

But Your Honor, They Didn't Transform Anything. I Was Already Willing to Say Anything for Cash!

Santos v. Kimmel, No. 24-2196-cv, 2025 WL 2825050 (2d Cir. Oct. 6, 2025)

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Fair use just got a late-night twist: the Second Circuit says Jimmy Kimmel's jokes about former Congressman George Santos were more than funny—they were transformative. On September 15, 2025, the Second Circuit held that Kimmel's segments titled "Will Santos Say It?" constituted fair use (and thus did not infringe) despite Santos's arguments that the segments were not transformative. The Second Circuit explained that whether a work is transformative is judged from the perspective of a reasonable observer, not based on the intentions of the copyright owner.

The online platform known as Cameo (<https://www.cameo.com/>) allows users to pay to request video messages from celebrities. Kimmel's staff anonymously requested videos from Santos ranging from more mild requests to more edgy requests such as a video congratulating a legally blind person for passing a driving test. Santos responded to each video. Kimmel used these videos in his segment "Will Santos Say It?", where Kimmel described "disgraced former Congressman George Santos[']s ... new gig making videos on Cameo for \$400 a pop."



Section 107 of the Copyright Act outlines four factors for a fair use analysis, where use of a copyrighted work may not infringe where it is used for a permitted purpose such as criticism, commentary, or teaching. Here, the Second Circuit focused on the first factor of fair use: the purpose and character of the use. Factor one considers whether the copyrighted work was transformed into something different. Santos argued that the District Court erred in dismissing its claims because, among other things, it improperly classified Kimmel's use as transformative. Santos argued that Kimmel did not transform his content because his original purpose was actually to say absurd things for money, which is the same as what Kimmel was criticizing him for.

The Second Circuit affirmed the dismissal, explaining that while Santos may have been willing to say absurd things for money, his subjective intentions were irrelevant. "[W]hether a secondary use is transformative turns on what a reasonable observer thinks, not the subject intent of the copyright holder or that of the secondary user." The Court explained that a reasonable observer would think the videos conveyed "feelings of hope, strength, encouragement, and positivity," not a willingness to say absurd things for money. As a result, the work was transformative because it went from a video conveying those positive feelings to criticism for Santos's (admitted) willingness to say absurd things for money.

Focusing on facts over feelings, the Court found intent of **both** parties irrelevant. The Court did not care that Kimmel instigated the creation of the works nor did it care that Santos intended to be silly for money. As a result, public figures should be aware that monetizing their personal appearance may subject their work to criticism or commentary regardless of their original intentions.