

When History Is Copyrighted: Lessons from the Zapruder Film

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Some of the most important moments in history are not captured by professionals, but by ordinary individuals in the right place at the right time. Few examples illustrate this better than the Zapruder film, a 26-second home movie that became one of the most analyzed pieces of footage in American history. Beyond its historical significance, the film offers enduring lessons on copyright law that remain highly relevant today.

On November 22, 1963, Abraham Zapruder, a Dallas dress manufacturer, used his 8mm home movie camera to film President Kennedy's motorcade. By chance, he recorded the assassination in real time. The resulting footage, only 486 frames long, captured events with remarkable clarity, including the now infamous "frame 313." What began as a personal recording quickly became a national artifact.

Within days, Zapruder sold the film to Time Inc. for \$150,000, transferring broad publication rights. The film was used extensively by investigators, including the Warren Commission, but remained largely out of public view for years. As interest and controversy grew, the film gradually moved from private ownership into the center of public discourse, eventually leading to government acquisition under the JFK Records Act decades later.

One of the most important legal questions surrounding the Zapruder film was whether such footage could be copyrighted at all. After all, it documented a real-world event. This principle was tested in *Time Inc. v. Bernard Geis Associates*. Under the 1909 Copyright Act, protection required only a minimal degree of creativity. The court ultimately found that Zapruder's creative choices, including where he stood, how he framed the shot, when he started filming, and how he moved the camera, were enough to qualify the film as an original work of authorship.

The *Time Inc.* case dealt with an author that published a book analyzing the assassination using sketches derived from the film frames. Even though the images were not direct copies, the court held that the drawings captured protected expression and were therefore infringing derivative works. At the same time, the court allowed the use under a fair use analysis, emphasizing the public interest in understanding the assassination.

The case highlights a tension that persists today. On one hand, factual events are not protected by copyright. On the other hand, the way those events are captured can be. The Zapruder film demonstrates that even a brief, factual recording can carry protectable expression when it reflects creative choices.

These issues have only become more complex in the modern era. Today, major events are frequently recorded by bystanders using smartphones, from breaking news incidents to moments of social and political significance. Like Zapruder, these individuals typically own the copyright in their recordings from the moment the video is fixed. The fact that the content is newsworthy does not eliminate that protection.

At the same time, uploading content to social media platforms introduces new layers. While users generally retain ownership, they grant platforms broad licenses to use and distribute the content.

Once a video goes viral, it can spread globally within minutes, often beyond the control of the original creator. The Digital Millennium Copyright Act provides some protection for platforms through its notice-and-takedown system, but it does not prevent widespread initial copying.

Fair use continues to play a central role in this landscape. Courts consider factors such as the purpose of the use, the nature of the work, the amount used, and the effect on the market. News reporting and commentary are often favored, but not automatically. One key consideration is whether unauthorized use undermines a potential licensing market, which is increasingly important as viral videos are frequently licensed to media outlets.

The Zapruder film also raises important questions about government use of privately owned works. Under the JFK Records Act, the original film was deemed an assassination record and required to be placed in the National Archives. This triggered a constitutional issue under the Fifth Amendment, which requires just compensation when private property is taken for public use. Because the film involved both a physical object and intellectual property rights, determining its value was complex.

After arbitration, the government ultimately paid \$16 million to the Zapruder family in 1999. The valuation reflected not only the physical film but also its historical importance and licensing potential. The dispute illustrates how intellectual property, even when tied to a historical event, can carry substantial economic value.

The story of the Zapruder film is more than a historical footnote. It provides a framework for understanding how copyright law applies when history is captured on camera. As technology continues to make recording and sharing instantaneous, these issues are only becoming more relevant. For creators, media organizations, and legal practitioners alike, the core lesson remains the same. Even when documenting reality, the act of capturing it can create protectable rights with lasting legal and commercial implications.

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