

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

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

**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  
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*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 11<sup>th</sup> day of August, 2009, to the following counsel of record:

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/s/ Robb S. Harvey  
Counsel for Defendants