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Tale of the Tape: the NFL's Copyright Claim to the Only Known Super Bowl I Recording

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Tale of the Tape: the NFL's Copyright Claim to the Only Known Super Bowl I Recording

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On January 15, 1967, over 62,000 spectators filed into the Los Angeles Memorial Coliseum for Super Bowl I.[1] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn1) A further 51 million watched the Green Bay Packers defeat the Kansas City Chiefs on either the CBS and NBC broadcasts.[2] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn2) For the good part of half a century, the events of the game existed only in the memories of those who watched it unfold in real time, as both CBS and NBC taped over their respective copies of the broadcast pursuant to the common industry practices of that time.[3] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn3) In 2005, Sports Illustrated included the tape of the first Super Bowl in its list of "25 Lost Treasures," estimating the potential value of such a recording to be upwards of \$1 million.[4] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn4)

Soon after Sports Illustrated ran the article, Troy Haupt received a phone call from a childhood friend who inquired as to whether he remembered coming across a box labeled 'Super Bowl I' while playing in his attic some decades earlier.[5] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn5) Haupt had no recollection of any box, but his mother knew exactly what he was referencing.[6] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn6) The box—and more importantly the two reels of film inside—had remained in that same Pennsylvania attic all those years.[7] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn7) After they were removed and restored, Haupt discovered that his father had used a quadruplex recorder at his place of work to record the entire CBS broadcast of the game, with the exception of halftime and a portion of the third quarter.[8] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn8)

After making the discovery, Haupt took the tape to the most obvious buyer: the NFL.[9] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn9) However, instead of acquiescing to the \$1 million price tag set by Haupt, the league took a different stance: they made him an offer of \$30,000, which has since been rescinded, and threatened him with legal action should he attempt to find an alternative buyer.[10] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn10) Essentially, while the league concedes that Haupt owns the tape itself, its position is that the contents of the tape are protected by the NFL's copyright and thus Haupt is prevented from commercially profiting off of its sale.[11] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn11)

While the NFL has thwarted any sale of the tape thus far, some scholars have characterized their position as “bluster” and suggested that it would be untenable if tested in court.[12] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn12) Others have asserted that “the law stands with the league.”[13] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn13) Critics of the NFL’s legal argument cite the first sale doctrine, an exception to the exclusive right of distribution provided by copyright law that permits the owner of any lawfully made copy to sell or otherwise dispose of that particular copy.[14] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn14) The applicability of this doctrine hinges on whether the copy made by Haupt’s father would be deemed “lawfully made” within the meaning of the statute.[15] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn15) Typically, the exception is applied with regard to legal copies that were purchased, the rationale being that the rightful owner of that particular copy is entitled to do with it whatever he or she pleases.[16] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn16) There is little indication that the doctrine would extend to an unauthorized reproduction, such as the one made by Haupt’s father. However, the determination may be further complicated by the fact that Congress did not explicitly extend copyright protections to live broadcasts of sporting events until 1976.[17] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn17)

Although the strength of the NFL’s legal position is unclear, two filmmakers in Utah are determined to test it.[18] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn18) The pair plan to produce a documentary on the tape, with the eventual goal of purchasing it from Haupt and releasing it to the public.[19] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn19) The two have budgeted \$100,000 for potential legal fees to fight off a challenge from the league.[20] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_edn20)

[1] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref1) Christopher Klein, *10 Things You May Not Know About the First Super Bowl*, History (Oct. 19, 2018), <https://www.history.com/news/10-things-you-may-not-know-about-the-first-super-bowl>.

[2] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref2) *Super Bowl TV Ratings*, TV By The Numbers (Jan. 18, 2009), <https://tvbythenumbers.zap2it.com/sports/historical-super-bowl-tv-ratings/>.

[3] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref3) *The Journal – The Long-Lost Super Bowl*, Wall St. J. & Gimlet Media (Jan. 31, 2020) (downloaded using Apple Podcasts), <https://www.wsj.com/podcasts/the-journal/the-long-lost-super-bowl/b89fe62d-de1e-40d8-b1a1-fc862bd1ff7f>.

[4] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref4) *SI’s 25 Lost Treasures*, Sports Illustrated (July 11, 2005), <https://www.si.com/vault/2005/07/11/8266104/sis-25-lost-treasures>.

[5] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref5) Richard Sandomir, *Out of a Rare Super Bowl I Recording, a Clash With the N.F.L. Unspools*, N.Y. Times (Feb. 2, 2016), <https://www.nytimes.com/2016/02/03/sports/football/super-bowl-i-recording-broadcast-nfl-roy-haupt.html>.

[6] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref6) *Id.*

[7] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref7) *Id.*

[8] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref8) *Id.*

[9] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref9) *Id.*

[10] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref10) *Id.*

[11] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref11) See *id.*

[12] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref12) Jeff John Roberts, *Why the NFL Can’t Control the Only Broadcast of Super Bowl I*, Fortune (Feb. 4, 2016) <https://fortune.com/2016/02/04/superbowl-copyright/>.

[13] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref13) Sandomir, *supra* note 5.

[14] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref14) Roberts, *supra* note 12.

[15] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref15) See 17 U.S.C. § 109 (2019).

[16] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref16) *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 550–551 (2013).

[17] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref17) *Nat’l Basketball Ass’n v. Motorola, Inc.*, 105 F.3d 841, 845 (2d Cir. 1997).

[18] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref18) Julie Jag, *Two Utah Filmmakers Want a Recording of Super Bowl I, But Have to Fight the NFL*, Salt Lake Tribune (Jan. 18, 2020), <https://www.sltrib.com/sports/2020/01/18/two-utah-filmmakers-are/>.

[19] (applewebdata://62273DC4-6815-4B7A-831E-4EEDC74A30F1#_ednref19) *The Tape: The Lost Recording of Super Bowl I*, Kickstarter, <https://www.kickstarter.com/projects/jeremycoon/the-tape-the-lost-recording-of-super-bowl-i> (last visited Feb. 4, 2020).

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