

Sustaining Television News for the Next Generation

Workshop Working Group: Legal

Summer 2018

On March 8-9, 2018 Vanderbilt University hosted a group of library and archive professionals to discuss the current challenges of television news archives. The event was sponsored by The Andrew W. Mellon Foundation. The group split into three working groups charged with specific issues. Each working group was given some questions to start the discussion, but they were also encouraged to raise other concerns or challenges they saw to their topic.

The legal working group met to discuss legal environment of television news archives. The group established four main examples to which their responses were based: Vanderbilt Television News Archive, UCLA Library Broadcast NewsScape, American Archive of Public Broadcasting, and Internet Archive TV News Archive. The legal group conversation had three discussions, first the legal basis for providing access to news archives, next possible next steps for news archives that stay within legal limits, and finally the ramifications of past lawsuits to the future of news archives.

The legal working group first decided that preservation was not controversial and did not need to be included in the conversation because access to news archives had many more important legal questions. The conversation then moved to an assessment of 17 USC §108 and §107. The group agreed that §108(f)(3) could function in tandem with §107 to bolster public access. The group cautioned against licensing content from the networks; rather, they suggested that the networks should support the operations of television news archives as they carry out critical preservation services for the industry and provide added value through

metadata creation and other means. The working groups also noted additional methods of providing access to content via permission requests, quitclaims, and click-through agreements.

When the legal working group discussed possibilities for improving access to news archive collections the main topic was providing electronic copies as a loan format. The group agreed that this type of service can be developed but the service must always be a loan service. Jill O'Neill's session on the expanding types of news broadcasts spurred another possibility for expanding access to news archives by broadening the scope of news. This led to a discussion about the definition of news that is covered by the law. The group used a dictionary definition of news as the most acceptable description of news broadcasts, which is broad and can include many formats.

The legal group again considered the limits of fair use when asked to consider the upper limit of sharing news collections. The group noted that libraries and archives should be aware of existing markets which might impact the fair use argument. They also suggested investigating methods of transforming works and adding value through additional metadata, commentary, etc. UCLA Library's Broadcast NewsScape was noted as an example, where news clips are enhanced with computational metadata before being made available for researchers.

Finally the legal working group commented on the importance of the First Amendment as an additional protection for libraries and archives providing access to news archives because the First Amendment has similar goals as fair use: "seeking to further the public interest through creation and dissemination of speech, expression, and works." The group cited *Suntrust v. Houghton Mifflin Co.*, 268 F.3d 1257 (11th Cir. 2001) as an example of this protection.