



of polar bears and copyrights: southern district of new york again rejects the server test

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A polar bear is currently at the center of an important copyright dispute in the Southern District of New York in a case that could hold major implications over the scope of a copyright holder's exclusive display rights. *See Nicklen v. Sinclair Broad. Grp.*, 2021 WL 3239510 (S.D.N.Y. July 30, 2021).

The case was filed by Paul Nicklen, a nature photographer and filmmaker, who authored a video of an emaciated polar bear wandering the Canadian Arctic. Nicklen posted the video on his Instagram and Facebook accounts, urging his followers to consider the "haunting" and "soul-crushing scene" and to take steps to mitigate the harms of climate change. The video was then picked up by a media company, Sinclair Broadcast Group ("Sinclair"), which published an article titled "Starving polar bear goes viral in heartbreaking video" and, without permission, "embedded" the video into the body of the article. Nicklen brought suit in the Southern District of New York for copyright infringement against Sinclair and its media affiliates, alleging that Sinclair infringed his copyright rights in the video, and that the article was reposted—and the video re-embedded—on television station websites operated by Sinclair and its affiliates. The Sinclair defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), arguing that plaintiff failed to state a claim for copyright infringement.

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