

9th Circ.'s 'Dancing Baby' Ruling Came with Big Caveats

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The Ninth Circuit's long-awaited ruling in the so-called "dancing baby" case was a victory for the fair use doctrine and for critics of aggressive online copyright enforcement, but one that was also carefully limited to avoid the kind of sweeping decision some wanted.

Stephanie Lenz sued Universal Music Group in 2007, claiming the label violated the Digital Millennium Copyright Act's takedown procedures by improperly asking YouTube to yank a 30-second clip of her son dancing to Prince's "Let's Go Crazy," a video she said was protected under the fair use doctrine.

As the case made its way toward a Ninth Circuit decision after more than eight years of litigation, many viewed Lenz's fight as a key battle in the broader, never-ending legal and policy war over how copyrights can and should be protected on the Internet.

In a broad sense, the Ninth Circuit's decision for Lenz was a sweeping endorsement of the fair use doctrine's place in American copyright law.

In finding that copyright owners need to consider the doctrine before sending notices, the appeals court ruled that fair use of copyrighted material is not some kind of exception to the law or merely a way to excuse otherwise infringing activity, but rather is "wholly authorized" by the law.

That distinction matters: Fair use is not some kind of loophole in protection, the court said, but a positive right.

"The court really embraced the fair use mantra and seemed to highlight it as a noble and welcome defense to copyright infringement that merits heightened scrutiny," said Scott Christie, a partner at McCarter & English LLP. "The court said that because society benefits from fair use activity, copyright owners need to be better schooled in it, and they need to make sure they're not stifling it."