



Client Alerts

B Nagel Films v. Netflix: A Copyright Dispute over Storytelling

January 13, 2025 | (Time to read: 3 minutes)

By [Brent Lehman](#)

In a streaming environment where there seems to be an endless supply of true-crime and pop-culture documentary content, there is bound to be some overlap. Take the multiple films about Katia and Maurice Krafft or the seemingly endless number of films about Woodstock '99, for example. In 2019, two documentaries centered on Billy McFarland's ill-fated music festival, Fyre Fest, were released in the same week. Recently, B. Nagel Films and Netflix each released documentary films discussing the sexual abuse scandal surrounding the Boy Scouts of America.

The legal arguments presented by B. Nagel Films and Netflix serve as an excellent discussion of copyright law in general as they focus on core principles of copyright law, emphasizing the distinction between protected and unprotected elements in creative works, even where the works overlap, and how production companies can defend against claims of copyright infringement.

Under copyright law, a plaintiff must establish (1) ownership of a valid copyright (i.e., the plaintiff must demonstrate they hold a legitimate copyright for the work in question) and (2) the unauthorized copying of original elements. Where the act does not involve directly using or copying an exact replica of the work (such as a sound recording or photograph), a plaintiff must show that the defendant had access to the plaintiff's work and that substantial similarities exist between the two works in their protectable expression.

There is no bright-line rule for substantial similarity. Courts compare plot, themes, characters, settings, sequence of events, and mood. Copyright protection applies only to original, creative expressions—not to facts, general ideas, or conventions of a genre. Courts will also consider "appropriation." This examines whether the two works share a substantially similar "total concept and feel" from the perspective of a lay observer. The defendants argue that the works differ significantly in focus, narrative structure, and style, making any claim of improper appropriation unsupportable.

The crux of the case is whether B. Nagel Films can show substantial similarity in protected elements, which is critical for a claim of infringement.

B. Nagel Films has an uphill battle to support its claim. First, the producers cannot simply argue that Netflix "copied" their story or idea to make a documentary film about the Boy Scouts of America abuse scandal by using a similar storyline or characters. Copyright law protects the specific expression of ideas, not the ideas themselves. This is enshrined in Section 102(b) of the Copyright Act, which explicitly excludes ideas, procedures, processes, systems, and concepts from copyright protection. Further, the scandal itself is in the public domain, which is material that cannot be monopolized.

The primary argument in favor of B. Nagel Films is that the Netflix production is "substantially similar" through its appropriation of themes, structure, mood, dialogue, visual style, and arrangement.

B. Nagel Films argues that "[a]nalysis of the two documentaries reveals concrete examples of defendants' documentary copying protectable elements of *Boy Scouts Honor's* expression as demonstrated by the defendants' documentary's infringing use of mood, tone, dialogue, structure, and other expressive artistic elements." As part of this, B. Nagel argues that the selection and arrangement of elements in the two documentaries show similarity.

B. Nagel Films points to specific moments in the two films that purport to make this point. Both films open with approximately two minutes and 30 seconds of "wholesome portrayals" of the Boy Scouts ending with an abrupt cut to a discussion of the abusive conduct. In closing scenes, both films end with white letters over a black screen accompanied

by dramatic music. The screens also include details of the Boy Scouts' bankruptcy declaration, settlement trust, and the uncertainty of what that might mean for survivors regarding their claims against the organization.

This, too, will be a difficult argument to assert as Netflix will rely on the *scènes à faire* doctrine in defense of its film. Under this doctrine, elements that are necessary or naturally flow from the theme of a work are not protected by copyright. Examples in this case include common documentary elements like archival footage, interviews, and documents, as well as techniques such as somber music, chiaroscuro lighting, and transitions between interviews and other visuals. Netflix will assert that these features are standard in documentaries and cannot form the basis of a copyright claim.

Netflix can attack B. Nagel Films' arguments by showing that juxtaposing "wholesome" scouting imagery with revelations of abuse is a common theme in similarly styled documentaries. Further, the entire narrative, character focus, and presentation of the stories are arguably different. While B. Nagel Films' production focuses on a single abuser and survivor, emphasizing personal stories and dramatized reenactments, Netflix's documentary takes a broader perspective, examining systemic issues and institutional failures without dramatizations.

This case hinges on the clear distinction between protected and unprotected elements in copyright law. By relying on established doctrines such as the idea/expression dichotomy and *scènes à faire*, Netflix is likely to convince the court that B. Nagel Films' claims lack legal merit and will underscore that any similarities between the documentaries involve unprotectable facts, ideas, and generic features, rather than original expression.

Related People

- Brent Lehman