

# Limbaugh copyright complaint was actually Fair Use

For a time late last month, Rush Limbaugh succeeded in abusing copyright law to get YouTube to take down a Daily Kos video stringing together the insulting remarks he made about Sandra Fluke, the Georgetown law student who became a featured player in

the contraception controversy a few months back.

The video stitched together short excerpts of Limbaugh calling Fluke a slut and a prostitute who should videotape herself having sex. Limbaugh apologized (sort of) after he began to lose advertisers. But when Daily Kos helpfully put together a greatest hits of Limbaugh's comments, Limbaugh used copyright law to demand that YouTube take down the video.

When YouTube complied, Internet free speech advocates, such as the Electronic Frontier Foundation, criticized Google for caving. Google quickly reconsidered and reposted the video.

EEF and other lawyers said that Limbaugh's copyright complaint was "trumped up" and baseless. Under the fair use exception to copyright, snippets of work used as part of criticism are protected from copyright complaints where they do not interfere with the market for the original work.

<https://www.eff.org/deeplinks/2012/04/limbaugh-copies-michael-savages-bogus-copyright-theory>

Joe Martineau, a media lawyer at Lewis Rice in St. Louis, thinks the Limbaugh/Fluke story was blown out of proportion, but that Limbaugh was off base on his copyright claim. Martineau wrote in an email, "...the video was a fair use and that the copyright challenge represents a misuse of copyright law for the purpose of stifling legitimate critical

commentary.

“Copyright law is designed to promote the progress of science and the useful arts by providing creators of creative and intellectual works exclusive rights to profit... Fair use makes it permissible to use limited portions of copyrighted works for education and criticism, providing the use does not serve as an alternative for the work and thereby deprive the creator of his rights to derive economic benefit from the work. That is the case here. The video was for critical purposes and it in no way serves as an alternative to the copyrighted work.”

Martineau adds a humorous note. He says that even Walt Disney, an ardent enforcer of copyrights, didn't try to stop this funny YouTube piece with snippets of Disney fairy tales.

[http://www.youtube.com/watch?v=CJn\\_jC4FND0](http://www.youtube.com/watch?v=CJn_jC4FND0)