

In re DMCA Subpoena to Reddit, Inc.
No. 19-mc-80005-SK (JD), 2020 U.S. Dist. LEXIS 37033 (N.D. Cal. Mar. 2, 2020)

Year	2020
Court	United States District Court for the Northern District of California
Key Facts	In August 2018, a pseudonymous Reddit user, Darkspilver, posted two items on the social media platform: (1) an image from the back of <i>The Watchtower</i> magazine, a publication by Jehovah’s Witnesses, of a solicitation for donations, and (2) a chart summarizing the type of personal information the church collected about their members. In court filings, Darkspilver explained that he posted the materials to spark discussion about the church’s fundraising and data collection practices. Watch Tower Bible & Tract Society of Pennsylvania (“Watch Tower”), the Jehovah’s Witnesses parent organization and publisher of the magazine, sent a DMCA take down notice to Reddit, claiming that the posts infringed its copyrights. Reddit removed the solicitation ad and Darkspilver voluntarily removed the chart. Watch Tower then served a subpoena on Reddit demanding that Reddit reveal the identity of Darkspilver. Reddit moved to quash the subpoena. A magistrate judge decided the case using a First Amendment balancing of harms test applied in anonymous speech cases. He quashed the subpoena with respect to the solicitation ad but enforced it with respect to the chart, with the qualification that Darkspilver’s identity would be disclosed only to the attorneys of record. Darkspilver filed a motion seeking <i>de novo</i> review.
Issue	Whether an anonymous user’s posting of an organization’s copyrighted works on a social media website for the purpose of criticizing the organization is a fair use.
Holding	On review, the district court judge found that the case turned on a determination of fair use, not First Amendment law. The court found “no reason to tackle broad online speech issues” when a fair use analysis is sufficient to decide whether the copyright infringement claim should proceed. With respect to the first factor, the purpose and character of the use, the court found that Darkspilver’s use was transformative because he used the copyrighted material for noncommercial commentary on and criticism of the Jehovah’s Witnesses’ fundraising and data collection practices. Regarding the second factor, the nature of the copyrighted work, the court found that the ad and chart are functional and instructive documents, which weighed in favor of fair use. The court decided that the third factor, the amount and substantiality of the portion used, weighed in Darkspilver’s favor because he copied what was “reasonably necessary” from the original work “to make his criticisms and comments understandable.” Under the fourth factor, the effect of the use on the potential market for or value of the work, the court found that Darkspilver’s use did not affect the market for <i>The Watchtower</i> magazine because Watch Tower does not license the works for the purpose of criticism. Further, the chart was not registered with the Copyright Office until after Darkspilver’s use, undercutting any loss of value in this work. Finally, the court rejected Watch Tower’s argument that the uses might have diverted web traffic from its site because “diversion or suppression of demand from criticism is not a cognizable copyright harm.” Looking at all four factors together, the court concluded the uses were fair and granted the motion to quash the subpoena in its entirety.
Tags	Review/Commentary
Outcome	Fair use found