

**New Era Publ'ns Int'l, ApS v. Carol Publ'g Grp.,  
904 F.2d 152 (2d Cir. 1990)**

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| Year      | 1990                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Court     | United States Court of Appeals for the Second Circuit                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Key Facts | Plaintiff New Era Publications International, ApS (New Era) was the exclusive licensee of all Church of Scientology founder L. Ron Hubbard's writings. Defendant Carol Publishing Group intended to publish an approximately 527-page manuscript titled <i>A Piece of Blue Sky: Scientology, Dianetics and L. Ron Hubbard Exposed (A Piece of Blue Sky)</i> , "an unfavorable biography of Hubbard and a strong attack on Scientology," written by a former member of the Church. In both the text and at the beginning of many chapters, the author quoted widely from Hubbard's substantial body of published works. Defendant publisher appealed the district court's ruling that the author's use of Hubbard's writing was not a fair use.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Issue     | Whether the unauthorized quotation of published works in a biography constitutes fair use.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Holding   | The court found that defendant's use of Hubbard's works was fair use. The court first found that defendant's unfavorable biography fit comfortably within the categories of uses that could be fair—namely criticism, scholarship, and research—because <i>A Piece of Blue Sky</i> was designed "to educate the public about Hubbard, a public figure who sought public attention," and used quotes to further that purpose rather than to unnecessarily appropriate Hubbard's literary expression. The court also found that defendant's book quoted from a small portion of plaintiff's writings and did not take the heart of the works. Further, the quoted works were all published, which the court pointed out allows for a "greater amount of copying." Even though plaintiff argued that defendant's biography harmed any future biography they may authorize, the court concluded that there was not a negative effect on plaintiff's market because potential customers for an authorized favorable biography would likely not be deterred from buying it on the basis that an unfavorable biography used the same sources. Furthermore, the court found that even if <i>A Piece of Blue Sky's</i> negative critique did dissuade customers from purchasing an authorized biography, such harm "would not result from unfair infringement forbidden by the copyright laws, but rather from a convincing work that effectively criticizes Hubbard, the very type of work that the Copyright Act was designed to protect and encourage." |
| Tags      | Second Circuit; Education/Scholarship/Research; Review/Commentary; Textual work                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Outcome   | Fair use found                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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