

[Brannon Howse]

Alan,

I watched your recent youtube posting and I am thankful for the gracious manner of your presentation. I have no problem with you debating this issue as I think debate is great and helpful. I also agree with fair use and use the right often myself. However, fair use only allows you to use a small portion for educational purposes and you are using about 10 minutes of our DVD. Please cut your use of our DVD down so as not to dilute our DVD sales. Please confirm you have removed this presentation until you have removed 7 minutes from your presentation. My desire is to come directly to you and handle this in a Biblical manner. Thank you.

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[Chris White]

Brannon,

Thanks very much for wanting to approach this in light of scripture and also for your gracious tone.

My name is Chris White I am the one who made the video and who's Youtube account the video currently on and so it is probably more appropriate for me to write you back as opposed to Alan.

Because of many of my other videos like Ancient Aliens Debunked <http://ancientaliensdebunked.com/> I have had to become very familiar with copyright law as A&E, The owners of the History Channel, initially took down the 3 hour film I made about their program "Ancient Aliens:" citing copyright infringement. They eventually dropped their claims and the video was restored for reasons I will discuss.

From what I understand there is no specific time limit that can be taken as the deciding factors all relate to the nature of the usage.

Section 107 contains a list of the various purposes for which the reproduction of a particular work may be considered fair, such as criticism, comment, news reporting, teaching, scholarship, and research. Section 107 also sets out four factors to be considered in determining whether or not a particular use is fair.

1. The purpose and character of the use, including whether such use is of 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
4. The effect of the use upon the potential market for, or value of, the copyrighted work

In other words as long as the nature of the usage is correct, one could use a great deal of the material. An example would be my 3 hour film Ancient Aliens Debunked, which used nearly 30 minutes or more from the History Channel's show, yet the nature of the video was obviously the reason that Fair Use exists in the first place.

In our case it seems that you feel that #4 applies to you:

"The effect of the use upon the potential market for, or value of, the copyrighted work"

This is speaking of the idea that people would not need to buy your product because they can attain the same basic material from watching the one in question.

It suppose it could theoretically effect your DVD sales, but only in the sense that people might not buy it because they were convinced by our arguments. But what the legal issue here is, is regarding a "direct market substitute" Which Im sure you would agree the video I made most certainly is not.

"In evaluating the fourth factor, courts often consider two kinds of harm to the potential market of the original work: First, courts consider whether the use in question acts as a direct market substitute for the original work. In the judgement of the Supreme Court in *Acuff-Rose Music* they decisively stated that, "when a commercial use amounts to mere duplication of the entirety of the original, it clearly supersedes the object of the original and serves as a market replacement for it, making it likely that cognizable market harm to the original will occur". In one instance, a court ruled that this factor weighed against a defendant who had made unauthorized movie trailers for video retailers, since his trailers acted as direct substitutes for the copyright owner's official trailers.<sup>[21]</sup> Second, courts also consider whether potential market harm might exist beyond that of direct substitution, such as in the potential existence of a licencing market. This consideration has weighed against commercial copy shops that make copies of articles in course-pack for college students, when a market already existed for the licensing of course-pack copies.<sup>[22]</sup><sup>2</sup>

I have also done many critiques of certain new age teachers like David Icke, Michael Tsarion, Jordan Maxwell and Gregg Braden. Each time the individual had Youtube take down the video I made citing "copyright infringement" this was also the case with Ancient Aliens Debunked. However in all cases I filed a counter claim with Youtube and the video was restored. I believe that this is in part because the parties involved did not want to take it to court, because they knew it would be a losing battle. Because, if you are not aware, once a counter claim is filed with Youtube, the person either has to take it to court or drop it, and if they drop it, the video will be restored.

I believe this is a free speech issue, and if the video is taken down I will have no choice but to file a counter claim. I would also recommend not taking that route for the reason that in every case cited above the fact that the other person filed (what turned out to be a false copyright claim) The video got way more publicity than it would have otherwise got, and it became a kind of underground hit and made the person look bad. Im not saying that would happen in this case, and I would not take steps to make that happen, Im only saying what has happened in the past.

I have no wish to take this to court, especially with a brother in Christ. This is the first such video I have done regarding an actual Christian and I have major issues with "ministries" that take down the church all day. However, this is an honest critique that, in my opinion needs to come to light. These issues need to be dealt with as the stakes, if we are right are too high.

Your brother in Christ,

Chris White  
<http://chriswhiteministries.com>

- 1.) <http://www.copyright.gov/fls/fl102.html>
  - 2.) [http://en.wikipedia.org/wiki/Fair\\_use#Effect\\_upon\\_work.27s\\_value](http://en.wikipedia.org/wiki/Fair_use#Effect_upon_work.27s_value)
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[Brannon Howse]

So u will not take it down to 3 minutes of our video is that what you are saying? I just need a yes or no so we know how to proceed.

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[Chris White]

A reluctant, but resolved...no.

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[Brannon Howse]

Ok.....

You must have a lot of money stashed away to be able to avoid the legal challenge I guess uh?

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[Chris White]

I am prepared to take this as far as we need to, and I have the utmost confidence of my position.

I do not want to go to court in light of 1 Corinthians, but if you sue me then I will be happy and honored to defend free speech all the way to the highest court.

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[Brannon Howse]

You sound rather foolish to me....

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And Finally a month later:

**Dear Chris White:**

We have disabled the following material as a result of a third-party notification from Brannon Howse claiming that this material is infringing: