

Copyright: Legal Issues and Policy

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19 November 2015

“Copyright Reform”

During the recent Association of Moving Image Archivists (AMIA) Conference, I came across a handout for a poster created by Manda Haligowski of McGill University, in Canada. Titled “The Ethical Ambiguity of Preserving Medical Films”, it briefly detailed the history of cinematography as a teaching device in the medical field, along with the ethical issues posed by the practice early on, and the attempts to preserve them later. Haligowski also points out that despite attempts to disassociate the patient from the body, issues of moral rights and consent come into the fold regardless. This leads one to observe, considering the issues of right of publicity and fair use discussed in class, that Haligowski’s essay could also be titled “The Legal Quagmire of Preserving Medical Films”. This is all too real to any navigating copyright law, and this essay gave me the impetus to hone in on the areas of copyright law that I believe need reform and expansion, with regards to right of publicity in relation to fair use, and exceptions for libraries and archives.

As it currently stands, right of publicity laws vary between the states and the federal government; the federal limit is the lifetime of the individual, while as many as 14 states have their own laws governing the post-mortem right of publicity. Oklahoma and Illinois in particular have rights of publicity statutes that last more than 100 years, and as of this writing, New York States is considering a port-mortem right of publicity statute.

Sections 107-110 do not consider a right of publicity, as determined by state, which may serve to undermine any claims on the merits of those sections brought before the courts. This is problematic in regards to medical documentation such as the films discussed in Haligowski's piece. Medical research institutions, in particular university hospitals, rely on audiovisual aid to document changes in the practice of medicine; the patients undergoing the procedures depicted or representatives for them can endeavor to sue them in 14 states under right of publicity statutes specific to those states. Sections 107-110 should be expanded to limit or eliminate the right of publicity in the case of teaching aids, both during the lives of individuals depicted and after, since the materials are not being monetized and there will be no financial value derived from them on the part of the institutions utilizing them. This expansion should also be incorporated into the exceptions for libraries and archives in section 108.

Strong opposition would come from large content providers and rights holders who may perceive such reform and legislation as a threat to revenue derived from the estates of individuals protected under right of publicity statutes at the state level. This would probably be lobbied by members of Congress representing the states of Illinois and Oklahoma. The two arguments I see them giving are that this copyright expansion would weaken their respective states' rights of post-mortem publicity, along with opening up the individuals protected by such laws to violations of their moral rights by allowing these limitations under sections 107-110.