

# The Washington Post

## Stephen Soderbergh, copyright infringer?

David Post

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Actor-director Stephen Soderbergh has been getting a great deal of attention recently for posting his newly-edited versions of classic films: [Psycho](#), [Raiders of the Lost Ark](#), and, most recently, [2001: A Space Odyssey](#). Interesting and creative stuff, indeed. But as Mike Masnick points out over at [Techdirt](#), Soderbergh has been a prominent copyright maximalist, testifying before Congress on behalf of the Director's Guild of America in favor of a harsh "three strikes and you're out" policy for online copyright infringers.

And both more peculiar, and closer to the point here, Soderbergh was the lead plaintiff in the 2006 case of *Soderbergh et al v. Clean Flicks of Colorado et al.*, (433 F.Supp.2d 1236). Clean Flicks (and the other defendants) were in the business of preparing and distributing edited versions designed to be more "family friendly" (i.e. with the nasty stuff edited out) of previously-released motion pictures . As the court put it:

CleanFlicks has created and publicly distributed copies of the [plaintiffs'] movies that it altered by deleting "sex, nudity, profanity and gory violence," using its own guidelines. CleanFlicks began editing movies on VHS videocassettes in June, 2000, added DVDs at some time and now does only DVDs. The deletions are from both audio and visual content of the movies. The editing techniques used include redaction of audio content, replacing the redaction with ambient noise, "blending" of audio and visual content to provide transition of edited scenes, cropping, fogging or the use of a black bar to obscure visual content. . . .

CleanFlicks first obtains an original copy of the movie from its customer or by its own purchase from an authorized retailer. It then makes a digital copy of the entire movie onto the hard drive of a computer, overcoming such technology as a digital content scrambling protection system in the acquired DVD, that is designed to prevent copying. After using software to make the edits, the company downloads from the computer an edited master copy which is then used to create a new recordable DVD-R to be sold to the public, directly or indirectly through a retailer.

The plaintiffs – Soderbergh included – were successful at shutting the operation down, on the grounds that the edited versions prepared by Clean Flicks violated their rights under sec 106(2) of the Copyright Act to create "derivative works" of the films – defined as "works based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment,

condensation, or any other form in which a work may be recast, transformed, or adapted.” The district court opinion is a bit of a mess – the court has *a lot* of trouble distinguishing the plaintiffs’ argument that Clean Flicks is creating “derivative works” from Clean Flicks’ attempt to defend their actions using the “fair use” defense – but ultimately the court concludes that “the presumed destruction of [Clean Flicks’ and the other defendants’] businesses is *not a justification for denying these copyright holders the right to control the reproduction and distribution of the protected works in their original form,*” and holding that Clean Flicks was responsible for “*irreparable injury to the creative artistic expression in the copyrighted movies.*”

So I guess I don’t understand where Soderbergh is coming from here. It’s a little odd that he doesn’t even mention the underlying copyright question(s) on his website – which he calls a “one-of-a-kind marketplace.” Under the Clean Flicks case (which, presumably, he knows about) his activities here are pretty clearly infringing the copyrights in the original films. Is he just a hypocrite, who thinks that he has some kind of “artistic license” to do what he denies to others, that his creativity is somehow more valuable than the creativity of others? That’s what it looks like to me, I must say.

*David G. Post is a Sr. Fellow at the New America Foundation's Open Technology Institute. He taught intellectual property and Internet law at Georgetown and Temple Universities until his recent retirement. He is the author of In Search of Jeffersons Moose: Notes on the State of Cyberspace (Oxford, 2009) and an Adjunct Scholar at the Cato Institute.*