

**Warren Publ'g Co. v. Spurlock,  
645 F. Supp. 2d 402 (E.D. Pa. 2009)**

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| Year      | 2009   |
| Court     | United States District Court for the Eastern District of Pennsylvania  |
| Key Facts | Plaintiff Warren Publishing Co. commissioned artist Basil Gogos to create cover art for several of its horror-themed magazines. Defendant J. David Spurlock published <i>Famous Monster Movie Art of Basil Gogos</i> , a biographical book that chronicled Gogos' life and artwork. Plaintiff alleged that defendant's book, which included twenty-four images of cover art that originally appeared on the covers of plaintiff's magazines, infringed its copyrights in the magazines.  |
| Issue     | Whether it was fair use for defendant to reproduce plaintiff's magazine cover artwork in a biography detailing the career of the artist who created it.  |
| Holding   | The court held that defendant's use of artwork to illustrate a biographical work about the artist constituted fair use. The court favored a finding of fair use despite its determination that a genuine issue of fact remained regarding whether defendant's use would have a commercial impact on the value of the copyrighted works. The court further determined that defendant's use of the artwork to illustrate a particular stage of Gogos' career was transformative, considering plaintiff had originally used the artwork for purposes related to the advertising and sale of magazines. The court also determined that the cover artwork only constituted a small percentage of the protected original works (one page out of each magazine issue's 68 to 100 pages) and that the artwork did not comprise the "heart" of the works in question. |
| Tags      | Third Circuit; Education/Scholarship/Research; Painting/Drawing/Graphic; Textual work  |
| Outcome   | Fair use found   |

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