Finding Murphy Brown: How Accessible are Historic Television Broadcasts?

Jeff Ubois*
Archival TV
P.O. Box 8495, Berkeley, CA 94707
http://www.archival.tv/
jubois@sims.berkeley.edu

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Abstract

This article presents the results of a project completed in May, 2005 at the University of California, Berkeley to measure the accessibility of historic television broadcasts. The first section describes a model of the accessibility of news and entertainment broadcasts, and the second section applies this model in an attempted reconstruction of the interaction on television between then-U.S. Vice President Dan Quayle and the fictional character Murphy Brown. The final section compares the results with the ruling in Encyclopaedia Britannica Educational Corp.

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* The project on which this paper is based was conducted while the author was a Staff Research Associate at the School of Information Management and Systems of the University of California, Berkeley.

v. Crooks, 542 F. Supp. 1156 (W.D.N.Y. 1982), which has restricted the sharing of video broadcasts recorded off the air for academic use, and offers some suggestions for future research.

1 Introduction

> "Television affects our lives from birth to death…Sadly, we have not yet sought to preserve this powerful medium in anything like a serious or systematic manner." – James H. Billington, Librarian of Congress[1]

Television constitutes a vital part of our cultural and historical record, yet even the largest archives in the U.S. provide access to only a fraction of news and entertainment broadcasts. Preserving important cultural artifacts and making them broadly available is vital to education and culture. Yet students, scholars, educational software developers, documentary film makers, and others who need access to television broadcasts face enormous obstacles in finding footage and obtaining rights to it [Murphy (1997), Zeller (2004)].

If journalism is the first draft of history, much of it that is broadcast remains very difficult to access, especially compared to print media. As Stanford law professor Lawrence Lessig writes in *Free Culture*, "Why is it that the part of our culture that is recorded in the newspapers remains perpetually accessible, while the part that is recorded on videotape is not? How is it that we have created a world where researchers trying to understand the effect of media on nineteenth-century America will have an easier time than researchers trying to understand the effect of media on twentieth-century America?" [2]

A controversy between then-U.S. Vice President Dan Quayle and the fictional character Murphy Brown from the television series of that name over 'family values' can serve to illustrate the problems facing researchers seeking access to historic footage. While this example is rather U.S.-centric, the subject is to many different disciplines, and the primary sources and follow-on broadcasts are distributed widely, under many different copyright regimes.

In the end, despite extensive efforts detailed here, the speech by Dan Quayle that initiated the controversy proved inaccessible for reasons of copyright, and the owner of the Murphy Brown episodes refused to provide them for educational use. The resulting gap between our expected ability to review public discourse and our ability to actually do so was surprising, and suggests that much public debate about access to the historical record, and the need to prevent off-air taping, is based on false assumptions.

From this attempted reconstruction of the Dan Quayle - Murphy Brown debate, this paper attempts to document or derive answers to the following questions:

- How accessible are old television news and entertainment broadcasts in the U.S.?
- What is involved in discovering, obtaining, and clearing permissions of video footage in general, and for educational and scholarly use in particular?
- What are the costs in time and money of obtaining access and permissions?
- What level of expertise is required to discover past video footage?

- Do original program owners provide reliable access to their old broadcasts?
- Might commercial archives help ensure the continuity of the historical record?
- What can television archivists in the U.S. learn from practices in other parts of the world?
- What is the cost to the educational community of the barriers to information access documented in this study?
- If different types of records are more or less discoverable, what biases does that introduce into scholarship?
- What are the societal implications of barriers to access?

2 Accessing Archived Video

There is no single measurement of the accessibility of television broadcasts, but the *Report of the Librarian of Congress, Television and Video Preservation 1997: A Study of the Current State of American Television and Video Preservation* offers some guidance on defining the problem:

> Access to television and video materials may be divided into four broad areas: description, consultation, reproduction, and use. Description includes general guides, catalogs, or other finding aids. A modern assumption is that these materials should be searchable on the Internet. Consultation refers to a researcher's ability to view and study the audiovisual document. Reproduction refers to a researcher's ability to obtain a copy. Finally, use refers to the ability to reproduce the audiovisual document for such purposes as public exhibition, display in a classroom, documentary production, and re-broadcast.[3]

This basic approach served as the foundation for this study, and reflects the consensus of other scholars [see Woo (2003), Bearman (2000) and Bearman (1998)]. To be considered fully accessible, video resources must be *discoverable* (i.e., described), *viewable* (open and available for consultation), *reproducible*, and *usable*.

These qualities also reflect successive stages in the process of research and the creation of new works. Attempted reconstructions of media events begin with *discovery* of potentially useful footage based on catalog descriptions and transcripts. Creating a complete list of broadcasts related to a single event is one way to test the limits of discoverability.

Having identified possibly relevant segments, researchers must then *view* or consult them. This may be done via visits to archives and libraries, via the loan of tapes by mail, or directly via the Internet. Archival footage that proves relevant after viewing may then be *reproduced* for future reference or offsite use. This is often provided as a fee-based service by archival institutions.

Finally, segments that have been reproduced for individual use must be cleared for *use* in classrooms or distance education settings. Typically, this is very difficult and expensive [Murray (1997), Zeller (2004), Aufderheide (2004)]. Reproducibility and usability are closely related, but it is useful to separate them because many broadcasts, especially news, are reproducible but not usable without clearances.

2.1 Barriers to Discovery, Viewing, Reproduction, and Use

Physical, economic, temporal, legal, technical, and educational barriers to discovery, viewing, reproduction, and use are intertwined in complex ways. While an increasing amount of television and video is born digital, historic broadcast video is an oddly physical medium. Broadcasts are typically stored on tape, and tape is hard to retrieve remotely. Researchers must therefore travel to libraries and archives, or order copies of desired tapes, both of which present economic barriers, and introduce delays into the research process.

The cost to view, reproduce, and clear usage rights is often beyond the means of academic researchers. For example, the entire set of Murphy Brown-related news clips in the Vanderbilt Television News Archive is less than two hours long, and yet the cost to obtain viewing copies is nearly $800 (i.e., this doesn't include the cost of rights) – and this is the least expensive option for obtaining news footage.

Temporal barriers – delays in retrieving video from distant archives, waiting for responses from libraries, archives and program owners – are often caused by the need to rely on the help of others for access, and may stretch out to days or months. There simply isn't much "self-service retrieval" available, often for legal reasons.

For example, libraries with print collections rarely prohibit the use of Xerox machines, but because of copyright law and contractual agreements with donors and program owners, video libraries are typically unable to allow or provide onsite reproduction, or offsite consultation via the Internet. Videos that can't be legally reproduced are not typically usable for other purposes such as classroom showing.

Finally, use of video resources is a highly specialized skill. Not only are there technical difficulties inherent in editing video, but discovering, and clearing footage for use in scholarly works forms an educational barrier, particularly for K-12 students and undergraduates. Each of these barriers plays out in the context of particular sources of broadcast footage, and each weighed heavily on the attempt to gather footage related to Murphy Brown.

2.2 Sources of Television Broadcast Footage

Any attempt to gather a complete record of a major event must be conducted across a variety of different resources, including:

- Text-only catalogs and databases of transcripts, broadcast times, and frequencies such as the LexisNexis news transcript database, and the Moving Image Collections (MIC) catalog.
- Television broadcast networks and program owners. CBS, NBC, ABC, CNN, public broadcasting stations, and others offer web-accessible catalogs to support the purchase of broadcast footage.
- Special collections, libraries, and museums. The Library of Congress's Television Collections (which retains copies of programs deposited for copyright), the Vanderbilt

Television News Archive, the Museum of Television and Radio, the Museum of Broadcast Communications, and others have large tape collections and catalogs.

- University libraries. For example, UCLA <http://www.cinema.ucla.edu/> and San Francisco State University <http://www.library.sfsu.edu/special/sfbata.html/> have web-accessible catalogs of their video collections.
- Commercial service providers. Several companies, including Video Monitoring Services of America, Federal News Service, NPG Inc. (the owner of Footage.net), and Radio TV Reports act as commercial video libraries.
- Fan clubs and other quasi-legal sources of footage. Entertainment videos may sometimes be obtained from fan networks on the Internet.

The options for discovery, viewing, reproduction, and use are summarized in Table 1. This categorization scheme is U.S.-centric, since it is derived from the hunt for Murphy Brown. In other countries, in which public stations account for a greater percentage of television broadcasts, government-run archives play a more important role.

Table 1: Accessibility of Different Video Archives and Collections

	Discovery	**Viewing**	**Reproduction**	**Use (rights clearance)**
Television broadcast networks, both public and commercial.	Networks do not typically reference footage other than their own.	Varies widely by network, but there is a trend toward online viewing	Networks usually provide reproductions of news, but don't always own and thus can't reproduce entertainment footage.	Networks sell usage rights to their news, but don't always own (and thus can't clear) entertainment footage.
Special collections, libraries, and museums.	These offer access to video broadcast on multiple networks, but may have less comprehensive holdings than broadcast networks.	May require travel, or ordering of videotapes by mail.	These organizations must carefully abide by the restrictions placed on them by owners, though news footage can be loaned.	These organizations may provide limited assistance.
University libraries.	Only a few university libraries have substantial video collections. Many simply point students at Vanderbilt.	May require travel.	Concerns about potential liability cause many university libraries to restrict access to and copying of video footage.	University libraries may provide limited assistance.
Commercial providers and monitoring companies	Commercial sources are useful for advertisements and some news; they are less useful for entertainment footage that is not for sale on tape or DVD.	Higher costs, but generally fast response times.	Reproductions are available for purchase.	Commercial providers can handle rights clearances.
Fan clubs and other quasi-legal sources of footage.	Coverage is spotty.	Inconsistent.	Reproductions are easy and convenient, not always legal.	These groups cannot provide rights clearances.

The possibilities for discovery, viewing, reproduction, and use vary considerably depending on the type of institution holding the materials.

3 Searching for Murphy Brown

In a speech at the Commonwealth Club in San Francisco on May 19, 1992, Vice President Dan Quayle suggested that a root cause of the recent rioting in Los Angeles was the decay of traditional family structures. The Vice President stated "It doesn't help matters when prime time TV has Murphy Brown - a character who supposedly epitomizes today's intelligent, highly paid, professional woman - mocking the importance of fathers, by bearing a child alone, and calling it just another 'lifestyle choice.'"[4] The next day, May 20, the Vice President's comments became the lead story for the major television news broadcasts, and the subject of intense debate.

In fact, the riots began on April 29, 1992 immediately following an all-white jury's acquittal of four white police officers videotaped beating motorist Rodney King, an African American.[5] The riots continued for nearly a week, resulting in the deaths of more than 50 people. It thus appeared to many observers that the Vice President was blaming the riots on single mothers and on Hollywood, when the real causes were persistent economic inequality, racism, police violence, and a perceived imbalance in the criminal justice system.

Murphy Brown makes a revealing test case for an exploration of the accessibility of television archives, at least in the U.S., for several reasons. First, for a debate between important actors about public policy, morality, and culture, the primary sources must be broadly accessible to allow fact-based public discourse, research, and education. Second, the interaction took place on many different networks, and the records of it are held or owned by a wide variety of institutions under several different intellectual property regimes. Therefore, it is possible to compare the availability of different types of footage (e.g., news and entertainment), and the responsiveness of different institutions. Third, the subject matter is relevant to many different academic disciplines, from presidential history and the practice of journalism to studies of race, class, and gender. Finally, as a relatively recent event that received wide coverage, it seemed likely that comparing the citations of the original broadcasts with what is now available would yield interesting results.

The actual search for Murphy Brown began with in excess of 30 informal telephone interviews with librarians and other experts who suggested likely resources. The search was an attempt to follow that advice, given the constraints of a limited budget for purchasing materials and for travel. In retrospect, the process can be described sequentially in terms of discovery, viewing, reproduction, and use. The preceding description of qualities, barriers, and sources is thus one of the results of a great deal of time spent trying to obtain copies of relevant footage.

3.1 Discovery

The discovery process involved consulting Internet-accessible catalogs, commercial databases available through the U.C. Berkeley library system, email requests to particular archives, and telephone inquiries. With the exception of the BBC archive, discovery was restricted to U.S.-based sources, as summarized in Table 2.

The librarians consulted also suggested some less conventional sources, including eBay, Amazon, Murphy Brown fan clubs, and a curious Hollywood institution: Eddie Brandt's Saturday Matinee (see http://www.saturdaymatinee.com/Videos.htm), which sometimes loans out off-air recordings to patrons who rent movies (studios have, according to one librarian, opted to look the other way, as Eddie Brandt is a crucial resource for film industry professionals).

Ultimately, the largest record of relevant video broadcasts proved to be the news transcripts database provided by LexisNexis Academic, which contains the times and frequencies of more than 800 video news broadcasts referencing Dan Quayle and Murphy Brown. This database had two shortcomings in the context of this project: 1) it did not provide information about entertainment footage, and 2) it contained what were essentially duplicates – citations to multiple airings of nearly identical segments. Still, this record was more complete than any provided by any broadcast network, university library, or video news clipping service.

Table 2: Sources Consulted During Discovery

Type	Institutions contacted
Television broadcast networks and program owners	ABC <https://www.abcnewsvsource.com/vsource/html/home.htm/> CBS <http://www.bbcmotiongallery.com/> NBC <http://www.nbcnewsarchives.com/> CNN <http://www.footage.net/> BBC <http://www.bbcmotiongallery.com/> Warner Brothers. Fax: (818) 954-3817 Emmy Awards <http://www.emmys.tv/> The Commonwealth Club http://www.commonwealthclub.org/archive/index.html/ Hoover Institution http://www-hoover.stanford.edu/hila/
Specialized video libraries	The Vanderbilt Television News Archive http://tvnews.vanderbilt.edu/ The Museum of Broadcast Communications http://68.20.194.81/MBC/index.asp/ The Museum of Television and Radio <http://www.mtr.org/> The Library of Congress http://www.loc.gov/rr/mopic/
University libraries	UCLA <http://www.cinema.ucla.edu/> San Francisco State University <http://www.library.sfsu.edu/special/sfbata.html/> Purdue University Public Affairs Video Archive / C-Span Archives
Commercial service providers	Multivision Inc. <http://www.multivisioninc.com/> VMS - Video Monitoring Services of America <http://www.vidmon.com/> NPG Inc. (owner of Footage.net) <http://www.footage.net/>
Fan clubs and other quasi-legal sources of footage.	Ebay <http://www.ebay.com/> Eddie Brandt's Saturday Matinee: (818) 506-4242 P2P networks (including Gnutella and Kazaa) Fan sites <http://epguides.com/MurphyBrown/>

More than 30 different sources were consulted in the hunt for relevant footage. Sources that did not have relevant materials have been removed from this list.

3.2 Requests to View, Reproduce, and Use Relevant Footage

Having identified broadcast segments from online sources, we requested video footage by telephone, postal mail, fax, and email. Requests for footage were designed to be as easy for broadcasters to accept as possible, and to avoid eliciting a completely negative response. Requests were multipart, asking first to view, then to copy, then to show in class, then to show publicly the materials in question.

Requests were also made in ways that seemed most likely to elicit a timely response. For example, written requests were pre-arranged or followed up by phone.

Frequently, requests went unanswered, or promised responses never arrived. After waiting some period of time, these would be followed up with additional requests by phone or email. In short, extensive efforts were made to ensure that broadcasters and program owners received ample opportunity to respond to requests, and we were diligent in attempting to gain access to and permissions for footage use.

The search was constrained by funding limitations; very few purchases of footage were completed. There was no travel budget, so distant libraries and archives were consulted by phone, and the availability of different segments was noted.

4 Main Findings and Conclusions

Ultimately, reconstruction of the Dan Quayle – Murphy Brown interaction based on primary source materials proved effectively impossible, despite extensive and prolonged efforts. The speech by Dan Quayle that initiated the controversy was inaccessible for reasons of copyright, and the owner of the Murphy Brown episodes refused to provide them for educational use. Other news and entertainment footage was difficult to find, expensive, or unavailable.

As noted in the *1997 Television and Video Preservation* report "...Educational access remains largely unattainable for a variety of reasons, including underfunding in public archives, lack of descriptive cataloging and reference copies, copyright interests and very restrictive usage policies."[6] Despite impressive advances in technology, this appears to remain largely true.

4.1 Discovery

No single comprehensive catalog of television broadcasts now exists in the United States. Researchers who wish to find a complete record of cultural events or major events appearing on different networks are forced to consult a wide variety of fragmented resources. Despite extensive efforts to consult all meaningful resources, there can be no doubt that some citations were missed in this search for Murphy Brown.

In all, we examined more than 1000 citations to broadcast video segments related to Dan Quayle and Murphy Brown. Many of these were essentially duplications, i.e. re-runs of the same segment at a different time. Still, less than 100 were easily obtainable, and fewer than 30 were available in a digital format.

This multiplicity of sources and citations might suggest that archived broadcasts are widely available, but this multiplicity is a problem rather than a solution because it increases search costs dramatically, and further biases research towards material that is easily discoverable.

4.2 Viewing

The speech by Dan Quayle that initiated the controversy, as well as the relevant Murphy Brown episodes, were difficult or impossible to view or use. Since access to news is governed by somewhat looser rules than access to entertainment programming, it is useful to separate those discussions.[7]

4.2.1 Viewing News

The original speech by Dan Quayle initially appeared to be available for purchase from the Commonwealth Club in San Francisco, where it was given and recorded. But more than a month after submitting a purchase order, the Commonwealth Club sent email stating: "The Dan Quayle tape is unfortunately no longer available. All our records prior to 2000 have been transferred to Hoover. All tapes will be, at some point, available from them, but I imagine it will take them a few years to digitalize all the records."

The Hoover Institution was unable to provide a copy, stating via email (see Figure 1): "The issue is copyright. And as it stands now, our contract with the Commonwealth Club prohibits us from distributing 'electronic copies' of any of those recordings." (The issue of copyright on presidential speeches in private venues has been discussed elsewhere.[8]) Unlike some program owners, Hoover didn't want to deny access; its helpful librarians were constrained by copyright and contract issues.

Figure 1: Response from the Hoover Institution

From: REDACTED @hoover.stanford.edu>
Date: March 16, 2005 1:05:19 PM PST
To: Jeff Ubois <jeff@ubois.com>
Subject: Re: Looking for Dan Quayle's Commonwealth Club speech

Jeff,

Don't know yet. As REDACTED alluded to earlier, our digitization program is brand new. We have the ability to make any of those kinds of files. That's not the issue. The issue is copyright. And as it stands now, our contract with the Commonwealth Club prohibits us from distributing "electronic copies" of any of those recordings.

I'm waiting to hear back from someone on their end regarding how this process should work. Needless to say, I will get back to you as soon as I can.

-- REDACTED

The Hoover Institution explains that copyright law prevents it from providing the speech made by Dan Quayle.

The search for other news footage is summarized in Table 3 below. Of the 898 references found in the LexisNexis news transcripts database, none were available free of charge. Only 94 were available on tape; half are almost certainly duplicates. Unfortunately, viewing costs and the lack of common cataloging standards makes this impractical to prove.

Commercial resellers and non-profit archives were often more responsive than the original networks. Multivision, for example, was ready to sell us footage from NBC that NBC was not willing to provide, while employees at NBC and CBS referred requests to Vanderbilt.

Table 3: Availability and cost of news broadcasts

Source	Number of segments broadcast and noted in LexisNexis transcript database	Number of segments noted in source's web catalog	Number of segments available from broadcaster (or service provider)	Approximate cost to obtain copies for viewing
ABC	27	13	13	$1040
CBS	123	n.a.	5	n.a.
NBC	5	26	0 (NBC referred us to Vanderbilt.)	n.a.
CNN	104	29	29	$1750+
Multivision		18 (7 ABC; 6 CBS; 5 NBC)	18	$1890 - $4842 (VHS is $105 per news segment; DVD is $165 per segment; digital is $195 per segment; the economy package (all 3 formats) is $269.)
Video Monitoring Service	298	n.a.	0 (Broadcast tapes are retained only for 60 days.)	n.a.
Vanderbilt Television Archive	n.a.	29 (10 from ABC; 10 from CBS; 9 from NBC)	29	$793

Not all citations were available for viewing. None were available for free, and costs varied widely.

4.2.2 Viewing Entertainment

During the course of this study, some episodes of Murphy Brown were re-released on DVD, and re-runs began on the cable channel Nick at Night. This dramatically altered the possibilities for viewing that had existed from 1992 through 2004. Still, the interactions in 2004 with both Warner Entertainment and with various archives holding copies of the relevant episodes are instructive because they reflect a common state of affairs for entertainment programming.

For researchers, knowing which network broadcast a program (as Murphy Brown was by CBS) is not the same as knowing the program owner (in this case, Warner Entertainment Inc. is the owner). Getting a response from Warner Entertainment involved multiple phone calls over a period of weeks to track down the correct licensing person, who ultimately refused to provide a copy of the tape (see Figure 2), writing:

> "Please note, we are unable to provide videocassette copies of the MURPHY BROWN episodes to you. They are not currently available to the general public on video, and company policies prohibits us from making it available…" [9]

Viewable but not reproducible copies of Murphy Brown episodes were available in a few places, including the UCLA Library. Viewing at UCLA would have required making an appointment seven days in advance and flying to Los Angeles; budgetary considerations prevented this. Other copies were kept at the Museum of Television and Radio in New York, and the Museum of Broadcast Communications in Chicago (unfortunately, it closed for remodeling until 2006). Other entertainment footage, specifically the presentation of an Emmy Award to Candice Bergen (the actress who portrayed Murphy Brown), was also unobtainable.

Figure 2: An Excerpted Reply from Warner Entertainment

818-954-3817 CLIP & STILL LIC. 016 P02 JUN 10 '04 11:10

Mr. Jeff Ubois
June 9, 2004
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Please note, we are unable to provide videocassette copies of the MURPHY BROWN episodes to you. They are not currently available to the general public on video and company policy prohibits us from making it available in its entirety.

This letter addresses only the classroom exception with respect to the copyright in the Property and does not address any other legal issues, such as possible claims by other parties, which may be raised by your exhibition of this Property. This letter applies only to Warner Bros. material, and is not intended as legal advice.

Sincerely,

, Clip and Still Licensing

JH:dg

In this faxed communication, Warner refuses to provide the "You Say Potatoe" episodes of the Murphy Brown series.

4.3 Reproduction and Use

To explore the issues of reproducibility, use, and rights clearance, four news broadcasts from ABC, CBS, and NBC (top stories on May 20, 1992 on all three networks, along with an edition of Nightline) were ordered from the Vanderbilt Television News Archive, which delivered them

in roughly ten business days for $111.

After receiving the tapes from the Vanderbilt Television News Archive, we again contacted ABC, CBS and NBC, asking for permission to 1) make a copy, 2) show it in class, and 3) put a digitized version of each clip up on a class website.

Responses varied. NBC asked for a $350 minimum, and $20 per second with a 30-second minimum for non-broadcast educational presentation. CBS offered to make another copy of the segment we had in hand, and to allow classroom use for $100 plus $25 in shipping, but noted "CBS does not permit use of its segments on the Internet, even closed sites." ABC was the only network to allow classroom showing and digitization of the Vanderbilt segment, writing "Do you just want permission to show it in class? If so, this is fine. You can digitize it for this purpose," but their rather kind granting of permission did not extend to providing copies to the class.

In response to our initial request, Warner Entertainment noted that if a lawfully obtained recording was available (which they would not provide), the "classroom exception," would allow showing in non-profit educational institutions during face to face teaching activities.

5 Implications and Questions for Further Research

The sheer variety of different legal, technical, and economic barriers to access mean that developing a cogent agenda for research into the loss of public memory will need to be developed over time through a dialog between many different stakeholders. Yet it is difficult to refrain from noting some of the questions that arose during the search for relevant footage, and some of the possible avenues that seem worthy of further exploration.

5.1 Was BOCES a bad call?

Much of the original impetus for this project came from Encyclopaedia Britannica Educational Corp. v. Crooks, 542 F. Supp. 1156 (W.D.N.Y. 1982). This case is often referred to as the BOCES case because the Board of Cooperative Educational Services, First Supervisory District, Erie County was a corporate defendant.

BOCES routinely recorded programs from PBS station WNED-TV, shared them among K-12 schools in New York, and claimed this constituted fair use. The judge decided otherwise, ruling "it is not reasonable to permit defendants to engage in copying and using plaintiffs' works for a limited period of time when these same copyrighted works are readily available from the plaintiffs for a limited period of time."

This underlying premise about availability seems questionable. Murphy Brown – and by extension, other broadcasts – are not in fact "readily available."

The judge continued:

> In examining defendants' claims, it is helpful to begin by examining the last factor, "the effect of the temporary use upon the potential market for or value of the copyrighted work," or, more succinctly, "harm."… any temporary use by BOCES of plaintiffs' copyrighted works would interfere with the marketability of these works, and the cumulative effect of this temporary videotaping would tend to diminish or prejudice the potential short-term lease or rental market for these works.

The mere study of material that is not commercially available seems unlikely to cause economic harm to the original owner. Two of the four major networks contacted referred requests to Vanderbilt, which suggests they do not rely on their own archives as a major source of revenue.

Although the public has an interest in the outcome of court decisions about access to video broadcasts, the parties with the greatest resources in these disputes are copyright owners. The interest of the public is not directly represented, nor is the public a party to the decision or the process.

5.2 Reasons for Denials of Access to News and Entertainment Footage

If the experience in gathering Murphy Brown materials is any indication, broadcasters and program owners are unlikely to create and maintain broadcast archives that meet the needs of future students, historians, and scholars. Discussions with video librarians revealed numerous anecdotes about unexpected denials of access or use of video footage:

- NBC, as a condition of its settlement with General Motors, must deny access to the *Dateline* clips of footage showing GM trucks catching fire in a rigged demonstration of side impact collisions.
- ABC has denied access to its investigative series on Winn-Dixie supermarkets under terms of a settlement with Winn-Dixie.
- CBS has denied access to the confrontation between Dan Rather and then vice-president George H.W. Bush in 1988 over the Iran-Contra affair.
- The producer of the documentary *Enron: The Smartest Guys in the Room*, Alex Gibney, reports that CNBC claims to have destroyed its footage related to Enron.

Contract terms imposed by program owners were reported to have similar effects. For example, many scholars of race relations would like to access *The Cosby Show*, but it is unavailable – the owner, Bill Cosby, won't release it for reasons that are somewhat obscure. Similarly, the documentary series *Eyes on the Prize* is now unavailable because the rights obtained to footage used in the series have lapsed.[10]

The lack of easy access to old broadcasts limits not just the practices of educators, but as Dr. Patricia Aufderheide (see Aufderheide, 2004) points out, their imaginations and research designs. Why bother to examine major events as they were broadcast on television if the footage is unavailable?

5.3 Verifiability and Provenance

Generally, we found few reasons to doubt the provenance of materials related to Murphy Brown. But provenance is critical for controversial subjects, footage used in litigation, when evaluating off-air recordings made and shared among fans, and when viewing segments provided by freelancers, government agencies, corporations, and PR firms to broadcast networks.

For example, shortly after the September 11 attacks on New York, ABC showed footage that was purported to be Palestinians dancing in the streets. But were they? How many? The lack of provenance for that clip led to long controversy over its authenticity.[11] Similarly, the recent controversy over video news releases produced by the federal government might have been partially avoided had some system of provenance been in operation.[12]

As noted in *Preserving Digital Information*, published in 1996 by The Commission on Preservation and Access and the Research Libraries Group, "Provenance has become one of the central organizing concepts of archival science."[13] Systems that provide provenance for television broadcasts will become increasingly important as video becomes easier to edit, but they have yet to be created.

5.4 Market-based Solutions and Cost Models

The unavailability of Dan Quayle's speech might be considered a market failure, while the re-issue of the Murphy Brown episodes might be counted a successful, market-driven expansion of access to archival television. As program owners find new, profitable ways to offer old footage to the public, some access problems may be solved by commercial entities rather than by libraries or archives.

Market mechanisms that accommodate the needs of both scholars and program owners could help make archived broadcasts more accessible. In the world of print journals, the Copyright Clearance Center has attempted to improve the process of rights clearance; some of the lessons (both good and bad) from that experience are worth exploring in the context of video.

Judging the prospective residual value of particular broadcasts is difficult. That may be one reason for program owners' apparent reluctance to offer easy access (if the market demand is small, why bother?), or to allow others to do so (but if there is residual value, it's sensible to protect it). Finding additional ways to gauge the value of old broadcasts might help program owners resolve this dilemma, or open some new approaches to compulsory licensing.

At the same time, a more rigorous approach to measuring the cost of accessing broadcast footage is needed. Without credible cost models, it will be difficult to assess the trade-offs that will be made in the course of creating new laws, markets, and technologies related to television archives.

In library economics, researchers such as Lankes, Gross, and McClure (2003) and Holmström

(2004) have measured the cost of accessing individual journal articles, and their approaches might suggest similar measurements for video clips. Measurements of service quality [Kyrillidou (2001, 2001) and Lancaster (1988)] are also suggestive, but don't track interactions with multiple institutions, or the cost of clearing usage rights.

5.5 International Comparisons and Practices Outside the U.S.

Running a similar test on the archives of other broadcasting systems outside the U.S. was beyond the scope of this project, but it is clear that the options for access to archival television footage differ widely around the world in several important respects. Among the most striking differences are contrasting patterns of media ownership, state support for archival institutions, general political expectations, and relative levels of broadband deployment.

State-owned broadcasters appear to be less intent on monetizing public access to and use of their holdings, and thus more willing to make collections available online for free. Several have begun work to make their catalogs and portions of their holdings directly accessible on the Internet:

- The BBC is in the process of making its entire catalog of more than one million items available on the Internet. Its Open News Archive, accessible at http://www.bbc.co.uk/calc/news/, provides clips of major historical events such as the fall of the Berlin Wall and the Tiananmen protests of 1989, that film makers, educators, and others can re-use in new creations.

- The Institut National de l'Audiovisuel (INA), created in 1975 by the French government to retain all audiovisual material broadcast by national broadcasting companies, recently launched "Archives Pour Tous" (see http://www.ina.fr/archivespourtous/index.php). The INA is adding about 5,000 hours per month to its collection, about 80 percent of which is free; the 20 percent that is copyrighted is available at €1 to €12 for full downloads.[14]

- In the Netherlands, where several member-based public broadcasting networks are supported by a mix of government funds and advertisements, parliamentarians have discussed (and largely agreed) that most footage should be made available online and considered as part of the public domain. [15]

- In Japan, the government is considering making 550,000 programs from the archives of NHK fully available online.[16] NHK currently supplies footage worldwide via NHK International (see http://www.nhkint.or.jp/.)

A comparison of effects of different patterns of media ownership, intellectual property regimes, and government involvement in archiving on students, historians, and scholars could help archivists worldwide illuminate best practices and gain support for any efforts to open up their holdings. An analysis of the different legal requirements imposed on broadcasters by their national governments, and of governmental support of television archives would also help to establish useful norms.

5.6 The Effects of New Technology

Television archives exist in a very dynamic technological environment characterized by a shift from videotape to disk for storage, from cable and broadcast networks to the Internet for distribution and access, from scheduled to unscheduled programming, and from the television to the PC, mobile phone, and HDTV screens for viewing. Continuing declines in the cost of storage will make enormous digital video collections affordable by libraries of even modest size, while improvements in network infrastructure, search technology, and peer-to-peer networks will bring archival footage within reach of most Internet users.

A full discussion of technical issues is beyond the scope of this article, but if legal and economic issues were resolved, television broadcasts could in principle be as easy to access as print journal articles are now. Of course, many technical issues will also need to be resolved, including standards for formats and metadata, low-cost approaches to digitization, and tools to simplify video editing and remixing. But it is clear that technical improvements could greatly reduce barriers to access.

Two issues are particularly pressing because they threaten preservation, and thus, future access. Both are made more complicated by legal and economic issues, but the outcomes are heavily dependent on technology, so we mention them here.

First is the decay of physical media. The PrestoSpace *Annual Report on Preservation Issues for European Audiovisual Collections*, which covers film, audio, and videotape, states "At current rates of preservation work, and with audio and video material beginning to degrade after 20 years at 5% per year, 40 % of existing material will simply disappear by 2045. This is a best case figure … At worst …70% of existing material will simply disappear (by 2025)."[17] It seems reasonable to think the situation in the U.S. may be similar.

Second is Digital Rights Management (DRM). If the experience with computer software is any guide, DRM is problematic for archivists,[18] though DRM advocates contend it will provide incentives for program owners to preserve and provide access to material. Research into the possible outcomes if DRM becomes ubiquitous is clearly needed to inform the debate about this technology.

Conclusion

Television is the primary source of news for most Americans,[19] and an important part of our culture. Certain broadcasts – from the Nixon / Kennedy debates to the Rodney King beating – qualify as historical events in and of themselves and should be available to scholars of the future. Without a dedicated effort to collect, catalog, preserve, and serve them to the public, televised events such as the Murphy Brown – Dan Quayle interaction will remain difficult to access, or be lost entirely.

The technical means to preserve and provide access to television broadcasts are well developed, but the legal barriers to doing so are growing. The *Television and Video Preservation 1997*

report notes that "Educators who testified in the public hearings strongly and consistently indicated that access to television and video archives for educational purposes is limited for a variety of reasons, the most vexing of which they attribute to copyright."[20]

After searching for Murphy Brown, it seems reasonable to ask whether we will be able to look back in fifty years and watch the historical events of our lifetimes, or whether televised history will be lost in a copyright-created memory hole. As George Orwell noted in his novel *1984*, "Who controls the past controls the future: who controls the present controls the past."[21]

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References

Althaus, S. L., Edy, J.A., et al. (2002) "Using the Vanderbilt Television abstracts to track broadcast news content: possibilities and pitfalls." *Journal of Broadcasting & Electronic Media*, Vol. 46, issue 3 (September), 473-492.

Aufderheide, P. and Jaszi, P. (2004) *Untold Stories: Creative Consequences of the Rights Clearance Culture for Documentary Filmmakers*. See http://www.centerforsocialmedia.org/rock/finalreport.htm.

Bartow, A. (1998) "Educational Fair Use In Copyright: Reclaiming The Right To Photocopy Freely." *University of Pittsburgh Law Review*, Vol. 60, Fall, 149-230.

Bearman, D. (2000) "Intellectual Property Conservancies." *D-Lib Magazine,* Vol. 6, No. 12 (December), http://www.dlib.org/dlib/december00/bearman/12bearman.html.

Bearman, D. and Trant, J. (1998) "Authenticity of Digital Resources Towards a Statement of Requirements in the Research Process." *D-Lib Magazine,* Vol. 4, No. 6 (June). http://www.dlib.org/dlib/june98/06bearman.html.

Breeding, M. (2003) "Building a digital library of television news." *Computers in Libraries*. Vol. 23, No. 6 (June), 47.

Christel, M; Wactlar, H.; Gong, Y.; and Hauptmann, A (1999) "Lessons Learned from the Creation and Deployment of a Terabyte Digital Video Library." *IEEE Computer*, Vol. 32, No. 2, 66-73.

Frey, M. G. (1998) "Casenote: Unfairly Applying The Fair Use Doctrine: Princeton University Press V. Michigan Document Services, 99 F.3d 1381 (6th Cir. 1996)." *University of Cincinnati Law Review,* Vol. 66, Spring, 959-1018.

Garon, J. (2002) "The Electronic Jungle: The Application of Intellectual Property Law to Distance Education." *Vanderbilt Journal of Entertainment Law & Practice,* Vol. 4, Spring, 146-172.

Gatien, K. (2003) "Internet Killed the Video Star: How In-House Internet Distribution of Home Video Will Affect Profit Participants." *Fordham Intellectual Property, Media & Entertainment Law Journal*, Vol. 13, Spring, 909-962.

Holmström, J. (2004) "The Cost per Article Reading of Open Access Articles." *D-Lib Magazine,* Vol. 10, No. 1. http://www.dlib.org/dlib/january04/holmstrom/01holmstrom.html.

Kyrillidou, M. and Heath, F.M. (2001) "Introduction" (for special issue on measuring service quality).

Library Trends, Vol. 49, Issue 4 (Spring), 541-547.
Kyrillidou, M. and Hipps, K. (2001) "Symposium on Measuring Library Service Quality." *ARL Bimonthly Report* 215 (April), p. 9-11.
Lancaster, F. W. (1988) *If You Want to Evaluate Your Library*. University of Illinois, Graduate School of Library Science, Urbana-Champaign, IL.
Lankes, R.D., and McClure, C.R. (2003) "Cost, Statistics, Measures, and Standards for Digital Reference Services: A Preliminary View." *Library Trends* Vol. 51, Issue 3, Winter, 401-413.
Lessig, L. (2004) "Copyrighting the President." *Wired Magazine*, Vol. 12, No. 8 (August). See http://www.wired.com/wired/archive/12.08/view.html?pg=5.
Lessig, L. (2004) *Free Culture*. The Penguin Press, New York.
Marchionini, G., and Geisler, G. (2002). "The Open Video Digital Library." *D-Lib Magazine*, Vol. 8, No. 12, (December). http://www.dlib.org/dlib/december02/marchionini/12marchionini.html.
Missingham, R. (2003) "What Makes Libraries Relevant in the 21st Century? Measuring digital collections from three perspectives." Conference paper, *Information Online, 2003*; http://conferences.alia.org.au/online2003/papers/missingham.html.
Montgomery, C. H. and King, D.W. (2002) "Comparing Library and User-Related Costs of Print and Electronic Journal Collections." *D-Lib Magazine*. Vol. 8, No. 10 (October). http://www.dlib.org/dlib/october02/montgomery/10montgomery.html.
Murphy, W. T. (1997) *The Report of the Librarian of Congress, Television and Video Preservation 1997: A Study of the Current State of American Television and Video Preservation*. Volume 1 is available at http://www.loc.gov/film/tvstudy.html.
O'Brien, D. (2003) "Something Completely Different." *Wired*, Vol. 11, No.. 11, (November). http://www.wired.com/wired/archive/11.11/start.html.
Reich, V. and Rosenthal, D. (2001) "LOCKSS: A Permanent Web Publishing and Access System." *D-Lib Magazine*, Vol. 7, No. 6 (June). http://www.dlib.org/dlib/june01/reich/06reich.html.
Reis, L. A. (1995) "The Rodney King Beating – Beyond Fair Use: A Broadcaster's Right To Air Copyrighted Videotape As Part Of A Newscast." *The John Marshall Journal of Computer & Information Law,* Vol. 13, Winter, 269-311.
Samuelson, P. (2003) "Copyright And Freedom Of Expression In Historical Perspective." *Journal Of Intellectual Property Law*, Vol. 10, Spring, 319-344.
Xalabarder, R. (2003) "Copyright and Digital Distance Education: The Use of Pre-Existing Works in Distance Education Through the Internet." *Columbia Journal of Law & the Arts*, Vol. 26, Spring, 101-178.
Zeller, T. (2004) "Permissions on Digital Media Drive Scholars to Lawbooks." *The New York Times*. June 14, 2004. Final, Section C, Page 4, Column 1.

Notes

1 Murphy, W. T. (1997) *The Report of the Librarian of Congress, Television and Video Preservation 1997: A Study of the Current State of American Television and Video Preservation*. p. xi. This is available online at http://www.loc.gov/film/tvstudy.html.

2 Lessig, L. (2004) *Free Culture*. p. 111. The Penguin Press, New York.

3 Murphy, p.137.

4 Quayle, J.D. (1992) On Family Values, *Address to the Commonwealth Club of California*, May 19, 1992. Available at http://www.vicepresidentdanquayle.com/speeches_StandingFirm_CCC_1.html.

5 Several copies of the Rodney King video are available on the Internet; see, for example http://www.multishow.com.ar/rodneyking/, and

http://www.law.umkc.edu/faculty/projects/ftrials/lapd/kingvideo.html.

6 Murphy, p. xiii.

7 Copyright Office (1998) *Circular 21, Reproduction of Copyrighted Works by Educators and Librarians,* p. 19, http://www.copyright.gov/circs/circ21.pdf. This states that libraries and archives may be free "to reproduce, on videotape or any other medium of fixation or reproduction, local, regional, or network newscasts, interviews concerning current news events, and on-the-spot coverage of news events, and to distribute a limited number of reproductions of such a program on a loan basis."

8 Lessig, L. (2004). Copyrighting the President. *Wired Magazine*, Vol. 12, Issue 8 (August, 2004), http://www.wired.com/wired/archive/12.08/view.html?pg=5.

9 Fax communication from Warner Bros.

10 Eyes on the Prize entry (2006), *Wikipedia*, http://en.wikipedia.org/wiki/Eyes_on_the_prize.

11 Mikkelson, B. and Mikkelson, D.P. (2001) False Footaging, *Urban Legends Reference Pages* http://www.snopes.com/rumors/cnn.htm.

12 Barstow, D. and Stein, R., Under Bush, A New Age of Prepackaged TV News, *The New York Times*, March 13, 2005. http://www.nytimes.com/2005/03/13/politics/13covert.html?ex=1268370000&en=c040ac38c7b344fa&ei=5090&partner=rssuserland.

13 Commission on Preservation & Access (1996) *Preserving Digital Information*, May 1, 1996, p. 14.

14 See Shannon, V. (2006) "The End User: From France, video for all." *International Herald Tribune*, Wednesday, May 31, http://www.iht.com/articles/2006/05/17/business/ptend18.php.

15 See Figueiredo, J. (2004) "Dutch parliamentarians favour releasing public broadcast images into public domain." *DMeurope.com*, October 20, 2004. http://www.dmeurope.com/default.asp?ArticleID=3911.

16 See "NHK to put entire archive online?" Last updated May 10, 2006 http://www.archival.tv/2006/05/10/nhk-to-put-entire-archive-online/.

17 PrestoSpace (2004) *Annual Report on Preservation Issues for European Audiovisual Collections* (2004) http://www.prestospace.org/project/deliverables/D22-4_Report_on_Preservation_Issues_2004.pdf.

18 Internet Archive (2003) *Internet Archive Gets DMCA Exemption To Help Archive Vintage Software*, http://www.archive.org/about/dmca.php.

19 According to a survey by the Radio and Television News Directors Foundation, 80 percent of the population watch television news and 56 percent rely on television as their primary source for what is important to them. See *Profile of the American News Consumer*, http://www.rtndf.org/resources/consumer/nncpanc.htm#SUMFIND.html/.

20 Murphy, *Recommendations*, http://www.loc.gov/film/tvstudy.html.

21 Orwell, George (1949) *1984*. p. 248, New American Library, New York.