defendants allege otherwise. (See FAC ¶¶ 15-17; MTD 7-9.)  
17 Accordingly, because the issue of fair use is a mixed question of law and fact, it will not be decided  
18 as a matter of law at this stage of the litigation. See *Harper & Row Publishers, Inc. v. Nation*  
19 *Enter.*, 471 U.S. 539, 560 (1985) (establishing that fair use is a mixed question of law and fact);  
20 *Hustler Magazine, Inc. v. Moral Majority, Inc.*, 796 F.2d 1148, 1151 (9th Cir. 1986) (holding that  
21 fair use should be analyzed as a matter of law only if there are no genuine issues of material fact).

#### 22 23 24 C. Failure to State a Plausible Claim

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28 <sup>1</sup> 17 U.S.C. § 107 provides in pertinent part: "[T]he fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright."

1 Finally, Defendants argue that Plaintiff's allegations against News Corp do not rise above  
2 a speculative level, and thus, should be dismissed pursuant to Rule 12(b)(6). (MTD 16-17). The  
3 sole issue raised by a Rule 12(b)(6) motion is whether the facts pleaded would, if established,  
4 support a plausible claim for relief. See *Bell Atlantic v. Twombly*, 550 U.S. 544, 556 (2007). A  
5 complaint should not be dismissed under Rule 12(b)(6) "unless it appears beyond doubt that the  
6 plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Balistreri*  
7 *v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988). Here, Plaintiff alleges that News Corp  
8 exercises control over Fox to the extent that "any separateness of . . . Fox and . . . News Corp  
9 does not . . . exist." (FAC ¶ 8.) For the purposes of this Motion, the Court assumes that all  
10 general allegations "embrace whatever specific facts might be necessary to support them."  
11 *Pelosa v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 521 (9th Cir. 1994). Accordingly, because  
12 Plaintiff's Complaint alleges that News Corp and Fox both derived profits from infringing Plaintiff's  
13 copyright, Plaintiff's Complaint supports a plausible claim for relief as to both News Corp and Fox.  
14 (FAC ¶¶ 8, 16.)

15 III. RULING

16 For the foregoing reasons, the Court **DENIES** Defendants' Motion to Dismiss Plaintiff's  
17 FAC. Defendants have until **JUNE 28, 2010** to file an Answer.

18 IT IS SO ORDERED.

19 Dated: June 7, 2010



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21 S. JAMES OTERO

22 UNITED STATES DISTRICT JUDGE  
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