

MAR 21 2013

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

NOT FOR PUBLICATION

UNITED STATES 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.