

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

| | | |
|--------------------------------------|---|-----------------------------------|
| HOUSE OF BRYANT PUBLICATIONS, |) | |
| L.L.C., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 3:09-0502 |
| |) | Judge Trauger |
| A&E TELEVISION NETWORKS, |) | |
| |) | |
| Defendant. |) | |
| |) | |

**DEFENDANT AETN’S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM**

Defendant A&E Television Networks (“AETN”), pursuant to Fed. R. Civ. P. 12(b)(6) and Local Rule 7.01 (a), respectfully moves this Honorable Court to dismiss the Complaint against it for failure to state a claim upon which relief may be granted.

As demonstrated in its simultaneously-filed Memorandum, Plaintiff’s cause of action for copyright infringement should be dismissed as a matter of law pursuant to the fair use doctrine, codified at 17 U.S.C. § 107. AETN respectfully submits that the incorporation of documentary footage from Neyland Stadium during a University of Tennessee-Knoxville (“UTK”) football game which captures twelve seconds of background noise including the UTK marching band playing “Rocky Top,” in the context of the forty-eight minute documentary television show and its description of the culture of Knoxville, Tennessee, constitutes fair use as a matter of law. This unusually clear example of fair use makes this case particularly appropriate for a Rule 12(b)(6) motion.

For the reasons set forth more fully in their Memorandum of Law, AETN respectfully requests that this Court GRANT its Motion to Dismiss for failure to state a claim. In connection with this Motion, AETN has simultaneously filed a Request for Judicial Notice with materials referred to in Plaintiff's Complaint.

Respectfully submitted,

/s/ Robb S. Harvey
Robb S. Harvey (Tenn. BPR No. 011519)
Heather J. Hubbard (Tenn. BPR No. 023699)
WALLER LANSDEN DORTCH & DAVIS, LLP
511 Union Street, Suite 2700
Nashville, TN 37219
Phone: (615) 244-6380
Facsimile: (615) 244-6804
E-mails: robb.harvey@wallerlaw.com and
heather.hubbard@wallerlaw.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion was served by hand-delivery and was electronically filed with the Court on this 11th day of August, 2009, to the following counsel of record:

Richard S. Busch
King & Ballow
315 Union Street, Suite 1100
Nashville, TN 37201

/s/ Robb S. Harvey
Counsel for Defendants