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Glorification of Serial Killers: How the Law Fails to Protect Families of the Victims

B YKSENIA KHLYSTOVA-GOWDA / ONNOVEMBER 29, 2022



Photo by Koen Jacobs on Flickr

Serial killers have always caused controversy. They have been talked about, feared, studied, and after their deaths, they have been remembered and memorialized in various forms of art. In pursuit of success and fame, movie and documentary directors attempt to promote their own narratives while depicting the gruesome and hideous murders and crimes of these killers. However, it appears that few consider the pain and suffering these “art forms” cause the families of serial killer victims. Almost every year, there are new media productions that put serial killers in the spotlight and depict their victims as sacrificial plot elements that are used to amuse and captivate the audience. Many of these directors did not attempt to ask whether the families consent to the depiction of the horrifying deaths of their loved ones being dramatized for entertainment and profit.¹ However, the families are forced to relive that dark time and to be harassed by reporters and members of the public who are glorifying serial killers and dismissing victims as nothing more than one of the steps that a serial killer took to attain his new-found celebrity status.² That is the harsh reality that many families now face when serial

killer documentaries are produced without their knowledge and consent.³ The recent aggrandizing of serial killers at the expense of their victims and families, who must live through it, is not only morally unethical but legally culpable.⁴

The 2022 release of Netflix's *Dahmer* series is a telling example. It depicts the heinous crimes of the serial killer and cannibal Jeffrey Dahmer in a way that is meant to evoke sympathy for the character, but most importantly as it made headlines around the country for the producers' failure to obtain any permission or consent from the families of the victims of Dahmer.⁵ In one instance, Eric Perry, the cousin of Dahmer's victim Errol Lindsey, argued that the new series is "retraumatizing [the family] over and over again, and for what? How many movies/shows/documentaries do we need?"⁶ Furthermore, Lindsey's sister Rita Isbell stated, "[i]f the show benefited them in some way, it wouldn't feel so harsh and careless . . . It's sad that they're just making money off of this tragedy. That's just greed."⁷

This greed has grown for the last twenty-plus years, as public interest in "weird or gory crimes [has become] unsurpassed."⁸ Unfortunately, while the existence of "Son of Sam" laws that aim to prevent these murderers from profiting from their crimes and notoriety, it does nothing to restrain members of the media who seem to be without limitation in their ability to exploit victims for profit.⁹ In fact, these laws make it easier for media companies to depict these serial killers because the killers have little to no rights to their stories and the potential value attached to it.¹⁰ Surely, the killers should not profit. After all, the policy argument is anything but new. Back in 1889, New York's highest court ruled that a "man convicted of murdering his grandfather could not inherit from his grandfather's estate"¹¹ because "no one shall be permitted to profit from his own fraud, or to take advantage of his own wrong."¹² However, none of this restrains the media companies, who are free to reap all the profits.

While Son of Sam laws rightly restrict killers from profiting from their crimes, it wrongly abandons the rights of victims' families. Specifically, depending on the jurisdiction, right of publicity laws either do not exist or barely protect the rights of the victims.¹³ The right of publicity stems from the work of Samuel Warren and Louis Brandeis, who framed it as the protection of an individual's personality or the right "to be let alone."¹⁴ However, this right has never been recognized on the federal level.¹⁵ Therefore, states are responsible for protecting what the Third Restatement of Unfair Competition currently qualifies as the "[a]ppropriation of the Commercial Value of Person's Identity."¹⁶ States must seek to enforce the right to protect the "value of a person's identity by using without consent the person's name, likeness, or other indicia of identity for purposes of trade."¹⁷ Recently, in 2020, New York codified the right to publicity, which is transferable and passes on to any "person claiming to be a successor in interest."¹⁸ The bill provides a "right of action on behalf of 'deceased personalities' for the use of their names, voices, signatures, photographs or likenesses for commercial purposes without consent, i.e., on or in products, merchandise or goods, or for purposes of advertising those goods."¹⁹

While this is certainly a step in the right direction, it is limited to incidents that take place after the bill was signed. Even further, it is well known that although the message of this law seems to be to protect victims, it is still preferential to the media industry.²⁰ As one media expert explained, "[c]onsider what movies would have been threatened if the rule

is that you cannot make a movie or TV show about somebody unless you get their permission.”²¹ This rationale is explicitly seen in the expressive works exception to the New York law, which includes books, movies, TV shows, newspaper articles, news broadcasts, etc.²²

When media directors base a character on an actual person and use their likeness for profit, a violation of that person’s right of publicity occurs and necessitates redress for their family. There should be a federal law that recognizes this right, much like the Copyright Act, which protects copyrighted material from being used by an infringer for profit,²³ and, most importantly, preempts conflicting state law.²⁴ Such a law would ensure the protection of these victims and prevent further suffering.

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