NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13414
Non-Argument Calendar

HOLLY JEAN FRAZETTA, et al.,

Plaintiffs,

FRAZETTA PROPERTIES, LLC,

Plaintiff-Appellee,

versus

VANGUARD PRODUCTIONS, LLC,
JESS DAVID SPURLOCK,

Defendants-Appellants.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:22-cv-00581-WFJ-AEP

Before LUCK, LAGOA, and ABUDU, Circuit Judges.

PER CURIAM:

Vanguard Productions, LLC, and Jesse David Spurlock ("Vanguard/Spurlock") appeal the district court's grant of summary judgment to Frazetta Properties, LLC ("Frazetta") in this copyright infringement case.[1] The district court held that Vanguard/Spurlock did not have a license to reproduce the works at issue, so its reproduction infringed on Frazetta's copyright. The district court also concluded that Vanguard/Spurlock's use of the works was not "fair use" under 17 U.S.C. § 107. On appeal, Vanguard/Spurlock argue the district court erred in granting summary judgment on its license and fair use defenses. After careful review, we affirm.

I. FACTUAL BACKGROUND & PROCEDURAL HISTORY[2]

This dispute concerns the use of Frank Frazetta's artwork. Frank Frazetta produced numerous distinctive drawings that were used as book cover art for fantasy and science fiction novels. Frazetta Properties, LLC, has registration certificates of copyright for some of his works, including Death Dealer II and V, the works of art at issue here. Death Dealer II and V were first published in 1988 and 1990, respectively, and both were certified in 2009.

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[1] *See Frazetta v. Vanguard Prods., LLC*, 716 F. Supp. 3d 1265 (M.D. Fla. 2024). There were other claims and defenses addressed in other rulings, but they are not at issue on appeal. *See generally id.* at 1285.

[2] At this procedural juncture, we construe—and summarize—the evidence in the light most favorable to Vanguard/Spurlock. *See Guevara v. Lafise Corp.*, 127 F.4th 824, 828 (11th Cir. 2025).

There are two contracts between Frazetta and Vanguard/Spurlock relevant to this appeal.[3] In 2010, Frazetta and Vanguard/Spurlock entered into a two-book publishing agreement ("Two-Book Publishing Agreement"). This agreement permitted Vanguard/Spurlock to publish one book of Frank Frazetta's "sketches" and one book of Frank Frazetta's "photographs."

The Two-Book Publishing Agreement was accompanied by the second relevant contract—an endorsement and trademark agreement ("Endorsement Agreement"). The Endorsement Agreement permitted Vanguard/Spurlock to publish a third book, entitled *The Definitive Frazetta Reference* ("Definitive Reference Book"), which was already written by James Bond and David Winiewicz, and had been published previously by Vanguard/Spurlock. Vanguard/Spurlock also received the rights to "update, revise text, replace images, re-design and publish" the Definitive Reference

[3] In 2015, Vanguard/Spurlock held themselves out as being "the only authorized publisher of books predominantly featuring Frank Frazetta art . . . [a]s per various agreements with Frazetta Properties LLC" signed in 2010. They made this representation in a cease-and-desist letter to a comic book distributor. Although the letter appeared to be signed by a Frazetta representative, after further inquiry into the document's authenticity, Vanguard/Spurlock withdrew the version of the document with Frazetta's purported signature. This unsigned document does not give Vanguard/Spurlock any rights that they did not already have from the two outlined contracts. Vanguard/Spurlock also do not argue on appeal that the now-withdrawn signed version of the letter was legitimate, abandoning any issue in this respect. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680–81 (11th Cir. 2014) (explaining that, on appeal, arguments not clearly raised in the briefs are considered abandoned).

Book as they saw fit. The Endorsement Agreement reiterated Vanguard/Spurlock's right to publish the book of sketches and a book of photos, as well. It granted Vanguard/Spurlock "the exclusive right and license to use [its p]roperty . . . solely in connection with the identification of the subject F[razetta] Books and their promotion, advertising, distribution and sale."

In 2022, Vanguard/Spurlock published the book at issue here: *Frazetta Book Cover Art – Definitive Reference* ("Cover Art Book"). Vanguard/Spurlock used both Death Dealer II and Death Dealer V in the book. Frazetta then sued Vanguard/Spurlock, alleging copyright infringement under the Copyright Act, 17 U.S.C. § 101. After discovery, each party moved for summary judgment. Frazetta asserted that Vanguard/Spurlock did not obtain permission to use Death Dealer II and Death Dealer V in the Cover Art Book. Furthermore, it contested each of Vanguard/Spurlock's defenses, arguing Vanguard/Spurlock had offered no ground to permit their infringement.

In February 2024, the district court granted summary judgment to Frazetta, concluding that Vanguard/Spurlock infringed on Frazetta's copyright. For reasons explained further below, the district court concluded that Vanguard/Spurlock was liable, and it

found no genuine dispute of material fact regarding Vanguard/Spurlock's defenses of license and fair use.[4] This appeal followed.

II. STANDARD OF REVIEW

"We review the district court's grant of summary judgment *de novo*, construing all facts and drawing all reasonable inferences in favor of the non-moving party." *Guevara*, 127 F.4th at 828. "Summary judgment is appropriate when no genuine dispute of material fact exists and a party is entitled to judgment as a matter of law." *Id.* at 828–29. "A dispute of fact is genuine if a reasonable jury could return a verdict for the non-moving party." *Id.* at 829. A party who moves for summary judgment bears the burden to demonstrate the lack of genuine issues of material fact. *Poer v. Jefferson Cnty. Comm'n*, 100 F.4th 1325, 1335 (11th Cir. 2024). "The mere existence of a scintilla of evidence in support of the [non-movant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-movant]." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). "Contract interpretation is subject to the same *de novo* review" as summary judgment rulings. *Hegel v. First Liberty Ins. Corp.*, 778 F.3d 1214, 1219 (11th Cir. 2015) (applying Florida law).[5]

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[4] Vanguard/Spurlock asserted other defenses in the district court, and there were additional proceedings on the appropriate damages. Vanguard/Spurlock only raise their license and fair use defenses on appeal.

[5] "We generally apply state law to such questions of contract interpretation . . . ." *Eli Lily & Co v. Air Exp. Int'l USA, Inc.*, 615 F.3d 1305, 1314 (11th Cir.

III. DISCUSSION

Vanguard/Spurlock do not contest that they used Frazetta's copyrighted works in the Cover Art Book. Instead, Vanguard/Spurlock assert that (1) they were permitted to use the photos under the licensing agreements; and (2) the district court erred in rejecting their fair use defense. We address, and reject, each of these arguments in turn.

A. Licensing

Vanguard/Spurlock assert that the 2010 Endorsement Agreement covers their use of the works. They argue that this agreement gave them the right to publish future editions of the Definitive Reference Book, with no limits on their ability to update the book using other pieces of Frank Frazetta's artwork.[6] We dis-

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2010). The district court applied Florida law in its analysis, *see Frazetta*, 716 F. Supp. 3d at 1277–78, and neither party argues a different forum's law applies on appeal. *See Sapuppo*, 739 F.3d at 680–81. Therefore, we will apply Florida law where relevant.

[6] Vanguard/Spurlock do not argue that the Cover Art Book falls under the Two-Book Publishing Agreement. Nor could they. That agreement discusses Vanguard/Spurlock's rights to produce and release two books. One of these books was a book of sketches, and the other was a book of photographs taken by Frank Frazetta. Frazetta granted and assigned Vanguard/Spurlock the "sole and exclusive right to print, publish, translate, copy, and sell" those two "[b]ooks, including all works created by the Artist therein." That said, the Cover Art Book is neither a book of sketches nor a book of photographs; it is a book of cover art. Additionally, the sketchbook was to be titled *The Frank Frazetta Sketchbook*, and the photography book was to be titled *The Photography of Frank Frazetta*. The Cover Art Book did not have either of those titles. Thus,

agree. Vanguard/Spurlock fails to put forth any evidence establishing a genuine issue of material fact that they had a license to produce the two disputed works in the Cover Art Book.

Under Florida law, "[c]ontract terms are given their plain meaning in the absence of any evidence that the parties intended the words to have a special meaning." *Delissio v. Delissio*, 821 So. 2d 350, 353 (Fla. 1st DCA 2002). The plain language of an agreement is the "best evidence of the parties' intent at the time of the execution of the contract." *Taylor*, 1 So. 3d at 350. Furthermore, in construing a contract, a court must read individual terms in the context of the entire agreement to effectuate the contract's "stated meaning and purpose." *Delissio*, 821 So. 2d at 353; *Brown v. Travelers Ins. Co.*, 649 So. 2d 912, 914 (Fla. 4th DCA 1995); *Bingemann v. Bingemann*, 551 So. 2d 1228, 1232 (Fla. 1st DCA 1989) ("[T]he court should place itself as nearly as possible in the position of the parties when the contract was executed, and should consider the object sought to be accomplished by the agreement.").

The Endorsement Agreement states that Vanguard/Spurlock had the "right to update, revise text, replace images, re-design and publish this [Definitive Reference Book] as [they] see[] fit." Although Vanguard/Spurlock maintain that the Cover Art Book is a

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the Cover Art Book does not fall under the clear terms of the Two-Book Publishing Agreements. *See Taylor v. Taylor*, 1 So. 3d 348, 350 (Fla. 1st DCA 2009) (explaining that "[c]ontract interpretation begins with a review of the plain language of the agreement because the contract language is the best evidence of the parties' intent at the time of the execution of the contract").

new "edition" of the Definitive Reference Book, the plain language of the Endorsement Agreement does not support that interpretation, and Vangaurd/Spurlock do not point to any evidence that bolsters their contention. *See Delissio*, 821 So. 2d at 353; *Taylor*, 1 So. 3d at 350. Needless to say, the books had different titles. In addition, their scopes were different; the Definitive Reference Book was about Mr. Frazetta's work generally, while the Cover Art Book focused solely on his work that was used as book covers. Vanguard/Spurlock admit this, stating that the Cover Art Book "omit[s] much of the prior lists of works and oft-reprinted images [shown in the Definitive Reference Book] but now reproduce[s] 180 Frazetta book cover art in the context of the original book covers," an almost four-times increase in the amount of cover art featured as in the Definitive Reference Book. The two books were attributed to different authors; the Definitive Reference Book was credited to James Bond, David Winiewicz, Ph.D, and Andrew Steven, whereas the Cover Art Book was credited to J. David Spurlock and Patrick K. Hill. Finally, the Definitive Reference Book notes on its copyright page that there was a first printing in 2008, and a second revised edition printed in 2010. The Cover Art Book, by contrast, states that its first printing was in 2022.

Considering the foregoing, there is simply insufficient evidence for a factfinder to find that the Cover Art Book is an updated edition of the Definitive Reference Book or that the parties contemplated as much in entering into the Endorsement Agreement. *See Delissio*, 821 So. 2d at 353. Thus, the use was not covered by the Endorsement Agreement, and Vanguard/Spurlock's use of

Death Dealer II and V was unauthorized by license. Vanguard/Spurlock failed to create a genuine issue of material fact sufficient to avoid summary judgment on this issue. *Anderson*, 477 U.S. at 252; *Guevara*, 127 F.4th at 828–29. Therefore, we affirm in this respect.

B. Fair Use

Vanguard/Spurlock alternatively argue that the fair use doctrine covers their use of Death Dealer II and V. We disagree.

The fair use doctrine allows courts to avoid rigid application of the copyright statute when it would otherwise stifle creativity, which copyright law is designed to foster. *See Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508, 527 (2023). Because there is a wide range of copyrighted material covered by the Copyright Act, fair use is a flexible concept, and the application of the doctrine depends on context. *Id.* The statute governing fair use is 17 U.S.C. § 107, which states:

> In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:
>
> (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
>
> (2) the nature of the copyrighted work;
>
> (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

> (4) the effect of the use upon the potential market for or value of the copyrighted work.

No one factor is dispositive, and the process is not "a mechanical 'add up the factors' approach." *Cambridge Univ. Press v. Patton*, 769 F.3d 1232, 1260 (11th Cir. 2014). Because each factor is important in our analysis, *see id.*, we address each in turn.

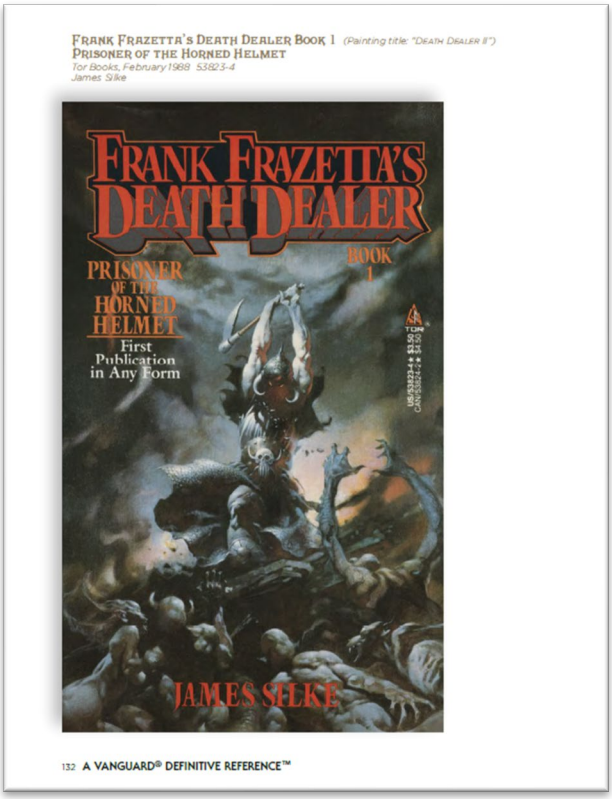
i. Purpose and Character of the Use

The first factor, the purpose and character of the use, considers the reason for and nature of the copier's use of the work. *Andy Warhol Found.*, 598 U.S. at 527–28. The "'central' question" we ask when looking at this factor is "'whether the new work merely "supersedes the objects" of the original creation ("supplanting" the original), or instead adds something new, with the further purpose or different character.'" *Id.* at 528 (alterations adopted) (quoting *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994)). The Supreme Court has recognized that not every use is "clear cut," and that this factor involves a question "of degree": whether and to what extent the use at issue has a purpose or character different from the original. *Id.* at 529. In this way, we determine the degree to which a use is "transformative." *Id.* To be fair use, the infringing use of the copied work should have a distinct purpose, different from the purpose of the original work. *Id.* at 532–33 ("If an original work and a secondary use share the same or highly similar purposes, and the secondary use is of a commercial nature, the first factor is likely to weigh against fair use, absent some other justification for copying.").

The district court reasoned that Vanguard/Spurlock's use of the images may have a different purpose than the original artwork, but the degree of that difference was minor, cutting against a finding of fair use of the images. It explained that because the primary purpose of Vanguard/Spurlock's work was to showcase the Death Dealer II and V images, the use had the same objective as the original protected work and was therefore not transformative in any meaningful way. Vanguard/Spurlock contend that the district court failed to correctly analyze that factor because it did not adequately consider their use of supplemental captions next to the artwork.

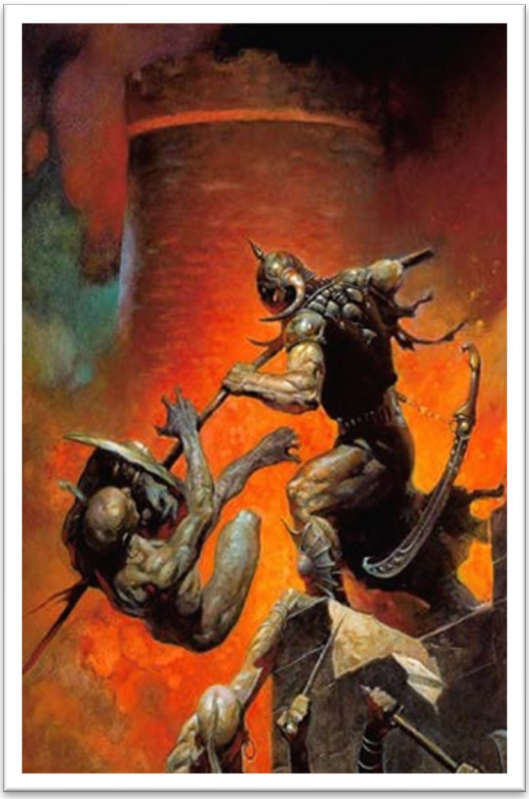
Vanguard/Spurlock's use was not transformative. In the Cover Art Book, each page focuses on a replicated cover art with a small caption. The non-transformative nature is obvious when the images—as used in the Cover Art Book—are viewed in their entirety, next to the original Death Dealer II and V. These images are presented respectively, with the original work on the left, and Death Dealer II and V on the page of the Cover Art Book on the right:

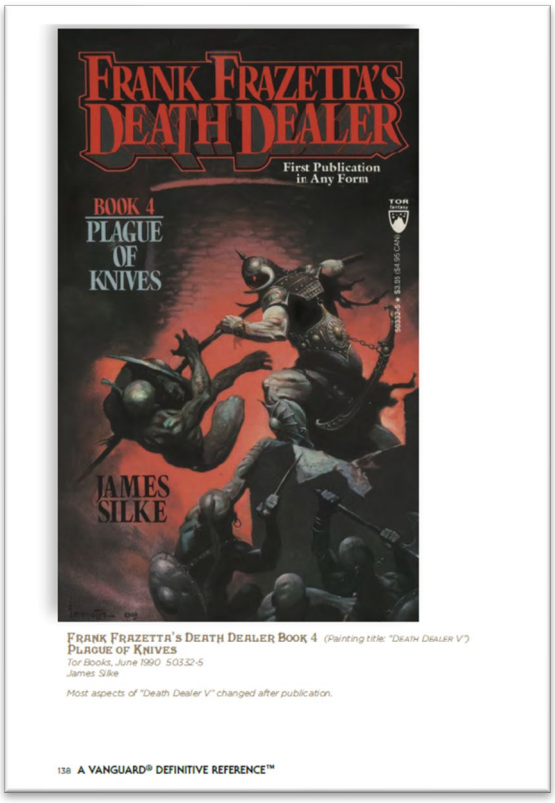




FRANK FRAZETTA'S DEATH DEALER BOOK 1 *(Painting title: "DEATH DEALER II")*
PRISONER OF THE HORNED HELMET
Tor Books, February 1988 53823-4
James Silke

132 A VANGUARD® DEFINITIVE REFERENCE™





FRANK FRAZETTA'S DEATH DEALER BOOK 4 *(Painting title: "DEATH DEALER V")*
PLAGUE OF KNIVES
Tor Books, June 1990 50332-5
James Silke

Most aspects of "Death Dealer V" changed after publication.

138 A VANGUARD® DEFINITIVE REFERENCE™

Looking at Death Dealer II, where the artwork takes up almost the entire page, the only transformation Vanguard/Spurlock argue is the captions provided above the work. The caption lists the title of the book, the title of the work, the author, and the publication date. Death Dealer V is presented similarly. Vanguard/Spurlock's use also provides a small description on the page with Death Dealer V that reads: "Most aspects of 'Death Dealer V' changed after publication."

Purpose and character of use, in the fair use context, is not transformative just because it added a new expression or had a different aesthetic. *Andy Warhol Found.*, 598 U.S. at 541. Any use that adds some new expression, meaning, or message does not automatically weigh in favor of fair use. *Id.* The transformative use must alter the original copyrighted work with "new expression, meaning or message." *Id.* Here, the captions failed to do so. Simply adding the details of titles and publication does not create a new expression for Death Dealer II and V, nor does it change the works' meaning or message. *See, e.g.*, *De Fontbrune v. Wofsy*, 39 F.4th 1214, 1225 (9th Cir. 2022) (holding that "[t]he fact that [the infringer] included informative captions and organized the photographs so as to facilitate research does not change [the court's] conclusion" because "[a]dding informative captions does not necessarily transform copyrighted works"). This minimal change cuts against a finding of fair use. Further, Vanguard/Spurlock used Death Dealer II and V as part of a commercial book to sell and

generate profit, which also weighs against their fair use defense.[7] *See Campbell*, 510 U.S. at 579, 584–85.

Vanguard/Spurlock suggest that "[t]he district court's analysis fell short of examining" the whole scope of this fact, and they rely on our decision in *Pacific &Southern Company v. Duncan*, 744 F.2d 1490 (11th Cir. 1984). However, the district court's analysis here is completely consistent with *Duncan*. *See id.* at 1495. In *Duncan*, the district court reasoned that the use "was not 'inherently productive or creative,'" so it declined to further address the four statutory fair use factors. *Id.* We explained that this was the wrong approach, as it flattened the flexible fair use doctrine into a "per se rule." *Id.*; *see also Andy Warhol Found.*, 598 U.S. at 527 ("[F]air use is a 'flexible' concept, and 'its application may well vary depending on context.'" (quoting *Google LLC v. Oracle Am. Inc.*, 593 U.S. 1, 20

[7] Vanguard/Spurlock briefly suggest that the Cover Art Book is a historical artifact and was reproduced for educational use, but the issue is mentioned in passing and not adequately pressed. *Sapuppo*, 739 F.3d at 680–81. Even if we were to consider it, Vanguard/Spurlock point to no evidence demonstrating their use of the works served an educational purpose. *See Cambridge Univ. Press*, 769 F.3d at 1279 ("Fair use is an affirmative defense, and the evidentiary burden on all four of its factors rests on the alleged infringer."). They also suggest, in passing, that they did not act in bad faith in reproducing the works. In any event, our caselaw is clear that, while "evidence of bad faith may be a relevant, but not necessarily dispositive, aspect of the first factor, . . . good faith does not insulate a defendant from liability." *Peter Letterese & Assocs., Inc. v. World Inst. of Scientology Ents.*, 533 F.3d 1287, 1312 n.27 (11th Cir. 2008). Therefore, a lack of bad faith on Vanguard/Spurlock's part does not drive our analysis here.

(2021))). Here, the district court followed that guidance, and addressed each of the statutory factors, separately and together. *See Frazetta*, 716 F. Supp. 3d at 1281–85 (addressing each statutory factor). Accordingly, no error under *Duncan* occurred.

For these reasons, the district court properly concluded that the first factor, purpose and character of use, weighed against a finding of fair use on this record.

ii. Nature of the Copyrighted Work

The second statutory fair use factor, the nature of the copyrighted work, seeks to protect those works that are "closer to the core of intended copyright protection than others." *Campbell,* 510 U.S. at 586. Highly creative works, as opposed to factual or informational works, are closer to the core of copyright, so the more creative a work is, the less likely its use will be considered fair use. *Cambridge Univ. Press*, 769 F.3d at 1268.[8] "The law generally recognizes a greater need to disseminate factual works than works of fiction or fantasy." *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 563 (1985).

[8] Additionally, if a work is unpublished, it is less likely to be fair use because copyright law protects the "author's right to control the first public appearance of his expression." *Cambridge Univ. Press*, 769 F.3d at 1268 (internal quotation marks and citations omitted). Because Death Dealer II and V were published before Vanguard/Spurlock used them, we focus on the creative aspect. *See id.* ("Because all of Plaintiffs' works in question here are published, we will focus on the creative/factual distinction.").

The district court found that the nature of the copyrighted works weighed against fair use because Death Dealer II and V are highly creative, original, and inventive works of fantasy that are among the most protected types of works under copyright law. We agree.

Death Dealer II and V are pieces of fantasy artwork that Frank Frazetta created. They are, inherently, highly creative works. Mr. Frazetta dictated the composition of the works; decided the colors and the actions; created the setting and the characters; and formulated the style from his mind. *See, e.g., Bouchat v. Baltimore Ravens Ltd. P'ship*, 619 F.3d 301, 311 (4th Cir. 2010) (holding that the second factor cut against fair use because "[t]he copyrighted work [at issue was] a creative drawing"); *see also, e.g.*, *Katz v. Google Inc.*, 802 F.3d 1178, 1183 (11th Cir. 2015) ("The Photo[graph], however, is merely a candid shot in a public setting, and there is no evidence in the record that . . . the photographer . . . attempted to convey ideas, emotions, or in any way influence Katz's pose, expression, or clothing."). The record does not suggest that Vanguard/Spurlock "attempted to convey ideas" in their use of the works beyond mere reproduction, as shown in the images reproduced above. *See Katz*, 802 F.3d at 1183. Accordingly, this factor weighs against a finding of fair use, as the district court concluded.

iii. Amount and Substantiality of the Portion Used

The third factor concerns whether the amount and substantiality of the portion of the copyrighted work used in relation to the

totality of the copyrighted work is reasonable in relation to the purpose of copying. *Campbell,* 510 U.S. at 586. In making this determination, we must consider the quality and importance of the copied portion; for instance, we consider if the copied portion contained "the heart" of the work, even if the replication was a minimal proportion of the whole. *Cambridge Univ. Press.*, 769 F.3d at 1271 (quoting *Harper & Row*, 471 U.S. at 565). This factor is often neutral or weighed less when the copied work is a photograph or artwork because those types of works will often be shown in whole. *Katz*, 802 F.3d at 1183–84 (noting that, for a photograph, "all or most of the work often must be used in order to preserve any meaning at all—[unlike] a text or musical composition, where bits and pieces can be excerpted without losing all value" (quoting *Fitzgerald v. CBS Broad., Inc.*, 491 F. Supp. 2d 177, 188 (D. Mass. 2007)); *id.* at 1184 (citing *Seltzer v. Green Day, Inc.*, 725 F.3d 1170, 1178 (9th Cir. 2013) ("[U]nlike an episode of the Ed Sullivan show or a book manuscript, [a drawing] is not meaningfully divisible"))).

Here, the third factor is neutral due to the nature of artwork needing the totality of the image without losing its value. *Id.* at 1183–84. Vanguard/Spurlock do not meaningfully contest the district court's reasoning on this factor; they instead note that there are some differences between the book covers reproduced and the underlying works. Having a snippet of Death Dealer II or V is meaningless if the purpose was to showcase the artwork. That purpose would be frustrated if Vanguard/Spurlock's book only

showed part of Death Dealer II or V or focused on one minute aspect of the works. Thus, the district court properly found that this factor was neutral.

iv. Effect of the Use on the Market

The fourth factor is "the effect of the use upon the potential market for or value of the copyrighted work." 17 U.S.C. § 107(4). The central question in our analysis is whether, assuming everyone engaged in the conduct of Vanguard/Spurlock, copying and using Death Dealer II and V in the challenged way without permission "would cause *substantial* economic harm such that allowing the conduct would frustrate the purposes of copyright by materially impairing the defendant's incentive to publish the work." *Katz*, 802 F.3d at 1184 (alteration adopted) (emphasis in original) (quoting *Cambridge Univ. Press*, 769 F.3d at 1276). [9]

The district court concluded that the Cover Art Book's effect on the market weighs against a finding of fair use. It found that Vanguard/Spurlock's use of Death Dealer II and V would supplant the purposes of the original and that if everyone engaged in conduct like Vanguard/Spurlock, then the market would be overrun by substitutes.

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[9] Historically, though not always, *see Katz*, 802 F.3d at 1184, we have considered two inquiries for this factor: "(1) the extent of the market harm caused by the particular actions of the alleged infringer, and (2) whether unrestricted and widespread conduct of the sort engaged in by the defendant would result in a substantially adverse impact on the potential market," *Cambridge Univ. Press*, 769 F.3d at 1275 (alterations adopted) (citation and quotation marks omitted).

Once again, we agree. Frazetta's business model is selling its artwork; it has a website marketing versions of Death Dealer II and V in prints, books of prints, and other merchandise. Similarly, Vangaurd/Spurlock sold the Cover Art Book commercially to make a profit.[10] Vanguard/Spurlock's distribution of Death Dealer II and V directly and substantially impacts Frazetta's ability to do the same. Thus, the use of the Death Dealer II and V in the Cover Art Book would frustrate the purposes of Frazetta's copyright for those works. *See Harper & Row Pubs.*, 471 U.S. at 566–67 (explaining that fair use is "limited to copying by others which does not materially impair the marketability of the work which is copied"). Furthermore, if everyone could copy the artwork and reproduce it, then there would be no need for Frazetta to sell its artwork, as consumers could access it via different avenues. *See id.* Thus, this factor cuts against a finding of fair use.

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[10] Vanguard/Spurlock raise an argument that their use of the works had a historic, educational purpose, since the book cover art is no longer being published. In any event, we have held that not all uses that claim to be educational are fair use. *See Cambridge Univ. Press*, 769 F.3d at 1242, 1280–81 (holding that professors who created the educational texts attempted to use the texts to educate their students infringed because the licenses for those texts were owned by a publishing corporation that did not grant licenses to the professors). Furthermore, as noted, Vanguard/Spurlock have not pointed to any evidence that their use was, or was intended to be, educational. *See id.* at 1279 ("Fair use is an affirmative defense, and the evidentiary burden on all four of its factors rests on the alleged infringer."); *Sapuppo*, 739 F.3d at 680–81.

In sum, when weighing all four factors and the entire record, the use of Death Dealer II and V did not qualify as fair use; and there is scant evidence to support Vanguard/Spurlock's defense on any of the relevant factors. No reasonable jury could have analyzed the factors in light of the entire record and found that they weigh in favor of fair use. *Guevara*, 127 F.4th at 828–29; *Anderson*, 477 U.S. at 252. Consequently, the district court correctly granted summary judgment on Vanguard/Spurlock's fair use defense.

IV. CONCLUSION

For the reasons we have explained, we affirm the district court's well-reasoned summary judgment ruling and its rejection of both of Vanguard/Spurlock's defenses.

AFFIRMED.[11]

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[11] Frazetta asserts, in a footnote, that it "preserves the right to seek relief under Federal Rule of Appellate Procedure 38 should th[is] Court determine that the appeal is frivolous." As much as this is a request for sanctions, we **DENY** it, as the appeal was not wholly frivolous. *See, e.g.*, *Trump v. Clinton*, 161 F.4th 671, 693 (11th Cir. 2025) ("[W]e do not intend to grant Rule 38 sanctions 'every time one or two arguments in an appeal might arguably be deemed frivolous.'" (quoting *McCoy v. Iberdrola Renewables, Inc.*, 769 F.3d 535, 538 n.1 (7th Cir. 2014))).