



Life Story Rights - Some Considerations

September 9, 2010 by Bob Tarantino

Diane Krausz has posted a valuable item: [Whose Life is it Anyway? Clearance of Life Story Rights in Film](#). The article is particularly interesting for her concise provision of this heuristic, which I think nicely articulates what many entertainment lawyers reflexively do when analyzing clearance issues for projects based on real people or events:

specifically, to classify the characters of a script into the "living" or "dead", "private" or "public" citizen, and the specific issues in a scene ("newsworthy", "private matter" or "public matter"), as this can make all the difference when determining whether the depiction of a particular individual in a specific scene constitutes infringement on someone's "right to publicity" or is permissible because of "fair use." Note that a right to privacy is a protected right of an individual to non-interference by others, while the right of publicity is an individual's right to exploit and profit from the exploitation of the exact things he or she is entitled to protect under the right of privacy

While Krausz's article is written with reference to US law, it provides, in addition to the quoted paragraph, additional practice points and guidance for Canadian lawyers who need to navigate the life story rights matrix. Among the notable ones:

- the creation of "composite" characters which enable the depiction of aspects or actions of various actual individuals without the need for obtaining clearance
- the importance of analyzing/clearing the rights of "ancillary" individuals (ie those are depicted but who are not the "main" characters)
- being aware of when contested versions of the truth have been made publicly available (eg when depicting the events which are the subject of litigation, each party to the litigation may have filed public documents which offer a different account of various events)
- finally, this gem of an observation: "ultimate resolution is often an imperfect combination of financial, practical, creative, legal and business considerations unique to the particular project in question"

Also worth tracking down in this context is Nghia Nguyen's "Lights, camera, fiction! : Analyzing the Legal Framework for Protecting the Docudrama in Canada" (1995) 9 Intellectual Property Journal 127, which explores many of the clearance issues relating to the depiction of real people.

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