'Eyes' fight focuses on rights

By Catherine Foster, Globe Staff  |  February 5, 2005

An attempt by a small group based in Worcester to widen the audience for "Eyes on the Prize," the acclaimed PBS civil rights documentary, has turned into a national flap.

The award-winning series hasn't been aired in a decade or released commercially because of expired copyright licenses. In late January, members of Downhill Battle, a group of four young activists, appalled that there is so little access to the film, made a digitized copy of the series available through its website. They initially encouraged people to download it and hold screenings this Tuesday.

Downhill Battle created the "Eyes on the Screen" campaign to celebrate the series and to draw attention to the copyright laws that are keeping it from being seen on television or made into DVDs. "The goal of the campaign is that in Black History Month we wanted to make it available to a large public audience again," said Holmes Wilson, a codirector of Downhill Battle.

The problem for the activists is that the company that made "Eyes on the Prize," the Boston-based documentary film production company Blackside Inc., is set to renew those rights and views what Downhill Battle is doing as illegal and counterproductive to its own efforts.

"We appreciate that they are very enthusiastic about bringing 'Eyes' back to the public and making it accessible for the public to screen," said a Blackside lawyer, Sandy Forman, who is working to renew the series' copyrights. "However, the way they're doing this is unacceptable."

Making a digital copy of the series was illegal, she says. So was encouraging people to download it.

"I don't know that it is illegal," said Downhill Battle codirector Nicholas Reville. "We believe that it falls under the 'fair use' doctrine of the First Amendment. It's a noncommercial use of a historical document with important political and First Amendment implications that are otherwise unavailable to the public. I'm not a lawyer, but we believe that this falls squarely into fair use."

Tony Pierce, a partner with Akin Gump Strauss Hauer & Feld, the Washington, D.C., law firm Blackside has engaged, disagrees. "They have a warped view of fair use," Pierce said. "Their activities were blatantly illegal, and I think they knew they were when they did them."

Once Blackside made clear its concerns, Downhill Battle pulled the link to Common Sense Culture, which created the copies of the film, off its website. But the campaign continues for people to hold screenings with their own legally purchased videos or ones checked out from their local libraries. According to the group's website, 40 screenings are scheduled for Tuesday.

Pierce says Blackside has no issue with licensed screenings. "We want thousands of them during Black History Month," he said. "The ones I'm trying to stop are the ones that were used on the website."

The 14-hour, two-part "Eyes on the Prize," which first aired on PBS in 1987, was a comprehensive look at the civil rights movement. Through interviews and archival footage, it showed, as Blackside founder Henry Hampton put it, the efforts by citizens to "peacefully dismantle apartheid in this country." It reached more than 50 million viewers and received an Academy Award nomination.

The series was created from copyrighted footage, photographs, video clips, and songs. To get the series back on television or released on DVD, thousands of copyrights must be renewed. But Blackside Inc. has been in shaky financial shape since Hampton's sisters took over the company after he died in 1998.

Apart from the legal complications involved in creating a digitized copy of the series, Blackside was also concerned that Downhill Battle's efforts would harm Blackside's ability to negotiate favorable terms with
licensors, if it was felt that Blackside participated in the illegal dissemination of copyrighted material.

Forman says the Ford Foundation gave Blackside a $65,000 grant to research the costs of renewing the licenses and bringing "Eyes" to television. Some sources estimate the cost could be as high as $500,000. Forman says it will be a few more weeks until a figure is set. Blackside hopes for the series to be broadcast on PBS in 2006.

The flap has caused phones to ring at both Blackside and Downhill Battle; calls have come from organizations as diverse as Wired News, which first reported the screenings initiative last month, and the Hollywood Reporter.

Forman is concerned because "Eyes on the Prize" is being pulled into the larger battle over copyright issues that has roiled the music industry. Downhill Battle is an 18-month-old nonprofit organization whose primary aim is to "end major label monopoly and build a better, fairer music industry," according to its website.

One of the main issues, Forman says, is "the debate and battle that's raging over free access to works like ours. It's a complicated balancing act, trying to allow for access to copyrighted works at the same time as you protect the rights of copyright holders."

But for Lawrence Guyot, who was in "Eyes on the Prize" as a civil rights leader in Mississippi, and who supports the screenings, this dispute has everything to do with what he fought for.

"We're talking about a cultural and national icon," Guyot said in a telephone interview from Washington. "There's never been a more key time to revitalize our faith in our ability to impact on every level. I'm not doing anything illegal, I'm persuading people to buy copies and those who have copies to share them, to facilitate as many showings as possible."