



CARPENTER HAZLEWOOD

January 8, 2019

Via Email and  
U.S. Mail

Philip Brumley  
General Counsel  
100 Watchtower Drive  
Patterson, New York 12563  
inboxLGLIPG@jw.org

Re: FaithLeaks.org

Dear Mr. Brumley:

This office represents the Truth and Transparency Foundation, sponsor of FaithLeaks.org. I have been forwarded a series of emails which you sent to my client on December 31, 2018, in which you allege a number of alleged copyright violations. We dispute your contention that my client is reproducing and distributing Watch Tower's intellectual property illegally and without authorization.

As you undoubtedly observed when you visited the FaithLeaks' page, FaithLeaks is a nonprofit media organization which distributes documents for use by professional and citizen journalists for starting and expanding news reporting, public commentary and criticism related to religion. FaithLeaks neither seeks nor receives any remuneration for the information which it publishes.

The documents which you reference in your emails were disseminated for purposes which fall under the fair use protection of the copyright law. As you may be aware, the district courts in the state of Nevada are well aware of the fair use doctrine and the defense found in 17 U.S.C. § 107 "for purposes such as criticism, comment, news reporting, teaching . . . scholarship, or research." For example, I would refer you to the opinion in *Righthaven, LLC v. Hoehn*, USDC, Nev., Case No. 2:11-cv-00050-pmp-rjj, document 28. While a portion of that opinion was vacated based upon the Ninth Circuit's affirmation of the lack of plaintiff's standing, the underlying rationale and reasoning of the case remains sound. As the court noted, "noncommercial, nonprofit use is presumptively fair." *Citing Sony Corp. of Am v. Universal City Studios, Inc.*, 464 US 417, 449 (1984).

The next element addressed by the Nevada court was the extent to which the copyrighted work was a "creative work." In the *Hoehn* case, the court found the work in question to be "a combination of an informational piece with some creative elements." The work was distinguished from "'creative work' in the realm of fictional stories, song lyrics or Barbie

dolls.” I would assume that you and those who follow the Watch Tower Society would not consider these various lectures of faith to be this type of “creative work” that the copyright laws are intended to protect.

The extent to which the third factor of the fair use analysis may be applicable is somewhat unclear; you have referenced a number of alleged infractions, some of which are partial use and some of which do include the entire work. Nonetheless, the amount published is consistent with the purposes for which FaithLeaks has published the selections and “wholesale copying does not preclude a finding of fair use.”

The last factor, and perhaps the most critical factor which supports my client’s entitlement to fair use, is the fact that my client’s publication does not impact the “potential market for or value of the copyrighted work.” My client’s use is indisputably noncommercial, and where a use is noncommercial, a challenge requires that the use is harmful or negatively impacting the market for your copyrighted work. The fact that these documents appear on a website devoted to “news reporting, public commentary and criticism related to religion” is not likely to interfere with the market for Watch Tower’s materials to its followers.

In light of all the foregoing, my client declines your request that they remove the materials in question. While I invite you to respond to this analysis, it is not likely to change my client’s position that the material which is published is published for a legitimate public purpose and falls within the fair use doctrine of the copyright laws.

Undoubtedly you are aware that a challenge to the propriety of the postings in question would only result in additional attention to the materials on my client’s site and elsewhere; the litigation which you would bring to suppress the dissemination of this information would backfire by bringing more attention to it. You should also anticipate that the discovery required to establish my client’s fair use defense would undoubtedly lead to an exploration of the locations in which the information has been and the circumstances under which it has been disseminated by your organization and others. What is currently a posting on a relatively obscure website would become news in multiple media sources relating to religion as well as copyright law.

I trust and assume that you will agree it is best that both parties simply go their own way rather than litigating the appropriateness of my client’s use of the documents in question.

Very truly yours,

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Lincoln W. Hobbs

LWH/kg