Oral History in the Digital Age

Major Legal Challenges

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Major Legal Challenges Facing Oral History In The Digital Age

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The meteoric rise of modern oral history from the early days at Columbia University to the digital age has fortunately not been dogged by frequent legal challenges and litigation. There are many reasons for this but the most significant appears to be the willingness of oral historians to establish sound ethical and legal procedures to minimize the possibility of legal problems. The four major legal areas of concern prior to the digital age: release agreements, protecting restricted interviews, the privacy torts, and copyright have not changed but due to the Internet and digital technology some new legal wrinkles have emerged. A large part of this is of course due to technology outpacing the law. Fortunately for oral historians; this disconnect between the speed of technology and the pace of the law is far less evident than in the world of business and commerce. The goal of this essay is to briefly examine some of the key legal issues involved in the practice of oral history in the digital age.

Legal Releases and the Consenting Process

Today the vast majority of oral historians and programs utilize release agreement to secure both the transfer of copyright and inform interviewees and interviewers of the terms and conditions relative to the processing and future use of their interviews. A Google search for “oral history releases” will always turn up dozens of release forms from a wide variety of programs and archives. While the terms and conditions of such agreements should always warrant careful drafting, the current push to put interviews

online in both transcript and audio forms has required programs to carefully assess the future use language in older agreements. Such assessments should always be two-sided, encompassing both professional ethics and legal interpretation. For example, the Oral History Association's *Best Practices* for the Post Interview phasespecifically articulates this ethical issue: "When media becomes available that did not exist at the time of the interview, those working with oral history should carefully assess the applicability of the release to the new formats and proceed—or not—accordingly."[1] What accordingly means is addressed elsewhere in the Post Interview section of *Best Practices.* In this context repositories, whether they are or are not the original collecting agency, are expected to comply "…with the letter and spirit of the interviewee's agreement…."[2]

Obviously such language provides a great deal of ethical leeway. For example, in many older releases the future use clause was often an extremely general one like, "for such future educational and scholarly purposes as the archive may determine." Whether one should construe such a grant of authority as broad enough to encompass new technology options is a challenging question. While the evidence is mostly anecdotal, some programs have clearly chosen to answer yes to this question while other have declined to do so. The latter group of programs have either chosen to refrain from uploading interviews or have embarked on a re-consenting initiative with interviewees and/or their heirs.

From a legal vantage point it is worthwhile to consider what causes of action an interviewee or his/her heirs might raise against an archive or program that uploaded either an older interview based on a very general pre-Internet future use clause or an orphan interview for which there was no release. One possible cause of action is promissory estoppel. This is a legal doctrine that allows a party to recover damages for the breach of a reasonable promise without consideration for which he/she relied to their detriment. In the most famous case involving this doctrine, *Cohen v. Cowles Media Co.,* the U.S. Supreme Court ruled in favor of an individual who provided inside political information to a newspaper in exchange for a pledge of confidentiality only to discover that they published his name anyway.[3] While cases involving promissory estoppel can be found in most states, the good news for oral historians is that they almost always involve significant monetary issues. Thus, while someone hypothetically could file such a lawsuit over the uploading of an interview to a website as a detrimental breach of a release agreement, the likelihood of this happening seems rather remote.

A second possible cause of action might be for invasion of privacy. This situation could arise if an interviewee or his/her family are embarrassed to discover that an unknown or forgotten interview has been uploaded to a website and is now instantly available for

anyone to access. Although there are laws that impose significant penalties on those who make unauthorized disclosers of medical information or employment history there is no recognized cause of action for making an interview more widely available than was originally expected. In other words, while an interviewee's personal sense of privacy may be offended this does not really provide the basis for a lawsuit. This type of scenario is more likely to be resolved by encouraging the offended party to actually agree to the continued online availability of the interview or to remove it from the website and possibly place restrictions on access. The most drastic step would be remove the interview from the collection. All of these possible responses are obviously administrative ones.

The second issue that has become increasingly paramount in the digital age is the consenting process which clearly derives from the importance that Institutional Review Boards (IRBs) place on insuring that research subjects are fully informed about the potential risks that they may face by participating in a biomedical study. Researchers in the social sciences and humanities who incur IRB review are as a matter of course required to show that they too will engage in a rigorous consenting process. For studies that utilize oral history interviewing this usually means that a consent agreement must provide warnings about even the most remote risks, the opportunity to either not answer a question or even terminate the interview, and specific information on whom to contact in the event that a participant has a concern about the way in which the study is being conducted. Such agreements usually must be signed first before the researcher can present the potential interviewee with a release agreement. But the excessively cautious stance taken by many IRBs should not, however, be taken as a sign that close attention to the consenting process in not important. This position is strongly underscored in the Oral History Association's *Principles and Best Practices:*

> Oral historians inform narrators about the nature and purpose of oral history interviewing in general and of their interview specifically. Oral historians insure that narrators voluntarily give their consent to be interviewed and understand that they can withdraw from the interview or refuse to answer a question at any time. Narrators may give this consent by signing a consent form or by recording an oral statement of consent prior to the interview. All interviews are conducted in accord with the stated aims and within the parameters of the consent.[4]

The best way to address the consenting process if a project is not one that requires IRB approval is to make sure that interviewers carefully review release agreements with interviewees. Such agreements should also contain a recital clause to further underscore this process, "I have read and understand this agreement which expresses the complete understanding of the parties." It is also wise to have the person who presents and

secures the signed release document the entire consenting process. This record should in turn be kept on file. Effective informed consent is also predicated on the use of clear and unambiguous language in a release. This is where the all- important future use clause comes in. Overly broad clauses like "for such scholarly and educational purposes as the oral history program shall deem appropriate," are simply too generic in the digital age. For truly effective consenting to occur this clause must be far more informative and specific like: "Potential uses of the interviews (in whole or in part)include but are not limited to research, Internet display, media productions, publications, educational curriculum, and museum exhibits." Finally, the growing use of video to record interviews together with increasing online displays of interviews and media productions all underscore the need to secure permission from interviewees and interviewers to display their names and images. A simple statement like, "I also grant the oral history program the right to use my name and likeness in conjunction with any Internet display, media production or publication," should suffice.

Protecting Restricted Interviews from Subpoenas

A recent survey of oral history programs from around the world revealed that sixty-two percent give interviewees the opportunity to place restrictions upon their interviews.[5] Whether the restriction closes the interviews for a set period of time or allows the interviewee to decide who can have access; the unanswered question has always been can such restrictions withstand a subpoena whether from an attorney in a civil lawsuit or from a prosecutor in a criminal matter. The recent Boston College case, which almost made it to the United States Supreme Court, provides a definitive answer to the latter type of subpoena.

The events that triggered this lengthy litigation began In May, 2011 when subpoenas were served on Boston College by the U.S. Attorneys' Office for certain interviews conducted by the Belfast Project. The interviews sought were recorded from 2001-2006 with former members of the Irish Republican Army and Loyalist paramilitary groups who participated in the "Troubles" in Northern Ireland. Shortly after receiving the subpoenas, Boston College filed a motion to quash. The promise that had been made to all interviewees was that their interviews would remain confidential until their death. A book by the Director of the Belfast Project and a public admission by one of the IRA interviewees about an unsolved murder apparently prompted the Police Service of Northern Ireland to seek access to some of the interviews collected by the Belfast Project. Pursuant to a Mutual Legal Assistance Treaty, the United States at the request of the United Kingdom initially served Boston College with subpoenas for the interviews of Dolours Price and Brendan Hughes. The interviews with Hughes were promptly turned over because he

had died. In August, 2011 additional subpoenas were served seeking "any and all interviews containing information about the abduction and death of Mrs. Jean McConville." The primary basis for Boston College's motion to have the subpoenas quashed was the pledge of confidentiality that had been extended to all interviewees and the chilling effect that compelled disclosure would have upon future research. They emphasized that if the continued flow of information to both journalists and scholars about controversial issues was constricted, society in general would be negatively impacted by such restrictions upon free speech.

In December, 2011 the federal district court not only refused to quash the subpoena for Price but after an *in camera* inspection of all of the transcripts also ordered Boston College to turn over the interviews from seven other participants in the Belfast Project. This decision triggered two separate appeals. The first appeal was filed by Ed Moloney and Anthony McIntyre, the Director and Chief Interviewer for the Belfast Project, and was the basis for the ruling by the First Circuit Court of Appeals on July 6, 2012. The second appeal filed by Boston College addressed the ruling by the district court that eighty-five additional interviews must be turned over. The College chose not to appeal the district court's ruling regarding the Price interviews based on her public admissions regarding past criminal activities during the "Troubles".

The appeal filed by Moloney and McIntyre grew out of a decision from the district court. On two occasions they sought to intervene separately in the lawsuit to squash the subpoenas but on both occasions were not allowed to proceed. Both of these attempts appear to have been grounded upon their disagreement with Boston College over the administration of the confidentiality provisions and the legal strategy employed to defend against the subpoenas. In their appeal to the First Circuit Court of Appeals they presented three main causes of action: the Mutual Legal Assistance Treaty allowed private interests to intervene to prevent evidence from being released, the district court abused its discretion under the MLAT, and the subpoenas should be quashed because they impinged on the First Amendment rights of the researchers.[6]

In a lengthy opinion, a three judge panel for the First Circuit rejected all three causes of actions brought by the researchers. The most important rejection in this case and for the subsequent appeal by Boston College was the court's response to the researchers' constitutional challenge. Under the First Amendment, Moloney and McIntyre claimed that they had a constitutionally protected freedom "…to impart historically important information for the benefit of the American public without the threat of adverse government reaction."[7] They buttressed this claim by arguing that they had an

academic research privilege that was akin to a reporter's privilege. They also maintained that if the interviews were turned over their lives might be at risk as well as those of some of the interviewees.

To assess this claim of privilege, the First Circuit relied heavily on the precedent established by the U.S. Supreme Court in *Branzburg v. Hayes.****[8]*** In *Branzburg* a reporter refused to testify before a grand jury about information he had received from confidential sources claiming that under the First Amendment he had a privilege not to do so. The Supreme Court, however, refused to recognize such a privilege.   Instead, they stressed that whether confidentiality was offered to shield the perpetrators of crimes or innocent informants, "effective law enforcement aimed at providing security for the person and property of the individual is a fundamental function of the government."[9]   Based on this precedent, the First Circuit ruled that "The choice to investigate criminal activity belongs to the government and is not subject to veto by academic researchers."[10]   The court also emphasized that the treaty obligation to assist another nation in a criminal investigation made the government's interest here even stronger than it had been in *Branzburg*.

The court also noted that this litigation might have been avoided had Boston College and the researchers been on the same page regarding the limits of confidentiality. According to the evidence presented to the court, Ed Moloney had been directed to place a clause in each release agreement that the pledge of confidentiality would be protected "to the extent American law allows." This was not done and Anthony McIntyre indicated had he known that the pledge of confidentiality was not ironclad he would not have undertaken the interviews with former IRA members.[11]

This decision did not put an end to the litigation. Moloney and McIntyre subsequently filed a writ of certiorari with the U.S. Supreme Court and were initially granted a stay of the First Circuit's ruling. The stay ended several months later when the high court chose not to take the case. Boston College was also active in the appeal process as it challenged the district court's order to release eighty-five interviews. The request for the creation of a limited researcher's privilege was raised once again but was summarily rejected. The only small consolation for Boston College was that the First Circuit agreed that the district court had abused its discretion and ruled that only eleven interviews contained relevant subject matter and must be turned over[12]

For a host of reasons already alluded to, the case generated a great deal of national and international publicity. Among academic researchers in general and oral historians in particular the case seems to have led to a significant re-examination of pledges of confidentiality. A number of commentators have also been highly critical of Boston College for everything from careless administration of the Belfast Project to failing to mount a vigorous legal defense.[13] While Boston College deserves much of this criticism, the suggestion that a more robust legal challenge to the subpoenas would have altered the outcome is simply wishful thinking. This view appears to have arisen from the assumption that all subpoenas are cut from the same cloth and that a scholar's privilege was a recognized defense to all subpoenas in the First Circuit.

In *Cusumano v. Microsoft Corporation* (1998), the First Circuit did in fact create a scholar's privilege based on the same constitutional grounds as that of a reporter's privilege.[14] The subpoena that the Court quashed in this case, however, was a civil one that arose out of a dispute between Microsoft and Netscape. As already discussed, however, the First Circuit staunchly refused to apply this same scholar's privilege to subpoenas arising out of a criminal investigation. It should also be noted that since the First Circuit created a scholar's privilege in 1998, no other federal or state court has chosen to do so. Thus, despite the definite need for courts to acknowledge and offer some measure of protection to researchers who cannot effectively pursue their studies without pledges of confidentiality, the law of the land as evidenced by the Boston College case is clearly not supportive of this position.

So what are lessons to be gleaned from the Boston College case? In terms of administrative policies, institutions do need to develop procedures to more closely scrutinize pledges of confidentiality. Such procedures should include legal risk assessments, utilizing IRB expertise where appropriate, possibly applying for a certificate of confidentiality, insuring that all parties understand the limits of the confidentiality promised, and making a commitment to mount a strong legal defense. On the latter issue it should be noted that researchers and scholars have had some success in civil cases utilizing a standard motion to quash to obtain either a withdrawal of a subpoena or the imposition of some reasonable limits on its scope.[15] If the subpoena was issued as part of a criminal proceeding, however, state and federal courts have taken a position similar to that of the First Circuit in the Boston College case. The highly unusual circumstances surrounding the Boston College case should not be seen, however, as calling into question the value of offering narrators the right to control future access but instead simply spotlighting the need for more thoughtful handling of such commitments.

Privacy Issues

The major privacy torts: defamation (slander and libel), false light, public disclosure of embarrassing private facts, and misappropriation of likeness (right of publicity) have always been potential liability issues for oral historians. With increased online interview dissemination and media productions they may become even more so. In 2007 the California Supreme Court decided one of the most noteworthy cases involving the legal liability of an oral history archive.[16] While the court's ruling was favorable, the archival practice that spawned the lawsuit highlights the vast difference between two different information sharing eras. The allegedly defamatory statements that led to this lawsuit were discovered by a researcher who read an interview transcript that had been available for public inspection for over eight years. Only three other libraries had copies of this transcript and of course the researcher had to physically go to the Regional Oral History Office (ROHO) in the Bancroft Library at the University of California, Berkeley to read it. Now fast forward to 2014 and the tens of thousands of interview transcripts and recordings that are available online and can be accessed worldwide with a few clicks of a mouse. It does not take an odds maker to calculate how many more chances there are today for someone to access interviews online. As a result, more planning and vigilance is needed today than ever before.

To protect against unnecessary exposure to a defamation claim, the following protective measures should be standard operating procedure:

1. Staff training for everyone in the program is essential. This should be an ongoing process in which potentially defamatory statements are discussed and reviewed.
2. Developing a checklist to assess potential defamation is a good way to facilitate staff training. Questions that might be helpful include:

    a) Is the individual alive and still active in his/her work or the community?
    b) Would a reader's opinion or estimation of the individual be negatively impacted by the statements or characterizations?
    c) Is there supporting factual information or just an unsupported negative opinion?
    d) Is there other evidence that supports or corroborates the interviewee's statements?

3. Most negative statements or characterizations are not defamatory. The historical record is not and should not be something that has been sanitized by its creators and keepers. Thus an incremental step –by- step approach that begins with an attempt to verify should be used. Only after this has been done should a program consider such steps as editing, sealing or even deleting.[17]

The torts of false light and public disclosure of embarrassing private facts are also of concern. The same staff training for defamation should also be used to protect against potential legal liability from these two torts. While false light is very similar to defamation, the major difference is that for former tort the offending words do not have to be false. In other words an accurate portrayal of an individual or group could trigger a false light claim if the manner in which it was scripted or presented could be interpreted by viewers/readers as suggesting some kind of highly offensive behavior. Since this cause of action usually arises from a media production or publication, a careful examination to check for this possibility prior to any public dissemination is always a good idea. The third privacy tort, public disclosure of embarrassing private facts, usually involves very personal factual information that would be highly offensive to a reasonable person and does not really address a legitimate matter of public concern. Disclosing that someone who is now a respected citizen was convicted of a crime many years ago or airing out intimate details about someone's personal life are the types of factual disclosures that can trigger this cause of action.

Misappropriation of one's name or likeness also known as the right of publicity is the other privacy tort that also deserves some consideration. While the "rich and famous" are the ones who are most often actively defending against the unauthorized use or their name or image for commercial gain, every person whatever their socio-economic status also has a right to protest against the unauthorized use of his/her identity even if the use is non-commercial in nature. As noted earlier in this essay permission to use an interviewee likeness or name should be a standard inclusion in release agreements. But careful consideration must also be given to including non-interviewees in media programs and publications. This consideration is driven more by professional ethics than law. There is a "news and commentary" exception that courts have interpreted very broadly when someone challenges the use of his/her name or likeness. It is safe to say that this exception encompasses almost any media programming or publication that conveys information or commentary on a topic of current or historical public interest.[18] While this defense may be reassuring to oral historians who primarily generate not-for-profit materials, ethical sensitivity to the potential privacy concerns of all individuals should be standard practice.

Copyright

Perhaps the best way to think about copyright is to start with the premise that in today's world someone seems to own just about everything. This ownership monopoly is of course tempered by the "fair use" doctrine. But this doctrine unfortunately does not provide easy answers to what and how much is really "fair use." Additionally almost all oral history programs are copyright owners and thus on the other side of "fair use" doctrine. Thus walk a mile in both your shoes and the other guys effectively frames the two sides of the copyright issue. While the vast majority of oral historians and programs are on the ownership side, the vast expansion in media production and publication in the digital age often places oral historians on the user side as well. Copyright protection of interviews and productions/publications is thus an important issue for oral historians. It can be best addressed by the question: how and to what extent do you wish to protect the copyrights in the interviews and media productions that you are publishing online? Since almost all interviews fall into the nonfiction category of works, they only receive "thin" copyright protection. This level of protection is usually limited to protection against excessive copying of the narrative and perhaps the organizational structure. The "fair use" defense in general also permits considerable utilization of nonfiction works even without permission so this should always be an important consideration in determining what protective measures to employ in cyberspace. The following are examples of some of the approaches currently in use:

> *Click Wrap Agreements*– this requires a potential user to sign in and agree to all terms of use.

> *Open Access* –but with clearly stated limits on use. These limitations are most helpful when accompanied by a "fair use" policy that allows users to quote from and utilize factual information coupled with a request that proper attribution be given to the interviewee/program.

> *Free Access*– with only the briefest statement of copyright or no mention whatsoever.[19]

The oral historian as a "fair user" of copyrighted material in media productions and publications brings to the table a different set of considerations. Since the Internet makes it so easy to copy material from another site it is important that oral historians always

presume that “someone owns just about everything. “ Whether the material you would like to use is clip art, photos, music, or shareware you must first read and consider the usage policy of the website. If potential users must sign a “click wrap” agreement read it over very carefully to ascertain whether your intended use is permitted. Materials in traditional printed sources obviously require the same care before use. This is often more complicated because you may have to go through a formal permission process.

The “fair use lets you use their things,” view is sometimes considered by nonprofit users to allow unlimited usage. It does not! While it can be a valuable defense for the nonprofit user when they take copyrighted material and transform it by way of research, scholarship, criticism or journalism, it is not an affirmative right. Even those who are found to have innocently infringed on someone’s copyright under the mistaken belief that they were covered by the “fair use” doctrine may still be liable for monetary damages. [20] So the best advice is to always be in touch with both sides of copyright: owner and user.

The task of designing and implementing a legally sound approach for copyright use and protection in the digital age is not as daunting as it might first appear because of the existence of Creative Commons, a nonprofit organization that seeks to change the mindset of copyright holders from an “all rights reserved” to a “some rights reserved” position. This approach seeks to encourage copyright holders to share some of the rights to their works with the public while legally retaining others that may have commercial value. To accomplish this goal Creative Commons has developed six different types of “open source” or public licenses that anyone can access and use. These licenses are drafted in strict compliance with copyright law and allow copyright holders to determine which uses are freely available to the public and which rights are reserved. The goal of this initiative which began in 2001 is “…to provide a free, public, and standardized infrastructure that creates a balance between the reality of the Internet and the reality of copyright.”[21] For example, an oral historian or program could select a license from the Creative Commons website that allows for unlimited use of an interview as long as the use is non-commercial in nature and appropriate attribution is given to the copyright holder. Not only are these licenses drafted by skilled copyright lawyers but the user of an “open source” license can also prominently display the Creative Commons logo with the work. Since such licenses are becoming more and more commonplace throughout the world, this type of notice is very advantageous in terms of alerting potential users to what they can and cannot do with a work. Visitors to the Creative Commons website can also find helpful guidance on how to dispense with copyright altogether by dedicating a creative work to the public domain.

It is important to note that while Creative Commons provides both the encouragement and the tools for copyright holders to allow for some free uses of their works, the organization does not police the licenses that it offers. This was demonstrated in a recent case involving a lawsuit brought by a copyright holder against a competitor for infringement.[22] While Creative Commons did appear in this lawsuit as an *amicus curiae* (a friend of the court), it did so only to emphasize that its public source licenses conform to copyright law and if a user tries to utilize a right that was reserved by the copyright holder they could be liable for such infringement.

Conclusion

The ever more rapid and user friendly technologies that are being relied upon in the digital age are not only capable of enhancing and enriching the work that oral historians do but unfortunately expanding the chances for legal challenges as well. Take for example the use of oral history as a teaching tool in the classroom. Tens of thousands of high school and college teachers annually introduce their students to the methodology of oral history. Until very recently the end product was usually a recording or perhaps a transcript that was either shared with the class or incorporated into a paper. Once again fast forward to 2014 and many of the students conducting class-related oral history interviews are now producing mini-documentaries about the narrator with photos, sound, and film clips. The ease and speed with which this techno-savvy generation of students is creating such media is just another indication of the vastly expanded media creation opportunities that most oral history programs now have. Once again the likelihood of someone claiming legal harm increases in direct proportion to this expansion.

This example points up the need for even greater attention to developing and following ethically and legally sound procedures for the collection, curation, and dissemination of oral history materials in the twenty-first century. Oral history programs and practitioners have thus far been relatively untouched by legal challenges and litigation but to maintain this status in the digital information era will require even more planning and vigilance.

[1] Oral History Association, *Principles and Best Practices,* (2009), www.oralhistory.org/about/principles-and-practices/

[2] Ibid.

[3] *Cohen v. Cowles Media Corp.,* 501 U.S. 663 (1991).

[4] OHA, *Principles.*

[5] Nancy Mackay, “Survey of oral histories in repositories,” July 26, 2013, H-ORAL-HIST@H-NET.MSU.EDU/ (mailto:H-ORAL-HIST@H-NET.MSU.EDU/)

[6] John A. Neuenschwander, “Belfast Project researchers lose court battle,” *Oral History Association Newsletter*, 46 (Summer, 2012), 3-4.

[7] *In re Request from the United Kingdom Pursuant to the Treaty between the Government of the United States of America and the Government of the United Kingdom on Mutual Assistance in Criminal Matters in the Matter of Dolours Price,* 685 F. 3d 1, 16 (C.C.A. Mass. 1 2012).

[8] *Branzburg v. Hayes*, 408 U.S. 665 (1972).

[9] *In re Request,* 16-17.

[10] Ibid. 19.

[11] Ibid. fn26.

[12] Ivor Bell, a former IRA commander, is facing trial in Northern Ireland on the charge of aiding and abetting the 1972 abduction and murder of Jean McConville. This is due in large part to information contained in interviews from the Belfast Project. Kevin Cullen,

"Troubles echo in IRA Trial," *Boston Globe,* March 25, 2014, www.bostonglobe.com/metro/2014/03/24/dead-and-gone-grave/html.

[13] Harvey Silverglate, "BC and the Belfast Project, A Scholar's Privilege to Disobey," *Forbes,* July 23, 2012, www.forbes.com (http://www.forbes.com)/sites/harveysilverglate/2012/07/23/bc-and-the-belfast-project-a-scholars-privilege-to-disobery/ & Ted Palys and John Lowman, "Defending Research Confidentiality 'to the Extent the Law Allows': Lessons from the Boston College Subpoenas," *Journal of Academic Ethics,* 10, No. 4 (2012), 271-297.

[14] *Cusumano v. Microsoft Corporation,* 162 F. 3d 708 (1st Cir. 1998).

[15] See *In re NCAA Student-Athlete Names & Likeness Licensing Litigation,* F. Supp. 2nd, 2012 WL4856968, (E.D. MO.,2012) & *Feist v. RCN Corp.,* F. Supp. 2nd, 2012 WL5412362 (N.D. CA., 2012).

[16] *Hebrew Academy of San Francisco v. Goldman,* 42 Cal. 4th 883 (2007).

[17] John A. Neuenschwander, *A Guide to Oral History and the Law,* (New York, NY: Oxford University Press, 2009), 45-46.

[18] Digital Media Law Project, "Using the Name or Likeness of Another," www.dmlp.org/legal-guide/using-name-or-likeness-another (http://www.dmlp.org/legal-guide/using-name-or-likeness-another).

[19] Neuenschwander, *A Guide to Oral History and the Law,* 92-95.

[20] Richard Stim, *Patent, Copyright &Trademark,* 11th ed. (Berkeley, CA: Nolo, 2010), 200.

[21] Creative Commons, “Licenses,” http.//creativecommons,org/licenses.

[22] *Jacobsen v. Katzer,* 535 Fed. 3d 1373, 1378 (Fed. Cir. 2008).

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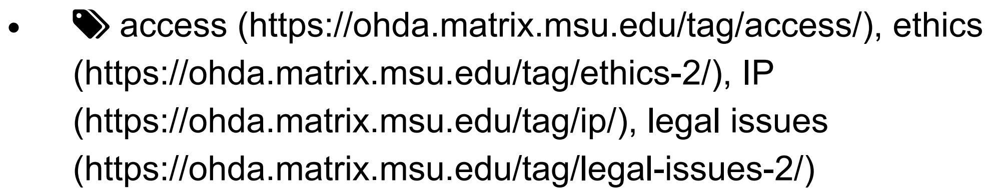

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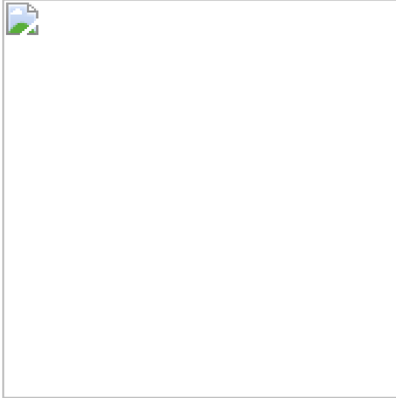
-  (https://ohda.matrix.msu.edu/author/admin/)

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