

Paul Gherman, University Librarian
Jean and Alexander Heard Library
Vanderbilt University

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Mary Rasenberger
Policy Advisor for Special Programs
U.S. Copyright Office

Re: Written comment on Section 108

The Vanderbilt Television News Archive has recorded national television news broadcasts since 1968 in an effort to document the video history of our Nation. The Copyright Act of 1976 provided protection in section 108 (f)(3) for libraries and archives to record the news, and, on a limited basis, copy recordings and lend copies to the general public.

Our collection today includes over 40,000 hours of broadcasts and new specials which are indexed and abstracted down to the individual news item included in each broadcast. Our original index and abstract database is available on the OpenWeb and has been harvested by the major Internet search engines. A wide range of individuals ranging from high school students to serious scholars borrow material from us for their personal research. Our collection is “watermarked” across the face with the network, date, time, and run-time clearly indicated. With all our loaned recordings we include a user agreement that prohibits rebroadcast or duplication.

Over the years we have migrated our collection from early 1” type A to ¾” U-Matic analog tapes. Because the Sony U-Matic equipment is no longer manufactured, we are now digitizing our collection with funding from the National Endowment for the Humanities.

These comments address your questions concerning 108 subsection (b) and (c).

Off-site Access

We currently loan copies of full or partial recordings, or compilations of news broadcasts, on VHS video tape, although we intend to loan copies using the DVD medium in the future. This activity is protected under Section 108 (f)(3). But now that our collection is digital in format, transmitting our loans via streaming video would be of great advantage to our users in that they could have immediate access to our collection at less expense. The use of streaming technology would actually increase protection against unlawful capture, duplication, or downstream transmission over physical media such as tape or DVD. We hope that section 108 might be amended to allow for transmission to offsite users via the Internet of these types of material. Without an amendment, streaming news

segments would be deemed public performance of the material, something not permitted us under Section 108.

User Community

Our user community is the general public who are interested in past public broadcasts of the national news. We do not feel it is advisable or practical to prohibit anyone who has interest in the news from having access to our collection. Our collection was originally public broadcasts freely available to anyone. Because of the importance of broadcast news to the democratic ideals of our nation, ongoing access to the news is an important aspect of protecting our democracy. In a similar fashion, access to past newspapers held in our nation's libraries assures access to the record of our history.

Simultaneous Users

Considering that our collection contains over 40,000 hours of video segmented into over 800,000 news segments of about four minutes, it is unlikely that more than one individual would be interested in the same segment at the same time. That being said, there are occasions when a specific segment might be assigned to a class as part of a lecture, so that the entire class needs to view that segment within a limited time period. Or there are occasions when a certain past segment may become of keen interest for a limited period of time due to current events. We have the technology to easily limit access to one individual viewing any specific segment at the same time, but we feel that doing so would unnecessarily impede access for educational purposes.

Signed User Agreements

We certainly support users being given notice of the legal responsibilities they incur when they have access to copyrighted material. Having them sign an agreement could impose an unnecessary burden on both the user and provider, unless there is proof that doing so would have a positive effect on abuse. We are not at all aware that there has ever been even limited or occasional abuse of our tape loans over the past 35 years of our existence. Nor in the two years that we have been streaming segments of CNN broadcasts by permission of that network has any copyright abuse of the Archive's streamed material been reported.

Digital Tangible vs. Digital Intangible Copy

We do not feel that there should be any difference in how these archive copies are treated whether they are digital tangible or intangible. There are many technical reasons why one or both medium could be used in the preservation process.

Recommendation

The amendment to 17 U.S.C. 108 (f)(3) was narrowly tailored to accommodate the Archive's current practice at the time of loaning a limited number of copies or excerpts of

audiovisual news programs, upon a request by a subscriber. In Sony v. Universal, the Supreme Court asserted that Congress has consistently adopted laws in order to accommodate new technologies, thereby ensuring the evolution of Copyright Law in light of these new technologies. In recognition of the fact that an amendment of Section 108 (f)(3) would be the best way to effectively allow the Archive to better serve our users by streaming news content, we propose an amendment such as the following:

Shall be construed to limit, either, the reproduction and distribution by lending of a limited number of copies and excerpts, or the public performance or public display via electronic transmission of excerpts, and any reproduction or distribution necessary and incidental thereto, by a library or archives of an audiovisual news program, subject to clauses (1), (2), or (3) of subsection (a); or

We hope the Committee will give serious consideration to our proposed amendment. We would be happy to answer any questions you may have.