

THE IMPORTANCE OF COLORIZATION OF MOTION PICTURES AND SYNDICATED
TELEVISION PROGRAMS TO BROADCASTING: 1985-1990

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Abstract

In the 1980s several companies offered a method for colorizing black-and-white motion pictures and syndicated television programs. Although the technique gave the consumer enhanced viewing with the addition of color to programs produced in monochrome, many directly involved in the production and criticism of motion pictures objected to colorization on aesthetic grounds. The public controversy began in the mid-1980s and culminated in the passage of a 1988 congressional act to protect certain black-and-white films.

In tracing the history of film colorization, the focus of this chapter is on the controversy: (1) how it began, (2) the persons most directly involved with the promulgation of film colorization, (3) the opponents of this technique, and (4) what was the sequence of public discourse on the colorization debate. The chapter presents an examination of the underlying assumptions involved with aesthetic criticism and the legal, economic, and political issues surrounding colorization.

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Motion pictures originally photographed in black-and-white are being converted to color movies by a computer process known as *colorization*.¹ Unlike hand-tinting, which manually adds one or two colors to individual frames of film, colorization allows the choice of several thousand colors combined to render full-color visual effect as if the film had been originally shot in color.² Although the process has been used to restore aging color movies, its primary application is for black-and-white motion pictures. This innovation has created controversy among media practitioners, even though black-and-white films like Fritz Lang's classic *Metropolis* had been tinted for re-release into art house exhibition long before the advent of computer colorization.³

The impact of new technologies on mass communication sometimes arises in the most unexpected places. Just as media observers thirty years ago could never have anticipated the disruption to traditional television caused by VCRs, satellite/cable channels, and remote control devices, it would have been similarly inconceivable even twenty years ago that old movies could be made to look newer. The unpredictable nature of technological change in the mass media makes it increasingly important to study the ramifications of current developments, so that public policy may adjust to unknown changes in the future.⁴ To that end, this chapter traces the controversy regarding motion picture colorization.

This chapter explains the economic and aesthetic issues inherent to the colorization controversy, the stakeholders involved, and their political and legal activities. The controversy has wound down considerably since the summer of 1988, but it is far from dead. Opponents of colorization continue to battle for the moral rights perspective.⁵ Briefly, the concept of moral rights is the European legal principle that protects "artistic copyright." The concept is suggested

by the language of the Berne Convention for the Protection of Literary and Artistic Works (2 Martens [2nd] 173) dated September 9, 1886. Moral right was integrated into the Berne Convention at the Rome Conference of 1928.⁶ It is noteworthy that the United States is not a signatory of the Convention; property rights are given higher regard in the U.S. than artistic rights.

Significance to Broadcasting

Colorization was extremely important to broadcasting in the 1980s because the appetite for filmed content grew immense with the proliferation of cable channels and the resulting competitive pressures. Previously, broadcasters were content to treat black-and-white materials as being too old to show, despite the intrinsic entertainment (and artistic) value of filmed series made prior to the network conversion to color in the mid 1960s. Prior to the arrival of multichannel television, broadcasters controlled what materials were seen on television and could thereby segregate materials not filmed in color to late-night time periods, if shown at all.

Television programming has changed significantly since the early 1970s. The number of independent stations has grown since the early 1980s, increasing the need for programming. Independent stations were particularly interested in movies, but believed movies filmed in color would attract much larger audiences than those filmed in black-and-white. Further, multichannel moguls like Ted Turner were willing to find new homes for old programming, thereby increasing older shows' value in syndication. Older movies were of special interest because entire channels could be devoted to classic movies (e.g., Turner Classic Movies). Older series (e.g., *Gilligan's Island*, *McHale's Navy*) had limited appeal because contemporary audiences expected color instead of black-and-white. The arrival of computer technologies that could paint color onto black-and-white film coincided with an historic point in the demand/supply for dozens of cable channels and hundreds of new television stations not affiliated with a network. Hence, the

potential profitability of content once thought to be “useless” increased.

A Short History of Colorization

Film color began with hand-stencilling at the turn of the century "by battalions of women who, with the aid of magnifying glasses, colored each frame individually" with the permission of French and German directors.⁷ Conventional color came in the 1920s with the Technicolor two-strip variety for features like *The Black Pirate* (1926) and was improved in the 1930s with the three-color Technicolor process for *Becky Sharp* (1935).⁸ The process was very expensive, making it more sensible for the film studios to produce thousands of films in black-and-white instead of color. Computerized colorization did not develop until the 1970s.

The significant technological accomplishment of the moon landing in 1969 played a role in the development of colorization, leading to the birth of a new industry.⁹ Wilson Markle began colorizing the video of Apollo astronauts in the early 1970s, but was bound by a ten-year agreement to work only for NASA. In 1981 Markle joined with brothers Morris and Earl Glick to form a computer graphics firm that by 1983 had become Colorization, Inc.¹⁰ Colorization, Inc., was owned by Hal Roach Studios and by Color Systems Technology (CST); each owned 50%.¹¹ In July 1985, American Film Technologies (AFT) was formed to compete with CST. Colorization did not appear to be a money-maker, however, and by December 1987, AFT managed to lose \$4.7 million.¹²

The potential for significant profit for colorization was going unrealized until entrepreneur Ted Turner purchased the MGM library (3,300 titles) in 1986. Turner simultaneously announced his intention to colorize as many as 280 films, a declaration that served as an important watershed event for the colorization industry. Both AFT and CST had an important economic agenda to pursue in their attempts to transform the large number of black-and-white films into color.¹³ A further technical development announced in August 1987 provided another boost for the

colorization industry. CST developed a method for computerized colorization that was three times faster than previous methods.¹⁴ Although this had little impact on cost, it shortened the time needed to get an "enhanced" film to television syndication. By 1987, then, the improving colorization technology made it relatively easy to recast black-and-white images into color, a fact that served as the catalyst for a controversy to develop between stakeholders.

The Controversy

The controversy surrounding film colorization centered on the dispute between the copyright owner of the motion picture and the various creators of the motion picture, most often the director. Directors are virtually unanimous in their opposition to what they term the "coloroids."¹⁵ The late Orson Welles left instructions that Ted Turner not use "crayons" on *Citizen Kane*.¹⁶ At the same time, copyright owners see the films as their property, and want to market them to a public that presumably does not want to see them in monochrome. Ted Turner drew attention with his remark, "The last time I checked, I owned those films."¹⁷ The fundamental question may well be whether the motion picture is art, commodity, or both.¹⁸ Attempts to resolve the controversy involved stakeholders, and eventually Congress and the courts.

Aesthetic Assumptions

A central issue in the controversy is an aesthetic judgment that colorized movies constitute an assault on the senses. Beck¹⁹ outlined "the aesthetic concerns at stake" for the artist, the art world, and what was called "general human concerns," specifically dealing with the nature of work. Beck wrote: "In the arts, work is still defined in a way that includes personal meaningfulness as an intrinsic property. This does not mean that artists can count on maintaining such personal integrity, but [it is] a paramount goal " (p. 5).

Beck attributed the establishment of the hegemony of color to "the major innovation that

threatened the mass popularity of all movies and gave movies the final push into artistic respectability: the arrival of television" (p. 6). As television became the new target for scorn, motion pictures "seemed more artistic" (p. 6). The supposed demand for colorization, however, presents "a dilemma to any putative guardians of the sacred status of black-and-white movies as an authentic art medium" (p. 10.)

What caused the aesthetic sanctification of black-and-white films? Wilson theorized that nostalgia played a significant role:

In a more general sense, both filmmakers and members of the audience may react as if their memories had been violated by coloring. Memory is crucial to a concept of self and to a grasp of continuity, of meaningful personal chronology. If a remembered movie, as art and artifact, is altered, viewers of a certain age may feel their past betrayed.²⁰

Wilson pointed out that art, unlike life, can be "had again" as an aesthetic experience. Even though still photography began in black-and-white because of technical limitations, "photographers turned necessity into a virtue and exalted black-and-white as the only faithful medium for photography as an art form."²¹ Similarly, some movie directors have claimed "certain emotions may only be truly captured in colorless terms."²² According to Sherman and Dominick, black-and-white evokes different emotions: "colorization takes away the sharp edges from an image, blurring it, making it less distinct, if not less real."²³

Artistic authenticity is an important element of the colorization debate. Dorothy Nelkin noted that authenticity is a necessary condition of aesthetic value, writing that "the dark, brooding styles and glistening wet streets of the film noir of the 1940s are expressed in the subtleties of shading and contrast that are intrinsic to black-and-white. Color applied to black-and-white film imposes its own dimensions, its own quality, that violate the intent of the artist and the integrity of the film."²⁴ Michael Schudson, however, disputed Nelkin's demand for authenticity. Instead, the

issue became how works of art are updated, "we perform Shakespeare in modern dress. We read the Bible in translations Our symphony orchestras play Bach's music on instruments he never heard and in secular halls of culture he never intended or imagined. We silently read and study as "literature" poetry originally created for oral performance."²⁵ Indeed, Schudson wondered if all literary translation should be prohibited, because -- like the film colorist -- a translator makes aesthetic decisions on every page without consulting the author.

Robert Russett made a case for colorization by discussing the aesthetics of video versus film, explaining that there is "a clear distinction between the inherent qualities of projected film and the type of imagery that is generated when a motion picture is electronically transmitted."²⁶ Russett wondered about the millions of existing black-and-white TV sets that eliminate the beautiful chromatic tone of color films: Why no outcry about decolorization? For Russett, the opponents of colorization miss the fundamental alteration of film when it is televised: "The only way to experience film in its pure and original form is to view it projected in a theater."²⁷

Another important aspect of the art v. commodity argument is the basic premise that the moral rights of the creators, especially those approaching the status of the *auteur*, are more important than the financial rights of the copyright holders. Several observers of this controversy have noted the collaborative nature of motion pictures.²⁸ Although the artist who creates a painting (or a concerto) usually toils as a lone creator, the director of commercial feature films necessarily engages in a cooperative effort. When the director says "Don't touch *my* film!" the other individuals who conceived, helped create, or financed the motion picture can logically ask "Whose film?" Indeed, some films (e.g., *The Wizard of Oz*) have more than one director.²⁹ Mayer suggested that most of the films involved in the colorization controversy are not "director films" but "studio films," for which the screenwriter was more responsible than the director for the creative vision.³⁰ As suggested earlier, this is a problematic assumption in light of the U.S. legal

systems where copyright laws are recognized over moral rights.³¹

Yet another substantive issue is whether the public genuinely dislikes black-and-white movies on video. The research evidence is mixed. This preference for the original, uncut version is presumed to be particularly keen among film aficionados, although Sherman and Dominick found no differences in attitude toward colorization among college students who were judged to fit or not fit the "fan" category.³² The answer most likely depends on the historical context in which the question is asked.³³ At a time in media history when color television was still diffusing, there probably was a disdain for black-and-white content because color was seen as "more modern" (often synonymous with "better" though not necessarily). For example, the marketability of old television shows in black-and-white was at a low point in the 1970s. Many of the pro-colorization companies lived through that era, an experience that may "color" their current feelings. Now that color television is extremely commonplace, it could be that modern audiences are more accepting of monochrome materials, witnessed by the large number of contemporary motion pictures (and music videos) being made (or simulated) in black-and-white.³⁴ If this is true, Frank Lovece correctly observed that colorization is only a fad, like 3-D.³⁵ Several film directors predicted: "Ultimately, of course, the colorizers will lose this battle . . . future generations will discard these cheesy, artificial symbols of one society's greed."³⁶

No discussion of aesthetics is complete without addressing the "color knob" argument.³⁷ Proponents of colorization argue that opponents can turn down the color control on their television sets. Opponents have noted that many color television sets do not permit the adjustment of chroma levels. Furthermore, once the image has been colorized, it is less sharp than if it had remained in black-and-white. But it is no surprise that non-artists fail to see the difference between real black-and-white and ersatz black-and-white, any more than the fact that most television viewers are not deeply offended by the phony look of colorization.

Finally, in answer to the art-or-commodity issue, the author of this chapter assumes that motion pictures are both an art and a commodity. This premise is useful for understanding the eventual compromise that was entered into between the stakeholders of the industry debate.

Stakeholders

The colorization controversy began with opposing camps, both of whom were significant stakeholders in the art v. commodity dilemma.³⁸ Representing the artists was the American Film Institute, the Directors Guild of America, the Writers Guild, the American Society of Cinematographers, and the Screen Actors Guild. The most active and visible among these artistic organizations was the Directors Guild of America (DGA).

While the Directors Guild of America was appealing to Congress in 1987 about the colorization of past films, it was also looking to the future. In May 1987, the DGA began film and television contract negotiations with the Alliance of Motion Picture & Television Producers (AMPTP). In parallel talks starting the same month, the DGA began direct negotiations with the management of the major studios regarding "creative rights."³⁹ Opposition to colorization was only one of 20 creative rights proposals. The DGA sought "to prohibit any material alteration of a motion picture after delivery of the answer print [director's cut]."⁴⁰ Other proposals required the director's permission for television editing, panning and scanning, and changing to allow 3-D exhibition.

On the other side, the Motion Picture Association of America (MPAA) allied itself with the National Association of Broadcasters (NAB), Turner Entertainment Company (licensee of superstation WTBS), the Association of Independent Television Stations and the Video Software Dealers of America..⁴¹ The teaming of the MPAA and the NAB (normally enemies) made for strange bedfellows, but the film studios have a tradition of being at cross-purposes with the creative community. George Lipsitz wrote: "The historic battle between artists and

entrepreneurs extends back to the beginning of the industry."⁴²

Behind the industry proponents is the colorization industry itself. These companies are American Film Technologies, Inc. (AFT), Color Systems Technology, Inc. (CST), and Tintoretto.

Their arguments in favor of colorization were among the most forceful during the earliest Congressional subcommittee hearings on colorization.⁴³ For example, they argued that low demand for color movies by television stations (virtually the only remaining mass exhibitor of classic films until the popularization of VCRs) was preventing old movies from being shown.

As with so many aspects of life, this alignment of artist versus corporation is not so simple. For example, movie studios like MCA, Paramount, and Warner do not colorize their libraries, reportedly to avoid offending the directors with whom they wish to work.⁴⁴ Disney and Twentieth-Century Fox, however, are not above tinting the black-and-white films in their vaults. Disney films, e.g., *The Absent-Minded Professor*, are assumed to be in little demand among young people who "reject black-and-white films with near unanimity."⁴⁵

The Economics of Film Alteration and Enhancement

To further complicate the issues addressed here, it is necessary to consider that colorization is not the only way that films have been altered or enhanced.⁴⁶ Motion pictures are routinely subjected to panning and scanning, time compression, and editing. Moreover, films themselves are remade by other film directors. Beck argued there was "no hint of shame or scandal" with the remaking of film classics.⁴⁷

With the advent of wide-screen motion pictures in the 1950s, the amount of material that can be displayed on television screens had already become a problem before colorization was developed (ironically, the wide-screen process was a response by the film industry to competition from television). In order to show all the action, especially where directors made full use of the wide-screen, television versions of such movies have been forced to pan and scan the image.⁴⁸

Films such as *Lawrence of Arabia* and *Rebel Without a Cause* are difficult to watch on television, even with panning and scanning. The "letterbox" format, which reduces the entire cinematic frame to preserve the width (at the expense of using the full height of the television screen), has been a recent response to the problem. The reverse process (re-framing an old film for wide-screen exhibition) for theatrical releases has not created a similar controversy; one famous example is the re-framing of *Gone With the Wind*.⁴⁹

A wide variety of technological alterations are used on films currently, and there may be more in the future. Television stations have long resorted to chopping movies to conform to commercial breaks or time slots.⁵⁰ Some motion pictures have been electronically "sped up" (a process called *lexiconning*) to make them fit a shorter time slot.⁵¹ Such editing has long been an issue, but never led to Congressional hearings on the infringements of film directors' moral rights. Likewise, motion pictures have been enhanced to permit stereophonic sound.⁵² There has been little hue and cry about sound issues. Apparently, there is a lack of customer interest, not unlike the disinterest shown by the public toward the colorization controversy.⁵³ Indeed, colorization may not be the last affront to film purists. David Robb noted the potential in the future for 3-D and holography to change the aesthetics of motion pictures. It is one thing to put a veneer of color on *Casablanca*, but it may be a greater shock to have Rick, Ilsa, and Sam literally in one's living room.⁵⁴

Woody Allen, a film director who makes contemporary films in black-and-white, called film colorization "the straw that broke the camel's back."⁵⁵ Indeed, the initial use of more noticeable film classics like *It's a Wonderful Life* and *Casablanca* has attracted more negative attention to the process than the colorizing of less-appreciated films like *Sands of Iwo Jima* or old TV shows like *McHale's Navy*.⁵⁶ Ironically for Woody Allen, his first film success was *What's Up, Tiger Lily?* -- in which he took a Japanese B-movie and used new sound, dialogue, and

footage for humorous effect.⁵⁷ One wonders if the Japanese director was outraged.

A separate area of concern deals with non-technological alterations involving motion pictures. Blum argued that film directors like John Huston and Alfred Hitchcock have taken great liberties with the novels they adapt.⁵⁸ He cites *The Maltese Falcon* as a prime example of "how movie directors alter other artists' work for their own benefit."⁵⁹ Could it be that Dashiell Hammett's original work is "filmized," in the same sense John Huston's original work is colorized?

It is difficult to avoid judging the colorization controversy in terms other than it being a "simple exercise in greed,"⁶⁰ and many technological devices are undertaken with an eye toward increasing audiences, hence profits.⁶¹ Certainly, there was a potential for Ted Turner to make a great deal of money from colorization. Dempsey estimated that the \$300,000 cost for colorizing each motion picture is substantially less than the conservative estimate of \$500,000 revenue per title.⁶² Turner's library of 100 classic movies could thus yield \$20 million. Unfortunately, 99% of home video renters do not care about old movies, whether they are colorized or uncolorized.⁶³ Officials at Turner's company admitted that the timetable for completing the colorization allowed no times for a home video window.⁶⁴

To date, the financial payoff has been with television syndication of colorized movies. At the heart of the economic situation is the ability of colorized programs to attain higher ratings than black-and-white programs; color programs on television have 80% higher ratings than comparable ones in black-and-white.⁶⁵ Television syndication of old classic television programs would be the "final test" of the financial success of the colorization process.⁶⁶

Initially, the firms that invested in colorization lost large sums of money. There was a time when it looked as if the process was not profitable. However, the finances of companies such as AFT (American Film Technologies, Inc.) had improved substantially by 1990.⁶⁷ But, just one year later, the financial picture was less profitable for AFT.⁶⁸ Indeed, colorization was

abandoned in the early 1990s because it was no longer considered cost effective.

Political and Legal Issues

There is a strong bond between members of the entertainment industry and politicians. The entertainment industry often uses its "star appeal" to influence the political process. The motion picture, television, and recording businesses are uniquely able to bring highly recognizable people to testify on their behalf in Congressional hearings, a strategy that was used in the colorization debate when the DGA arranged appearances of James Stewart and Ginger Rogers, neither of whom were directors. More significantly, members of the entertainment industry are also large political contributors. Aside from the money given to campaigns, the same "star appeal" can enhance political campaigns. One of the Presidential hopefuls in 1988 was Rep. Richard Gephardt (D-Mo.), who offered on May 13, 1987, a bill that promised to "provide artistic authors exclusive rights to control material alteration including colorization of motion pictures."⁶⁹ A key provision would require the director (or the director's heirs) to give permission for colorization. Sen. Daniel Patrick Moynihan (D-N.Y.) similarly announced he was "considering" offering a bill similar to Gephardt's "Film Integrity Act of 1987" (H. R. 2400), though neither was given much chance for success. It could be argued that an organization with less highly visible members would not be able to convene a Congressional subcommittee on its behalf. On the other hand, Sen. Patrick Leahy, who chaired the 1987 subcommittee, was apparently not swayed by the movie stars. Even so, Presidential-hopefuls like Rep. Gephardt may have been influenced by the high-profile nature of the colorization imbroglio.

Conversely, the political climate was ripe in the 1980s for commercial interests to cast aside the aesthetic interests of those who consider film to be art. Ronald Reagan was in the White House presiding over a fundamental shift away from close federal regulation of American broadcasting. This deregulatory mood probably influenced companies to consider economic

alternatives that would have seemed unthinkable in previous decades, although deregulation began to take root toward the end of the Carter presidency.

With political influence supporting both sides of the art v. commodity issue, in May 1987 the DGA began their "social negotiation of rights"⁷⁰ before the Senate subcommittee chaired by Rep. Patrick Leahy (D-Vt.).⁷¹ The directors were represented by prominent artists such as Woody Allen and Milos Forman.⁷² On the other side stood the colorization industry and Turner's forces.⁷³ The hearings had no immediate impact, aside from the introduction of the Film Preservation Act of 1987 by Sen. Gephardt, discussed above. Rep. Leahy saw little harm in alteration of a film when the original motion picture, like an adapted novel, was still available.⁷⁴ The two sides were uncompromising.

The critical period in the history of film colorization came during the summer of 1988. The initial indications pointed to a victory for the DGA,⁷⁵ but this proved premature. In June 1988, legislators and Jack Valenti of the MPAA successfully hammered out a compromise, similar to Valenti's successful work with the movie rating system twenty years earlier.⁷⁶ The compromise, principally sponsored by Rep. Bob Mrazek (D-N.Y.), called for colorized films to display a disclaimer⁷⁷ stating that directors had not been consulted regarding the alteration of the motion picture.⁷⁸ An original pre-colorized video copy of each title would be sent to the Library of Congress. A film preservation board⁷⁹ was created to choose 25 motion pictures per year that would designate certain films as "classics" and further require disclaimer labels for such films when subjected to material alterations such as colorization.⁸⁰ The full House of Representatives approved the bill unanimously on June 29, 1988. The DGA hailed the measure as a "tremendous victory for film lovers everywhere."⁸¹ In August 1988, the Senate made minor changes to the film preservation bill⁸² and the first 25 titles of the National Film Registry were selected by the board in September 1988.⁸³ The list was culled from 1000 titles nominated by mail and finally

selected by James Billington, Librarian of Congress. The film preservation bill⁸⁴ was signed by President Ronald Reagan in October 1988.⁸⁵ The legislative outcome of the summer of 1988 was Ted Turner's colorized telecast of *Casablanca* on November 8, 1988. The fate of *Citizen Kane* was different. Under an interpretation of the contract Orson Welles had signed to direct the film, Ted Turner agreed not to colorize *Kane*.⁸⁶

The latest phase of the DGA's quest for "moral rights" began during Congressional hearings in October 1989. Although Senate subcommittee members were sympathetic to filmmaker concerns, they were equally committed to maintaining the status quo for the film studios, "an industry that contributes mightily to the U.S. balance of trade."⁸⁷ Sen. Orrin Hatch (R-Utah) said he was "generally opposed to the imposition of moral rights concepts by federal statute rather than through the bargaining of the parties to a transaction."⁸⁸ In February 1990, the DGA had better fortune with the House of Representatives, where a congressional panel passed a bill granting "enforceable rights" to visual artists. Rep. Robert Kastenmeier (D-Wis.) sponsored the measure and chaired the subcommittee, but he said the bill was narrowly focused on painters, sculptors and graphic artists, such that film directors' rights would be "issues for another day."⁸⁹

The art v. commodity colorization issue has been fought in courtrooms as well as legislative hearing rooms. Scholars have argued that colorization is not really a legal issue, given the current status of copyright in the United States.⁹⁰ The only cases dealing with colorization were ones that involved ownership, not artistic rights.⁹¹ Directors did not donate their work to the studios, but were very well paid.⁹²

Strong outlined the copyright considerations in layperson's terms.⁹³ A colorized videotape is, by law, a derivative work, rather than a mere copy. He noted that once a film is in the public domain (i.e., no longer under copyright), the legal right of the colorization companies

to create a derivative work is protected by copyright laws. Norman Glick of Colorization, Inc., asked rhetorically: "If the directors cared so much about their films, why did they let their copyrights lapse in the first place?"⁹⁴

The colorization industry achieved its first important legal victory in June 1987, when the Copyright Office of the Library of Congress agreed that colorized films were "derivative works" eligible for copyright protection. The decision turned on two key elements: human intervention (rather than by computer alone) and the wide range of colors used (4000 per frame from a palette of 16,000). The DGA had opposed separate copyright protection, arguing that the colorized versions were not sufficiently different from the originals.⁹⁵ The ruling concurred with arguments by Hal Roach Studios that color choices would be "based on artistic experience, expertise, and judgment."⁹⁶

In April 1990, the DGA found a way to prevent Turner Entertainment Company from colorizing *The Haunting*, a 1963 film directed by Robert Wise. Wise's contract contained a clause that specified the motion picture be filmed in black-and-white and that no substantial changes could be made without Wise's consent.⁹⁷

During that same month (April 1990), the Supreme Court ruled in *Abend v. MCA* that MCA, James Stewart and the Alfred Hitchcock estate had violated the copyright of a literary researcher when it re-released *Rear Window* in 1983 without his consent. Sheldon Abend owned the rights to a story on which *Rear Window* had been based.⁹⁸ By May 1990, Turner Entertainment Company had decided to delay its decision to show *The Haunting* (which it had already paid to colorize) because of the Supreme Court ruling. For his part, Abend hoped to form a kind of "literary ASCAP" to protect authors from alteration by filmmakers.

Conclusions

The fate of colorization was actually sealed by 1991 and the whole issue is now an interesting footnote in broadcast history prior to 1990. An official at AFT was quoted as saying colorization movie syndication is "in the toilet," with only \$22,000 profit per title.⁹⁹ Perhaps colorization went out with a whimper. The colorization controversy has moved from a narrow issue of colorization to a broader one that deals with the rights of artists. This chapter has addressed the underlying issues along with the sequence of events that led to the state of colorization by 1990. Several conclusions may be drawn from the issues and events.

First, it is unlikely that the "camel's back" will ever be the same, given the current trends in copyright law.¹⁰⁰ New communication technologies yet developed will likely continue an assault on works of art, at least in the eyes of traditionalists. Even modern motion pictures will eventually fall into the public domain and be subject to "enhancements" beyond our present imagination. In this sense, it is useful to study the course of events for motion picture colorization because it serves as an example of how problems may arise and how problems may be resolved.

Second, it is probably disingenuous for proponents (and opponents) of colorization to hide behind the argument that all alterations and enhancements of films are either all good, all neutral, or all bad. Moreover, the analogy between the colorization of a black-and-white motion picture and the film adaptation of a literary work is overworked. The public *knows* the difference between an adaptation and an alteration, even though it still has trouble telling the difference between video and film. On the other hand, the argument that most or all of the classic films in question were intended to be released in black-and-white is equally overstated. One could make a reasonable argument that no photography or cinematography would have been done in black-and-white had the color process been available inexpensively. Others would argue that

some black-and-white films *still* would have been an artistic choice, but it remains difficult to imagine such "choice" occurring on the scale of pre-1960s Hollywood.

Finally, it is still unclear how important the colorization controversy is to the general public. Although public opinion should not ultimately decide whether colorization is an acceptable practice, the lack of concern among the audience for movies is at least an indicator of whether colorization is an important controversy. The public will not likely suffer, regardless of the outcome. It is unlikely that motion picture directors will be less willing to create masterpieces. Nor is it probable that black-and-white classics will become less available to those who want to see them. The 91 percent penetration¹⁰¹ of VCRs (not to mention DVDs) in the United States has taken the decision away from the traditional distribution systems.

Notes

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1. R. N. Wilson, "Green and Other Colors," *Society*, (1987 May/June), 21-23. The term "colorization" becomes a problem when put in its gerund form "colorizing." A more appropriate term would be "coloring," but the former version has worked its way into the American lexicon. Turner Entertainment called the process "colorimaging" to avoid the grammarians (See *Broadcasting*, October 24, 1988, p. 45).
 2. Bruce Klopfenstein,. *The technology of colorization*. (1991). Chicago, IL: Speech Communication Association.
 3. Bernard Beck, "Inglorious color," *Society*, (1987 May/June), 4-12. The Killiam Connection is a private library of early black-and-white films available for 16mm rental. The latest catalogue indicates that many of the titles (e.g., *The Birth of a Nation* and *Intolerance*) are tinted, or as Killiam phrases it: "When appropriate, COLOR TINTS are added."
 4. Beck, 4-12.
 5. David J. Kohs, "Paint Your Wagon - Please!: Colorization, Copyright, and the Search for Moral Rights," *Federal Communications Law Journal* 40, no. 1, (1988), 1-38.
 6. Michael Sissine Wantuck, "Artistic Integrity, Public Policy and Copyright: Colorization Reduced to Black and White," *Ohio State Law Journal* 50, no. 4, (1989), 1013-33.
 7. "Tinting and Toning," *The Economist*, (1988 April 2), 83.
 8. Herbert T. Kalmus, "Technicolor Adventures in Cinemaland," *SMPTE Journal* 100,(1991 March), 182-190.
 9. The first moon pictures were available only in black-and-white, for technical reasons.
 10. Sheridan, 57-63.
 11. "Hollywood Color Wars Attract Risk Takers To Do the Planning," *Television/Radio Age*, (1988 April 4), 121, 126.
 12. "Hollywood Color Wars," 121.
 13. According to the author's survey of the database at us.imdb.com, the proportion of nonanimated U.S. feature films released in color for each respective decade from the 1920s through the 1980s was the following: 1%, 13%, 13%, 34%, 60%, 95%, and 97%.
 14. "Color Systems Outfit Devises Faster Method of Colorizing Pics, TV," *Variety*, (1987 April 2), 3, 43.
 15. M. Sheridan, "Black and White in Living Color," *Canadian Business*, (1987 February), 57-63. Ironically, Frank Capra was originally supportive of the idea and approved the colorization work done by others on a ten-minute segment of *It's a Wonderful Life*. Later, he reconsidered when he was denied creative control. The colorization firm had discovered that Capra had let the copyright lapse years before.
 16. Morrie Gelman, "Colorization of 'Kane' Halted," *Variety*, (1989 February 22), 419-420.
 17. "Hollywood Color Wars Attract Risk Takers," *loc. cit.*
 18. Beck, 4-12.
 19. Beck, 4-12.
 20. R. N. Wilson, "Green and Other Colors," *Society*, (1987 May/June), 22.
 21. Wilson, 22.
 22. Wilson, 22.
 23. Barry L. Sherman and Joseph R. Dominick, "Perceptions of Colorization," *Journalism Quarterly* 65, (1988), 976-980.

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24. Dorothy Nelkin, "Show and Sell," *Society*, (1987 May/June), 16.
 25. Nelkin, 18.
 26. Robert Russett, "A Case for Colorization." *Audio-Visual Communications*, (1987 June), 52.
 27. Russett, 69
 28. "Colorizing Bill Seen Dying," 1988. *TV Digest*, (1988 June 27), 9; Paul Harris, "Top Director in D.C. to Speak out Against Colorizing," *Variety*, (1987 May 13), 3, 48; R. L. Mayer, R. Word, and B. Young, "Colorization: The Arguments For," *Journal of Arts Management and Law* 17, no. 3, (1987), 64-78.
 29. Mayer et al., 64-78.
 30. Mayer et al., 76.
 31. Kohs, 1-38; Wantuck, 1013-33.
 32. Sherman and Dominick, 976-980.
 33. Indeed, colorization has been abandoned because it is no longer considered cost effective. Companies that charged \$3000 per minute to colorize films were not making enough money. By the time such companies raised their prices in the 1990s, their initial customers has become disenchanted with the return on their original investment. Ted Turner quietly discontinued colorizing his film library.
 34. Wantuck, 1013-33.
 35. Frank Lovece, "CBS/Fox Releases Intensify Colorization Debate," *Billboard*, (1987 January 31), 52-53.
 36. Woody Allen, Milos Forman, Sydney Pollack, Ginger Rogers, and Elliot Silverstein, "Colorization: The Arguments For," *Journal of Arts Management and Law* 17, no. 3, (1987), 79-93.
 37. Allen et al., 79-93.
 38. "Hollywood Color Wars"; Lovece, *op cit*.
 39. David Robb, "Directors Push to Protect Their Pix," *Variety*, (1987 May 27), 5, 37.
 40. Robb, 5.
 41. Drew Voros, "Anti-colorization Crusade in Uphill Battle," *Variety*, (1989 September 1), 9, 12.
 42. George Lipsitz, "Blue Money," *Society*, (1987 May/June), 14-15.
 43. Mayer et al., 64-78.
 44. John Dempsey, "Canadian Tax Loophole Lifts Colorizers," *Variety*, (1991 February 4), 31, 33.
 45. B. Young, "Video Classics: Color Them Profitable," *Billboard*, (1987 June 13), 9.
 46. A. A. Berger, "Film Technology's Latest Frankenstein," *Society*, (1987, May/June), 12-13.
 47. Beck, 4-12.
 48. Dennis Wharton and James McBride, "Second Group of Pix Chosen for National Film Registry," *Variety*, (1990, October 22), 10.
 49. Beck, 4-12.
 50. "House Hearing Covers Colorization Spectrum," *Broadcasting*, (1987 May 18), 78-79.
 51. Gary Edgerton, "'The Germans Wore Gray, You Wore Blue', Frank Capra, Casablanca, and the Colorization Controversy of the 1980s," *Journal of Popular Film and Television* 27, no. 4, (2000 Winter), 24-32.
 52. "House Hearing," 78.

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53. Chris Morris and Earl Paige, "It's Not the Color of Money," *Billboard*, (1987 May 16), 1, 85.
 54. Robb, 5.
 55. Allen *et al.*, 79-93.
 56. "Here's Looking at Hue, Kid," *Broadcasting*, (1988 June 13), 46-47.
 57. Beck, 4-12.
 58. David Blum, "Emotion Pictures," *The New Republic*, (1987 February 9), 13-15.
 59. Blum, 14.
 60. Beck, 11.
 61. "Hollywood Color Wars," *loc. cit.*; Eugene Secunda, "Is Movie Colorization a Moral Issue for Broadcasters?" *Broadcasting*, (1987, May 25), 20; Sheridan, *loc. cit.*
 62. John Dempsey, "Distribs Find Pics the Color of Money," *Variety*, (1988, April 8), 43, 58.
 63. Young, 9.
 64. R. Tyler, "Retailers Say Black & White More Popular than Colorized Versions," *Variety*, (1988 August 3), 50.
 65. Secunda, 20; Tyler, 50.
 66. Dempsey, (1988), 43.
 67. John Dempsey, "O'seas TV Viewers Getting 1st Look at Colorized Pix," *Variety*, (1990 January 31), 65.
 68. Dempsey, (1991), 31.
 69. Harris, "Top Director," (1987), 3.
 70. Beck, 7.
 71. Harris, "Top Director," (1987), 3.

 72. Allen *et al.*, 79-93.
 73. Mayer *et al.*, 64-78.
 74. Harris, "Top Director," (1987), 3.
 75. Paul Harris, "Directors Win D.C. Victories on Colorization." *Variety*, (1988 June 22), 1, 77.
 76. Jack Valenti reprised his role as the peacemaker. He was successful in portraying the government as the villain.
 77. Paul Harris, "Pic Preservation Board Okayed by Prez; Win Against Colorizing," *Variety*, (1988 October 8), 2. The disclaimer read: "This is a colorized version of a film originally marketed and distributed in black & white. It has been altered without the participation of the principal director, screenwriter and other creators of the original film."
 78. Paul Harris, "House Okays Film Registry Compromise," *Variety*, (1988 July 6), 5, 29.
 79. The board was comprised of the presidents of the MPAA, NAB, AMPTP, Academy of Motion Picture Arts and Sciences, Screen Actors Guild, the Directors Guild, Writers Guild, National Society of Film Criticism, Society for Cinema Studies, American Film Institute, University Film and Video Association, and the chairpersons of the film departments at UCLA and New York University.
 80. "House Bill Calls for Labeling of Colorized Films," *Broadcasting*, (1988 July 4), 49.
 81. Yet, the original DGA version of the bill would have prohibited the colorized film from being exhibited under its original title. Harris, "House Okays," (1988), 5.
 82. "Bill Creating Panel to Label 'Classics' Closer to Passage," *Variety*, (1988 August 17), 1, 53.

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83. "Library of Congress Names 25 Titles to New Registry of Significant U.S. Movies," *Variety*, (1988 September 27), 10, 28.
 84. National Film Preservation Act of 1988, Pub. L. No. 100-446, Title 1, 1988 U.S. Code Cong. & Admin. News (103 Stat.) 1782-88 (codified at 2 U.S.C.A. §§ 178-78(2) (West Supp. 1989)).
 85. Paul Harris, "Pic Preservation Board," (1988 October 8), 2.
 86. Gelman, 419-420.
 87. Voros, 9.
 88. Voros, 9.
 89. Dennis Wharton, "Color DGA Encouraged by Bill," *Variety*, (1990 March 7), 7.
 90. Secunda, 20; Kohs, 1-38.
 91. S. Linfield, "The Color of Money," *American Film*, (1987 January/February), 29-35, 52.
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92. Mayer et al., 64-78.
 93. W. S. Strong, "Legal Shadings," *Society*, (1987 May/June), 19-21.
 94. Sheridan, 59.
 95. 52 Fed. Reg. 23, 442-443 (Feb. 4, 1987).
 96. Paul Harris, "Win For Coloroids: Govt. Outlines Plan for Copyrighting," *Variety*, (1987 June 24), 1, 77.
 97. James McBride, "Directors Looks to Spook Colorizers via 'Haunting,'" *Variety*, (1990, April 25), 20, 29.
 98. David Robb, "'Haunting' Through out the 'Window,'" *Variety*, (1990 May 9), 5, 38.
 99. Dempsey, (1991), p. 31.
 100. Even more recent efforts to lengthen the number of years that a copyrighted films can be kept from the public domain will not likely have any implications for film colorization. The Sonny Bono Copyright Term Extension Act of 1998 does not specify colorization issues, but the law does raise concerns that Disney characters may *never* enter the public domain. Likewise, films of the 1930s will wait longer and longer to be colorized, assuming their copyright holders see more value in the original B&W versions than in derivative colorized versions.
 101. <http://www.tvb.org/tvfacts/tvbasics/basics3.html>