

NOT FOR PUBLICATION

MAR 21 2013

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM J. LATHAN,

Plaintiff - Appellant,

v.

THE CITY OF WHITTIER, ALASKA; et
al.,

Defendants - Appellees.

No. 11-35684

D.C. No. 3:10-cv-00070-TMB

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Timothy M. Burgess, District Judge, Presiding

Submitted March 12, 2013**

Before: PREGERSON, REINHARDT, and W. FLETCHER, Circuit Judges.

William J. Lathan appeals pro se from the district court's summary judgment in his copyright infringement action. We have jurisdiction under 28 U.S.C.

§ 1291. We review de novo. *Worth v. Selchow & Righter Co.*, 827 F.2d 569, 571

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

(9th Cir. 1987). We affirm.

The district court properly granted summary judgment because the Copyright Act's fair use defense bars Lathan's action. 17 U.S.C. § 107 (2006); *see also Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1163 (9th Cir. 2007) ("The [fair use] defense encourages and allows the development of new ideas that build on earlier ones, thus providing a necessary counterbalance to the copyright law's goal of protecting creators' work product."); *id.* at 1163-68 (explaining four-factor test for fair use analysis).

Because the district court properly made a finding of fair use, we need not review the district court's finding that the merger doctrine also bars Lathan's action.

AFFIRMED.