

**House of Bryant Publ'ns, L.L.C. v. A&E Television Networks,
No. 3:09-0502 (M.D. Tenn. Oct. 30, 2009)**

Year	2009
Court	United States District Court for the Middle District of Tennessee
Key Facts	Plaintiff House of Bryant Publications, LLC licensed the song <i>Rocky Top</i> , Tennessee's official state song, to the University of Tennessee (UT). Defendant A&E Television Network produced a montage about UT's football program for an episode of its "true crime" television program <i>City Confidential</i> that was set in Knoxville, Tennessee. The montage included an eleven- to thirteen-second clip of the UT band playing <i>Rocky Top</i> . In response to plaintiff's allegations of infringement, defendant argued the purpose of the broadcast was criticism, comment or news reporting.
Issue	Whether defendant's unauthorized reproduction of portions of plaintiff's song, allegedly for the purpose of criticism and comment, was fair use.
Holding	The court held that defendant's use of <i>Rocky Top</i> was not a fair use. In reaching its conclusion, the court determined that including the clip in the football montage was not transformative because defendant's broadcast did not comment on or discuss the work itself. The court also found that the creative nature of <i>Rocky Top</i> weighed against a finding of fair use. Lastly, the court determined that defendant failed to carry its burden of showing that there was no negative effect on the potential market for <i>Rocky Top</i> and concluded that plaintiff's ability to license the song was harmed.
Tags	Sixth Circuit; Film/Audiovisual; Music; Textual work
Outcome	Fair use not found

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