

Xin Fang
Copyright, Legal Issue and Policy
Written Assignment #2
10/17/2015

Part 1

Fox News Network, LLC v. TVEyes Inc.

TVEyes is an archive that records all the content of broadcast from over 1,400 TV and radio news outlets, and organize the transcript of the content to a searchable database for over 22,000 subscribers. The subscribers get access to the video clips of a part of these TV shows and use them freely, and they pay \$500 per month for the service.

Fox News is an international news organization includes Fox News Channel (FNC) and Fox Business Network (FBN). Fox News filed the lawsuit to TVEyes in 2014 for copyright infringement based on Copyright Act, and unfair competition and misappropriation based on New York law. In Fox's opinion, allegedly, TVEyes created a substitute for viewers to watch Fox News and harmed its commercial business. TVEyes asserted that taking the content from Fox News was fair use protected by Copyright Act.

The first factor of fair use is the purpose and the character of using the content. We need to evaluate if the work allegedly infringes the copyright has new expression and further purpose of use. Another way of saying it would be try to determine if TVEyes's work is transformative. I assume the purpose of the secondary work is transformative. The primary purpose of Fox News broadcasting news is considered as the nature of a social media and a news agency. What TVEyes is doing is recording and archiving the news mostly for research purposes for its subscribers. Plus, the monthly fee for accessing the database is five hundred

dollars. The subscribers would clearly be beyond middle class if they could afford the fee. Mostly there would be organizations, politicians and educational institutions. The subscription is not primarily for general public. The types of the subscribers indirectly speak for the purpose of the database. The only point I find problematic is that TVEyes allows its subscribers to download, edit, save and archive those news video clips. Although TVEyes has asked all the subscribers to sign a User Agreement to limit the use of the downloaded clips for other purposes, the actual purposes of use by so many subscribers are not that easy to control.

The second factor is the nature of Copyright Act. We need to take a close look at the news Fox has been broadcasting. The content of the news itself is not copyright protected, as it is usually considered as facts. The creative expression of compiling the news and organize it in a unique way for the viewers are subject to copyright protection. Fox News is definitely protected by Copyright Act.

For “the amount and substantiality of the portion used” as the third factor, we need to make sure about the portion TVEyes showed in its database to its subscribers. It is without doubt that TVEyes has recorded everything from Fox News. It is in the TVEyes’ descriptions that it monitors all the TV and radio broadcasting 24/7. I get the fact that the clips are limited to ten minutes, and most of them are only two minutes. Unless the subscriber save or download the certain clip, the clip would stay on the web for 32 days. Although TVEyes records all the content from Fox News, the availability of the usage does not seem a large portion to me.

The fourth factor is “the effect of the use on the potential market”. We need to see if “the secondary use serves as a substitute for the original work.” TVEyes is definitely not the substitute for Fox News. Fox News is a news agency for broadcasting, and TVEyes is a searchable database that provides limited amount of the clips from Fox News for research purpose. The nature of the two sides is different. For the economic reason, the statistics show that the average length of the clips in the TVEyes database is less than one minute. The viewers would not give up watching Fox News because of those short clips existing in the database online. It is reasonable to say that TVEyes does not harm the profit of Fox News. The body of the subscribers for TVEyes is fairly small due to its high subscription fee, and Fox News has a large number of audiences. I do not think there is possibility that TVEyes would harm the market of Fox News significantly.

In conclusion, I would say Fox News certainly wins for the second factor about the nature of Copyright Act. The third factor is kind of neutral for both sides since TVEyes does record all the content from Fox News. The purpose of use for the database is absolutely transformative from the original purpose of Fox News and TVEyes certainly does not harm the market of Fox News. The use of news for TVEyes’ database is subject to fair use in Copyright Act.

Part 2

The nature of the archive is collecting the unique and rare materials, copyright status also related to the nature of the archives. As technology progress, there are some new types of archive exist but the copyright law is not that comprehensive for them. The online archive is one of those new types. We all know that it is not easy to keep film in a good condition and some films deteriorate badly enough that the deteriorated part is irreversible. What if a film archive digitalizes all the irreversible part of the film for those films only have one copy left and put the portion online, and discards the deteriorated part. The archive could do this process as well as the preservation process for the original film/copy of the film. People who need to access the film can look at the film and the digitalized part at the same time.

In order to determine if it is fair use, let us check the four factors of fair use. First of all, the purpose is to save the film at risk, mostly, save the content of the film. The purpose should be transformative. Second, the nature of copyrighted work is definitely copyright protectable since it is film with creative expressions. Third, the film archive only digitizes a small part that is deteriorated, and it should only be a small portion of the film. Last but not the least, those clips would not harm the market of the original film badly.