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Untold Stories: Creative Consequences of the Rights Clearance Culture for Documentary Filmmakers

By Patricia Aufderheide and Peter Jaszi

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Executive Summary

This study explores the implications of the rights clearance process on documentary filmmaking, and makes recommendations to lower costs, reduce frustration, and promote creativity. It focuses on the creative experience of independent, professional documentary filmmakers.

FINDINGS

Rights clearance costs are high, and have escalated dramatically in the last two decades.

Gatekeepers, such as distributors and insurers, enforce rigid and high-bar rights clearance expectations

The rights clearance process is arduous and frustrating, especially around movies and music.

Rights clearance problems force filmmakers to make changes that adversely affect—and limit the public’s access to—their work, and the result is significant change in documentary practice.

Filmmakers, while sometimes seeing themselves as hostages of the “clearance culture,” also are creators of it.

Filmmakers nonetheless exercise fair use, and imagine a more rational rights environment.

RECOMMENDATIONS

Make the most of fair use:

- *Develop and disseminate models of “best practices” ;*
- *Establish one or more “legal resource centers” to support filmmakers.*

Facilitate the clearance process:

- *Establish a non-profit rights clearinghouse;*
- *Work for legislation on orphan works.*

Build greater awareness of filmmakers’ use rights:

- *Facilitate filmmaker access to sound pre-production legal advice;*
- *Develop learning materials -to provide a balanced general account of intellectual property, for filmmakers and film students;*
- *Educate gatekeepers about creators’ use rights.*

Untold Stories: Creative Consequences of the Rights Clearance Culture for Documentary Filmmakers

Concept of Study

This study explores the implications of the current terms of rights acquisition on the creative process of documentary filmmaking, and makes recommendations to lower costs, reduce frustration, and promote creativity. It focuses on the creative experience of independent documentary filmmakers who work primarily within a broadcast environment (sometimes with a theatrical “window”).

Independent documentary filmmakers were selected because their work regularly requires them to interact with a wide variety of rights holders, from archives for photographs and stock footage to performers to other filmmakers. This is especially clear when it is a historical documentary or one that comments on commercial popular culture, but it is an issue for most documentary filmmakers, no matter what the subject matter. When a trademark appears on a baseball cap, or a subject happens to be watching television, or a radio in the background plays a popular song, or a subject sings “Happy Birthday,” rights clearance becomes a professional and creative challenge.

Independent documentary filmmakers are particularly appropriate subjects because they typically develop projects with autonomy, generating new topics and approaches, and sell or lease them to broadcasters or cablecasters to get them seen. They are responsible for doing rights clearance. Generally, however, they do not have much choice about what to clear. Their insurers, television programmers, and theatrical distributors usually set rigid and high-bar requirements for rights clearance. Without a detailed record of rights clearance, for example, they cannot get errors and omissions insurance, without which a broadcaster or cablecaster will not show the work. Programmers, insurers and distributors are primarily concerned about legal risk to lawsuit, however frivolous, and have a much lower investment than the filmmaker in the creative effect on the work.

Methodology

Using contacts developed through business networks and via festival catalogs, student and faculty interviewers in the School of Communication and Washington College of Law at American University interviewed 45 documentary filmmakers. Researchers selected the people in charge of making creative decisions, primarily directors but also including some editors and producers. (Some filmmakers play multiple roles.) Using a questionnaire as a guide to discussion (text available on website), the interviewers explored three areas:

- Problems in rights acquisition of completed projects;
- Rights problems that resulted in stalled or incomplete projects;
- Rights permissions and experience with unauthorized or inappropriate use of her or his own work.

Filmmaker interviews were summarized by researchers and reviewed by the filmmakers, and then analyzed by the co-principal investigators, Patricia Aufderheide and Peter Jaszi.

Legal Background on Intellectual Property and Filmmakers

Any documentarian today must thread or cut her way through a thicket of legal rights associated with the preexisting cultural objects that her own creative enterprise depends on. The overlapping systems of intellectual property that form this thicket have grown up without much intersection with documentary practice, although they profoundly affect it.

The pattern is so complex in part because any item to be acquired may have many different kinds of rights attached to it, within the U.S. alone. Image, text and music, for example, all are copyrighted by the person or firm who originally created them (or the entity they transferred it to). “Sound recordings”--particular fixations of music, incidental sounds, or other aural material--also are copyrighted in the U.S. Soundtracks of movies are copyrighted separately from the films themselves, and any item a film incorporates--book text, for example--may be the subject of a separate copyright. Commercial signs, labels and other promotional materials may be trademarked at both state and federal level, as well as being copyrighted. The names, images, likenesses and other attributes of famous (and sometimes less-than-famous) people are protected under so-called “right of publicity” rules of various state jurisdictions.

When a documentarian aspires to distribute a work internationally, the thicket grows still denser. Some kinds of cultural artifacts that receive relatively weak protection in the U.S. (for instance, architectural works) are more strongly guarded under the laws of other jurisdictions. Many foreign countries may provide stronger protection overall for previous creators, in the form of so-called “moral rights,” which protect an author’s claims to attribution and the integrity of her work. By contrast, however, “rights of publicity” are generally more highly developed in the U.S.

To complicate matters further, most relevant intellectual property rights have a long or even indefinite duration (patents being a marked exception). Many works created in the 1930s still enjoy copyright protection in the U.S. and elsewhere, for example, and trademarks are potentially unlimited in temporal scope. When a documentarian has to negotiate rights that are decades old, she will often face problems that start with being able to identify and locate rightsholders. People die and their assets are dispersed, and companies sell their rights without leaving any public record of the transactions; other companies simply fail and put the rights they held into a kind of legal limbo.

The problem of identifying ownership, in fact, is not just restricted to older projects. A documentarian who wants to comment on or use as illustration a Hollywood film may find many obstacles. The film copyright may belong to the original producing company or its successor, but contracts with unions representing actors and other creative workers – some of whom also may have right of publicity claims – condition it. So the filmmaker probably also has to negotiate with those artists as well. Artwork or other graphics integrated into the film will likewise typically be independently owned. The filmmaker also will have to negotiate separately for any independent musical compositions or recordings integrated in the film’s soundtrack, with the

composer(s) and/or any successors and the producer of the original sound recording. Many works' ownership remains a mystery, and they become, for the purposes of creative use, "orphan works."

On the other hand, the documentarian also has certain rights to access and use intellectual property. In fact, every intellectual property right is qualified by significant limitations, far exceeding in scope those that apply to other kinds of property interests, such as real property. Rights of publicity, for example, are uniformly inapplicable in situations where a celebrity is depicted to make a point about the individual's career or the cultural meaning of his or her image. Conventional trademark rights do not apply where the use is not commercially competitive with the owner's own sales activities; even as trademark law has recently been expanded, it is unlikely to reach depictions of even the most famous marks that occur in the context of critical commentary.

Copyright is subject to various limitations, the most important being the so-called "fair use" exception, first devised by mid-nineteenth century judges and included in the statute (at Sec. 107) for the first time in 1976. As the Supreme Court of the United States recently has confirmed, one of the purposes of "fair use" is to reconcile the rights in expressive content that copyright confers on authors with the core constitutional protection of free speech in the First Amendment.

When can a creator invoke fair use? The statutory formulation lists a number of factors--the purpose of the use, the nature of the protected work, the extent of the use, and its economic impact. Should fair use be contested, courts must consider these factors in deciding whether particular uses qualify. The basic question is always the same: Whether the public cultural benefits of the use outweigh the private economic costs it may impose. In recent decisions, strong preference has been given in fair use analysis to uses that are "transformative" in character -- where a creator has added substantial value of her own to material that was derived (without authorization) from preexisting works.

Central Findings

RIGHTS CLEARANCE COSTS ARE HIGH, AND HAVE ESCALATED DRAMATICALLY IN THE LAST TWO DECADES.

The cost of rights can dramatically inflate a budget, as budding filmmaker Jonathan Caouette vividly demonstrated with the 2004 release of his home-made movie about his dysfunctional family, *Tarnation*. Although the film was largely made from images of his mother and grandparents, it interwove many references to popular culture. Thus, a film that the filmmaker estimated at a cost of \$218 in hard cash ended up costing \$400,000, using most of the eventual budget to clear rights.

Veteran filmmakers see a trend toward increasing costs for clearances. Filmmakers generally asserted that rights costs accounted for more of the budget than they had a decade before, that clearance took more time than before (sometimes accounting for a fulltime position), and also that legal fees had risen to deal with rights.

John de Graaf a veteran maker of social documentaries based at a Seattle public TV station, noted how dramatically the legal portion of the budget has risen in recent years, just to accommodate rights clearance issues. Although he may use the station's lawyers, his increasing use of the station's lawyers is billed to his budget.

"I notice in our budgets we're building in more and more money for rights," said **Gordon Quinn**, a founder of Kartemquin Films (*Hoop Dreams*, *Chicago Maternity Center Story*, *Golub*, *5 Girls*, *The New Americans*). "We're pretty experienced and senior filmmakers, but we were \$100,000 off on our rights for *The New Americans*. We just didn't have enough money budgeted for it and it's becoming a huge strain on the project. That \$100,000 is after we made all kinds of compromises. You really have to budget for it and think it through and think about what markets it's ultimately going to go into."

Gerardine Wurzburg, an Academy-winning filmmaker for *Educating Peter*, noted that "in the past we would have had nothing or very little for rights, and now it's \$5,000-\$10,000 out of a budget of \$150,000-\$200,000."

Grace Guggenheim noted that a sea change has taken place since the height of her father Charles' career some 20 years ago. "With the older films that Charles had done licensing was not a big deal, probably because distribution was not a big deal, probably because cable was not a big deal. Contracts were handshakes, and there may have been a looseness about releases. I learned the hard way, because of the fact that some of our films went from educational use to home video and I was upgrading the rights. I put everything in place now."

Editor **Rena Kosersky** says, "It's easier to get someone on the other end of the phone, but now it's hard to pay the outrageous fees that they want." This problem is especially bad at the larger companies, because "they don't care what the message is."

Joan Sekler, director of the political documentary *Uncovered*, noted that "even though we were a non-profit, it was very hard to negotiate and bargain for the rights. We wanted world-wide rights in perpetuity, because we thought it was important enough that it would air around the world on television, it would screen around the world at various venues, it would be in the internet. So we wanted worldwide rights...and the majority [of networks of which we inquired] charged \$90 a second. Even C-SPAN, which is a not-for-profit organization, charges close to that amount." In the end, the bill for rights clearances amounted to nearly \$100,000, a figure Sekler considered, "really outrageous."

Repeatedly filmmakers emphasized problems associated with consolidation in commercial archives (particularly Getty Images and Corbis, both of which bought up many other archives over the last decade and which are often the only places to get certain images) for stock footage, photographs and music.

Karen Bernstein, producer of *Atomic Ed* and other documentaries seen on public TV, said, "It used to be that you could go to a small photo archive and say, 'Hey we're a really good, earnest PBS series, or something, and we're really trying to do good things, and can you give us a break on this photograph, because we're not a magazine, a corporation. They would, for the most part, be willing to negotiate with you. But now that all these smaller archives have been either driven out of business by the big guys... you

can't really negotiate... It's '\$500 or nothing.'" She finds photographs much more expensive than footage these days.

On the 1999 "American Experience" documentary *Ella Fitzgerald—Something to Live For*, "the rights costs were by far the biggest part of the budget. The budget itself for that film was over \$1 million. I would say the rights costs alone, were, probably about 60% of that."

Lori Cheadle, director of *This Land Is Your Land*, a critique of advertising culture, noted, "Getting clearances for stills is horrible, because of the commercial consolidation. Licensing stills four years ago I paid a fraction of what I pay now. It's cheaper to use film than stills."

Danny Anker, who has worked for public television over two decades, said, "I have watched over the years as these prices have sky-rocketed, in particular, for newsreel footage, and how these little archive houses that used to work very closely with filmmakers were gobbled up by bigger companies."

GATEKEEPERS ENFORCE RIGID, HIGH-BAR RIGHTS CLEARANCE EXPECTATIONS.

Insurers, programmers, distributors, and co-producers all bring pressure to clear rights, and expect that the filmmaker will carry the burden. Errors and omissions insurance, which Jon Else calls the "chokepoint" of rights, is required for broadcast. It ensures against copyright infringement and its providers demand resolution of an ever-widening range of rights issues. The price of errors and omissions insurance is rising, with consolidation, and heightened scrutiny also escalates legal costs.

Filmmaker **Jeffrey Tuchman** (*Mavericks, Miracles & Medicine* among many others) says, "Right now the people who make these films [documentarians] are singularly the most powerless, and the most concerned about the content being distributed, to the right people, in the right way. Ultimately, you have networks with extortionate rules covering this stuff. Even though we are in the position of having to indemnify anyone who airs what we make, we still have to play by their rules. We can't say now, 'We feel confident that this image can be used safely.' They don't accept that—even though they have required that I completely insure my production. I don't have the option to say, 'I'll take the risk,' because the broadcaster or cablecaster will not accept a film if the paperwork does not conform to their lawyers' standards."

The price of non-compliance can be non-distribution, at least until the filmmaker complies. For example, Thom Andersen's *Red Hollywood*, in which he quoted much feature film material, was not distributed commercially, and was never shown in Germany because "the broadcasters were intimidated." Aviva Kempner became embroiled in an extended conflict with the DVD distributor of *The Life and Times of Hank Greenberg*, because of rights that needed to be renegotiated for video and DVD distribution. PBS would not carry Robert Stone's *Satellite Sky*, which referred to American cultural notions of space travel by excerpting 1950s science fiction films, until he cleared rights to films whose trailers he had used, even though the trailers were in the public domain. PBS's demand cost his company \$25,000 of his fee. *Strange Fruit*, a documentary about lynching, depended on music that couldn't be cleared for home video, and is excluded from that market.

Jeff Krulik, a filmmaker whose early experience in cable access gave him, he says, a blithe attitude toward rights, has made an award-winning documentary about an American soldier who obtains what appears to be a top hat of Hitler's. Krulik incorporated scenes from Hollywood films ridiculing Hitler, a choice that let him complete the film he envisioned but that also bars it from television distribution. "I've not let rights issues deter me if footage is critical to a story, for instance, [as with] the Chaplin, Disney and Fred Astaire footage in *Hitler's Hat*," he said. "I had no qualms about liberally using footage that I didn't have the rights for."

"However, this successfully and effectively prevents me from ever selling this film to distributor in its current shape. It exists on my website and I screen it at festivals and venues. It's a proud part of my body of work. I set out to make it in 1997, got derailed, resumed speed in 2000, and then premiered it to great reviews at the New York Jewish Film Festival in 2003. It now sits on my shelf."

Even lack of clarity can limit distribution. **Kevin Rafferty** (*Atomic Café* and other compilation films) notes that his acclaimed 1992 film *Feed*, using satellite "feed" video of candidates before they went on-air, was never aired on television. He believes that this is because the rights status of such material is simply unclear, since its use within a film was unprecedented." It's the only movie I've made that's never been on U.S. television ...Clips of it were on all the talk shows. It was theatrical in 1992, before the election, in forty cities. We made thirty-six prints of the film, but it's never been on TV. Now, whether it's illegal, [or] people were [just] scared of it, I don't know. But you know, [we had] no problem [with rights challenges during theatrical release]. It had big reviews in major papers around the country, so if someone were really pissed off they probably would have done something about it."

Filmmakers also find themselves caught between demands of gatekeepers and of rights-holders.

Gordon Quinn recalls that *Stevie*, another Kartemquin release of the past decade, has been confounded by virtually unlimited "galactic" conditions imposed on securing music rights. "The distributor gave us an advance and said, 'Well, you have to license the rights for all technologies and all venues and all markets that may some day be invented in the universe!' But the music companies won't license these rights. So we're saying, this is ridiculous. When you need those rights, give us a call and we'll work it out for you. But until you need them, give us our money!"

THE RIGHTS CLEARANCE PROCESS IS ARDUOUS AND FRUSTRATING.

Filmmakers repeatedly mentioned three problem areas. They noted idiosyncratic responses by rights holders in general, along with specific difficulties with mainstream movies and music rights.

The process is often highly idiosyncratic, because of the undocumented nature of claims and numerous potential rights holders. Filmmakers all noted the heavy burden on the filmmaker to search out all rights holders, especially with feature film excerpts. Although the clearance requirements imposed on documentarians were unambiguous, they were also sometimes unattainable. Sometimes celebrities refused to answer requests; sometimes nobody knew who had shot the video; sometimes a rightsholder demanded fees entirely out of range.

Filmmaker **Ron Merk** co-produced a Czech film, *Looking for Lennon*, in which an attempt to clear rights for the John Lennon song “Imagine” failed after many attempts to contact Yoko Ono. “It’s very frustrating because the rights owners have no obligation to give you a license. It’s their property. They own it.” However, Merk says the most frustrating aspect of rights clearance is the hoop jumping required just to have a licensing proposal read. “There are so many lawyers and agents and managers, those levels of buffers I would call them, between you and the creative people who create these other rights that you need to utilize. Sometimes it’s just impossible to get to them.”

Public affairs and news footage can be frustrating to license, even when it depicts public figures involved in public situations.

Robert Greenwald found NBC unwilling to license a clip of George Bush in a public address, for a recut version of *Uncovered*. Greenwald speculated that the reluctance might have been reluctance to be associated with a political film.

Erica Ginsberg (*Crucible of War*) noted frustrations in dealing with recent war footage. “In a war zone so much is pool footage. It was complicated to determine what was pool and what was shared rights. If it was shared rights you had to negotiate with the various right holders. So we selected footage based on not wanting to go to more than one source to license.” Additionally there was some confusion when one source buys out another source. So they had to find the right owner and making certain that the footage did not have shared rights with another organization.

Filmmakers were often frustrated by demands that seemed out of proportion with the reference to the work.

Seasoned filmmaker **David Van Taylor**, of Lumiere Productions, recalled that in *A Perfect Candidate*, about Oliver North’s run at the Senate, someone sang *God Bless America* at a campaign rally. “This was not only a nice touch but tells you something about what is going on there,” he said. But rights holders and music licensors treated this as if it were a commercial or fiction film. In that case the Irving Berlin estate—“notoriously hard bargainers”—demanded and received a substantial fee, which Van Taylor counted a good outcome. He had feared that the estate might simply refuse or ask a prohibitive amount.

“There’s a pivotal scene in *Hoop Dreams*,” recalled **Peter Gilbert**, “where it’s Arthur’s 18th birthday and his mother said, ‘Isn’t it wonderful that he made it to 18?’ and they sing ‘Happy Birthday.’ ‘Happy Birthday’ costs. They’re brutal about it. You’re not going to get a deal on ‘Happy Birthday.’” It cost \$15,000 to \$20,000 for just one verse of “Happy Birthday.”

Jon Else noted, “There are some people you don’t want to cross, Fox and Rupert Murdoch is an example. According to folklore, even George Lucas goes after people trying to do parodies of *Star Wars*. Lucas polices his intellectual property pretty aggressively.”

Sometimes filmmakers found themselves entirely blocked by rights-holders.

John de Graaf noted that he once wanted to buy a five-second clip of *Alice in Wonderland* and was willing to pay up to \$5,000. Disney simply wouldn't sell it for any price to him.

Chris Wilcha ended up dropping several pieces of music from his debut film, *The Target Shoots First*. A song by rap artist Dr. Dre was cut because it "was based on a sample, and the sample was from an obscure R & B artist. And so in starting to research the copyright, I was going to need to get signatures from the deceased R & B singer's extended family...plus, Dr. Dre, plus...there were six or eight people who were going to have to say 'yes, you can use this' and for how much." In the end, about five or six elements from the movie were also cut or muted because of rights issues, including a Christmas party scene where Kool and the Gang played "Celebration," a track that he claims would have cost half the clearance budget to keep.

These same problems sometimes kept existing films from distribution.

Grace Guggenheim has had insuperable difficulties re-releasing a film that her father Charles Guggenheim made in 1968 for the Democratic Convention, *RFK Remembered*. "They worked around the clock. They had access to labs all around the country – labs that stayed open 24 hours a day – and everyone was willing to waive the clearances and give use of material free of charge, because Kennedy was a man they wanted to honor, and they wanted to benefit the Democratic Party...in the end it was shown at the convention and was broadcast on all three networks.

"Well, several years ago I thought that this film should be in every single school around the country. It's a great catalyst to understanding history of the time, to talking about the Vietnam War, about Lyndon Johnson, about the assassination of Martin Luther King, about the tragedy of Robert Kennedy's brother four years before, about the fact that the country was in crisis. And it teaches about intolerance and that you can have a passion about doing something in life that helps make this world a better place. But, although the material was cleared for its intended use, it was not cleared for any kind of commercial distribution.

"In doing my research for this, I found a filmmaker whose footage is in the film. I've gone back to him to try and get clearance, but he's resistant to having his footage re-used. He just doesn't believe in it. So I've gotten the Kennedy family involved – Ethel Kennedy and Ted Kennedy – to try and persuade him, because I really feel it's important. But when they're gone, what leverage do I have? This is a signature film in Charles' career. It won an Academy Award. It can live on for so many years to help educate children and just our society in general. But there were no written agreements."

Judy Kinberg made a film about the world famous choreographer Bob Fosse that successfully aired on public television, but has never been distributed in home video. The market, she commented, will not bear the price it would take to renegotiate the licenses for the scores of rights holders involved.

"Most favored nation" clauses in license agreements, meaning that all rights holders get the highest price negotiated by any, are often demanded by rights holders afraid that another rights holder will get a better deal. They introduce more ambiguity and tension into the rights process. As Kenn Rabin notes, "not only do you not know where you stand, the music you pick really gets determined by who's going to set a quote that knocks everybody else out of the water. And you can't even know what your music

budget is until you get all of your quotes in.” Jeffrey Tuchman analogizes, “It’s like going to go the grocery store and pinching your pennies and using your coupons and then the last thing you buy is a steak for \$20 and then every soda and bag of M&Ms you bought suddenly costs \$20.”

This process makes budgeting unreliable, forces filmmakers into harsh aesthetic choices, and sometimes threatens to derail a production. Lori Cheatle noted,

“In *This Land Is Your Land*, we use most favored nation status. We are upgrading rights as we go along. There were some people who didn’t want to do most favored nation [that is, agree to the lowest rate paid to that date], and we had to drop some songs because it would have brought up all the rates. We had a hard time with one song, but I can’t talk about it because we’re still negotiating.”

Katy Chevigny noted that she was forced into a perilous position with a broadcaster as a result of intransigence at the last minute in a most favored nations negotiation:

Nuyorican Dream used a fee of \$500 per song. Unfortunately, Summy-Birchard Music/AOL Time Warner was not happy to oblige by the clause, and as Chevigny recalls, was demanding something in the neighborhood of \$2,000 to use ‘Happy Birthday.’ “Not only could I not afford it, I couldn’t do it because I had this most favored nations clause...I was bound by the ‘Happy Birthday’ people to clear the song, and I was bound by my contract with HBO to clear every piece of music—and then I was bound by my most favored nations clause...”

“It was up until the wire that the ‘Happy Birthday’ people wouldn’t agree to go as low as \$500,” Chevigny said. “Mind you, this is a low budget, \$150,000 documentary.” At this point, Chevigny’s lawyer advised her to tell Cinemax that *Nuyorican Dream* could not be broadcast because “Happy Birthday” had not been cleared. “There’s no way I’m doing that. I’m just going to risk the lawsuit,” Chevigny told her lawyer. “It’s not something you should do, but I felt I had to take that risk—to put the production in jeopardy in order to not ruin my relationship with the broadcaster.”

Indeed, Chevigny had already told the broadcaster, Cinemax (which is parented by HBO—another Time Warner asset), that she had cleared all the music in the film. In reality, Chevigny had sent paperwork to each music entity and each had said they were willing to negotiate, but she did not have paperwork back yet. “You’re constantly, as an independent filmmaker, not having to lie, but having to promise things that you don’t have totally in order just to get the ball rolling. It’s the chicken and the egg thing,” Chevigny explains.

Luckily, the situation with “Happy Birthday” did eventually fall into order for Chevigny. Around the time *Nuyorican Dream* was first broadcast, Summy-Birchard Music/Time Warner faxed Chevigny an agreement to work within her clearance structure. “They finally processed it and I wrote them a check for \$500 and it was done. It all ended up okay, but it was definitely a nail biter.”

Filmmakers noted that the personal relationship, even within a large corporation, was critical to success, and that sometimes one found a sympathetic ear even within the largest systems. Many took pride in their ability to charm or wheedle affordable rights. Several filmmakers believed that without their negotiating skills and personal contacts, it would have been impossible or unaffordable to make their films. “Mostly I’ve had very good luck negotiating with rights

holders,” said Robert Stone. “Ultimately you’re dealing with people one on one, and everybody at a film archive can cut you a break if they want to.”

Rights to mainstream movies, even when clips are to be used for criticism or quotation, are very difficult to clear. Documentary filmmakers often find themselves enormously frustrated when attempting to refer to popular films. Studios can demand high prices or simply not return phone calls, and many other rights can be imbedded in a single scene.

Danny Anker’s *Imaginary Witness*, about Hollywood’s portrayal of the Holocaust, contains nearly an hour of footage from films made by Hollywood’s large, commercial studios. Anker says the rights costs triple the cost of the entire production budget, even after he received many favors, partly because of the Holocaust subject matter. He had particular difficulty with studios. Licensing officials were unmoved by his argument that his film would bring attention to long-forgotten movies. “What they don’t want to do is hear anything about your film, that it’s a special film, or that it’s a documentary and serving the public good, or that their costs are prohibitive. They hear those arguments 50 times a day.”

Jeffrey Tuchman noted, “In my history of medicine series, I had a sequence in which we were talking about Dolly the cloned sheep, and we talk about the historical antecedents of Dolly. We spoke to an ethicist, Arthur Kaplan. He said that cloning has a real history, but predominantly in fiction. He starts to talk about specific examples. What a fabulous opportunity to make a more playful piece of his science history, by using footage from *Jurassic Park* or *Frankenstein* or *The Fly*, or *The Clones*. You wouldn’t need much.

“Needless to say, we had on our hands an absolutely ridiculous task. We had to track down the film, the rights, the rights holders, the executors, and when we did we found out either we would not be permitted to use it or at an extortionate rate. I’m not even talking about the extortionate rate the archives charge, \$3,500 or \$4,500 a minute. I’m talking the sky is the limit. So we said, ‘That’s our entire archival budget for an hour.’ So we decided to pursue trailers instead.

“But there too there was a problem. Apparently A&E, when they began doing ‘Biography,’ they -- or the production companies that made biographies for them -- figured out that trailers were not only cheaper but in many cases public domain. Essentially the movie studios determined that their goodwill was being egregiously abused. There were hours made where the networks using the trailers, especially on cable, instead of paying for a small percentage of what amounted to \$20,000 or \$30,000 worth of footage, they would pay nothing. That plus changes in the copyright law, I believe, more or less ended this practice. Now, even if studios will permit use of trailers without cost, A&E’s lawyers won’t permit it.

“So in the end we had to turn to a less appealing (but much more affordable) alternative-- movie posters--to create an animated sequence, where footage and sound would obviously have been preferable. It was not a choice made on creative grounds, but purely on the basis of legal and financial issues.”

Jack Walsh recalled a 2001 KQED production of *And Then One Night: The Making of Dead Man Walking*, a look at the launching of the San Francisco Opera, *Dead Man Walking*, based on Sister Helen Prejean’s book. “We knew we wanted to use some clips from the film, to show the trajectory—the sister’s work, the book, the film, and now an opera. So we wanted to show maybe 15 seconds of the film. The maker of the film was Polygram Films, a Dutch-based interest that had Hollywood presence in the ’90s. When I

went to look for their rights, I found that MGM acquired their library for US licensing. So I made a cold call to MGM licensing department. It's streamlined and bureaucratic--they have a system. I was asked to fax the description of the material. Our use was limited, because we could only do rights that mirrored the performance rights we negotiated with the opera--for three years, the standard PBS rights back then. No beyond-broadcast was being negotiated on any of this.

"A couple of days later I heard back from them, that they'd do it for about \$6,000. And they didn't even have to provide us with the material—we were taking it off a DVD. But then they said this cost did not include any of the underlying rights. You have to get Sean Penn's signoff before we can enter into the licensing agreement, and then you need to get all the principals in all the scenes—Susan Sarandon and a couple of other actors playing the prison guards. Also, clear any extras that happen to be in the scenes. And you have to get the music rights, from the composer and the musicians. So then we set off on that journey.

"Prior to that, we had been told by someone else we needed to get Tim Robbins' permission, to facilitate MGM's approval. But it turned out Tim Robbins didn't have anything to do with it. We were glad we did it as a courtesy, but it was a lot of time and a hurdle we didn't need to jump over. And then it turned out that we needed to pay Tim's DGA licensing fee. These licensing fees are modest, about \$100, \$150. And then we also had to pay the Writers Guild fee. By the time we were done, the cost went up to about \$8,500. Some people were wonderful. Sean Penn not only gave us permission but said he didn't want any money. Susan Sarandon didn't take a fee and gave us permission. But the meat and potatoes performers were a problem to track down to get permission and negotiate fees; that is their form of support.

"It took an incredible amount of time. On my part of it—Robbins, Penn and MGM—I spent a good week or week and a half. The associate producer on the project literally spent weeks. One of the performers who was deceased, we had to track down his estate and get their permission. And then the issue was that there was nothing beyond the broadcast that we could use it for."

"I have a go project as executive producer with a network that shall remain nameless to make a historical documentary about the making of a famous play that became an even more famous movie," said **Mitchell Block**. "The studio won't license us the footage. So now the project is dead. A filmmaker was doing a making-of for the DVD release and said he could get the rights so that a documentary feature film could be made, and so I sold it to a network. To obtain the rights, we even offered the studio the copyright to the movie. All they were giving up was the rights to have it shown on TV for several years, they would own everything else. They would have a two hour special that would celebrate their movie, and they killed it. They couldn't complain they were getting an unqualified filmmaker, because they had hired him. Or that they weren't getting a good deal. And it's a classic Hollywood movie."

Music is a particularly fraught rights acquisition area. This is so not only because music is such an important part of every film, but also because the rights are layered. There are rights both in the composition itself and in the recording of it; furthermore, since filmmakers want to "synch" images with sound, they need synchronization rights, so they cannot turn to a blanket-license arrangement like ASCAP or BMI and must deal on a case-by-case basis. Although PBS has a blanket license agreement, it does not extend to after-markets such as home video and the educational market—which are markets PBS

itself may claim in its contracts. PBS's blanket agreements have become less helpful as ancillary markets have grown.

Kenn Rabin describes the attempt to reference popular culture in a documentary on how people in the past imagined the future, "Yesterday's Tomorrows." They wanted to buy the opening title sequence from the television series, 'The Jetsons' for the documentary. "Buying the clip to the opening animation was no problem. I just had to negotiate with Warner Bros who owned Hanna-Barbera and we bought the clip. But the music, the theme song, involved having to clear all of the singers who sing the song. Finding each one of the singers, who they were and where they are now and clearing them and negotiating with each one separately, where we were totally at their mercy of what they wanted to ask for money...One option was to drop it. And we really didn't want to drop it because almost everyone we interviewed talked about 'The Jetsons' as one view of the future. So that was a huge touchstone of popular culture that we really wanted to use. So what we ended up doing was stripping out the music, because we couldn't afford it, and stripping in a piece of library music that kind of sounded similar and kind of went with the visual. If you watch it, you know you're not listening to 'The Jetsons' theme, and it's just not the same."

David Van Taylor had major rights problems with music in *Dream Deceivers*, about a rock band, Judas Priest, which was sued because a kid had committed suicide after listening to their music. The band was included in the film and interviewed. The film vindicates them, but nonetheless, the band used it as an opportunity to demand money that Van Taylor didn't have. It has done very well in broadcast but still is not available in home video because of music rights issues.

'Happy Birthday' is a problem in many contexts. **Rena Kosersky** recalled editing on *Eyes on the Prize*. At one point in the film, King's staff had thrown a birthday party for him, and they all sang "Happy Birthday." She almost had to take the sequence out because without the song, the clip had no meaning. "This is the kind of thing that happens when the music is integral for the content of the sequence," she said. "It took about four months to get a fee that we could handle."

Filmmakers are particularly exasperated about clearance of accidental or background music. When music is playing in a supermarket, an elevator, a bar or café, or when young people sing a popular song or do karaoke, when a scene takes place in a bar where popular music is playing, when churchgoers sing a chorus, filmmakers must enter into the rights-clearance thicket. Some filmmakers have substituted songs and some now routinely plan to change the environment when they enter by asking to have music turned off.

When making her film *Little People*, **Jan Krawitz** filmed a sequence in which a dwarf child featured in the film exercises in gym class. Filming had to be interrupted when the instructor played the Village People's, "YMCA," as background music. Krawitz and her crew asked the teacher to begin again without the music, as rights to the hit song would have been unaffordable. "There's no way you argue fair use--'Oh, it was happened to be playing in the background,'" said Krawitz. "You know, that just doesn't fly with the music publishers."

Linda Goode Bryant at first found it hard to believe that familiar hymns from her childhood, sung in churches across the U.S., would require rights clearance if she used a scene filmed in a church, in which group singing occurred.

RIGHTS CLEARANCE PROBLEMS FORCE FILMMAKERS TO MAKE CHANGES THAT ADVERSELY AFFECT—AND LIMIT THE PUBLIC’S ACCESS TO--THE WORK, AND THESE PROBLEMS ARE GRADUALLY CHANGING DOCUMENTARY PRACTICE.

Because of rights problems, filmmakers sometimes need to falsify or change reality, even when the film is cinema vérité.

“When you walk into a store, and you’re filming someone, you’re constantly listening to what’s the sound in the background,” said **Peter Gilbert** (*Hoop Dreams, With All Deliberate Speed*). “If it’s a song by Madonna, or a pop song, you’re going to end up having to pay for it. That goes all the way through the process while you’re doing stuff, so the first thing that you do, in a bizarre way, is that you quiet things.” You might not necessarily want to turn the music off, because it might work for the scene. However, from a budget standpoint you might find yourself turning it off. “

Jon Else described how, in *Sing Faster*, a stagehands’ backstage view of the Wagnerian Ring Cycle, he was required to substitute what was actually on the TV (Major League Baseball and ‘The Simpsons,’ respectively) because of rights. The sports rights were too pricey and while fair use might have been an option, it too could become expensive. “I’ve been in this business long enough, I’ve had enough depositions taken to know that it’s not worth it. I’m willing to sacrifice a wonderful droll cultural moment -- the stagehands watching ‘The Simpsons’ -- to avoid being taken to court. We did the same with this as the World Series. Literally at the 11th hour, a day before the online, I cut and pasted into the TV set a shot that I own to make the problem go away. Who loses is the audience in the end.”

Editor **Richard Berge** recalled that problems with acquiring rights to film an orchestra in the background of a scene, in a documentary featuring an impresario who is visiting the orchestra, meant that the team had to restructure the shoot in order to eliminate any visual reference to the orchestra. This meant taking the central character out of context. “In the end the audience doesn’t get the full picture,” said Berge.

Jeffrey Tuchman described the loss of historical authenticity in a film he is currently making, featuring oral histories of the civil rights movement.. Tuchman hoped to be able to use a Folkways Records/Smithsonian collection of songs, *Voices of Civil Rights*. “We got so far as to be informed by the Smithsonian that the master rights, as opposed to the publishing or whatever, just the master rights to one needle drop of a minute’s duration, not a whole song, would be \$3,500. And after that the publishing rights could cost anything, anything at all and while many of the songs are in the public domain, the arrangements are not.

“So here I was with music that was utterly indigenous to the story I was telling and I couldn’t use any of it. I will have had to resort by the end to some combination of library, of which these days there is wonderful stuff but not to my mind the right choice; post-composed score; and possibly if I can manage to make it work and afford it, music

that we recorded on this trip, gospel choirs and so on. I'm not done with trying to use music from that time, but do I have the resources to pursue it to the end of the earth? No."

For several films, including *Drive In Blues*, **Jan Krawitz** was forced to make aesthetic compromises, replacing preferred newsreel and other footage with photographs when the price was too high. "I went up to the Sherman Grinberg Film Library in New York. They're out of business now, but back then they had a vast newsreel collection, and I saw a piece of silent Pathé newsreel from the opening night of the first drive-in. In my film, I deal with the opening night of the first drive-in. I have an interview with the son of the inventor and the usher. And I just thought, 'This is priceless,' so I called up Sherman Grinberg [Library], [which]...was completely intransigent on the price. I remember it was going to cost me something like \$1,500 for 23 seconds. Their going rate at the time was around \$60, which was for one set of rights. But by the time you're finished with non-theatrical and TV, etc., etc.—and the whole budget for the film wasn't huge—I just could not justify it and it really hurt me. I ended up relying on stills that I was able to shoot for free from an archive in a theater collection in the free library in Philadelphia, but it's an impoverished sequence compared to what it would have been had I been able to show that footage, and we hear from the usher describing what it was like on opening night."

Filmmakers sometimes must cut out scenes that would improve the documentary, in order to avoid rights problems.

When **Linda Goode Bryant** was working on *Flag Wars*, a documentary chronicling conflict between African-Americans and newly-arrived gay and lesbians in a gentrifying area, she had to sacrifice a scene involving a principal character, Linda Mitchell. Mitchell was singing along with the radio while painting her front porch. To ensure the clip could be included in the film, Bryant attended a producer's academy sponsored jointly by POV and WGBH in Boston on the subject of music rights. The lawyer there assured her that such a situation "shouldn't be a problem. But in reality, it seems that there is a problem, because we met the criteria [cited by the PBS lawyer to be able to claim fair use] with the Linda Mitchell moment and we had to cut her out [anyway]." After consulting with public TV documentary series POV staffers and Sony, the music publisher, the consensus was that ultimately the musician/songwriter would be uncooperative and to just cut the scene. "It was a shame, because it was a moment which really showed an aspect of her character which was important."

The high cost of rights, especially for non-broadcast and post-broadcast markets, makes filmmakers have to choose where they can afford to show the entire reality of the scene, and limits which audiences can see it, and which formats (such as DVD) can be made available.

Gerardine Wurzburg recalled, "On *Graduating Peter*, there was a wonderful scene. They're in an amusement park, and they're singing 'What a Girl Wants,' in karaoke. I had to have the money to pay the rights for that, because it's just such a great scene. And [in the same scene] then there was also the song, 'When a Man Loves a Woman.' The [high cost of the] rights to those songs are keeping the film out of foreign sales. When it goes foreign, I'm stripping out everything but 'What a Girl Wants.'"

Robert Stone noted, "I'm in the situation now, with my film on Hollywood and Vietnam, it could be an amazing film but I'm in a straitjacket for what I can do. The

straitjacket is: if I want to use a clip from a Hollywood film, I can't release it on DVD or overseas or in theaters, only on cable TV. AMC wanted all rights, but even for cable it's \$7,000 a clip, plus SAG minimum for all actors on screen, plus music, so maybe that's \$10,000 a minute. This is a film about how a very important aspect of American history has been interpreted in film. This is an important subject about how popular culture shapes our understanding of history."

The cost of news footage can force filmmakers into harsh choices, when broadcast news was the primary audio-visual record of a historical event.

To make their anti-death penalty film *Deadline*, the producers at Big Mouth Productions had to pare back their use of network archival footage referring to historic events, because they faced a prohibitively high bill to use network TV footage. Even after scaling back, the firm owed more than \$50,000 for less than 12 minutes total of broadcast archival footage. Some of this footage might have been a legitimate fair use claim, but, said **Katy Chevigny**, the producers preferred to pay because they could not afford the research costs.

When rights are licensed for fixed periods—a common procedure, most often employed to save money—important work can be withheld from the market both because of prohibitive rights renewal costs and also because the original producing team no longer exists.

Jon Else, series producer and cinematographer for Henry Hampton's *Eyes on the Prize*, noted, "*Eyes on the Prize* is no longer available for purchase. It is virtually the only audio-visual purveyor of the history of the civil rights movement in America. What happened was the series was done cheaply and had a terrible fundraising problem. There was barely enough to purchase a minimum five year rights on the archive heavy footage. Each episode in the series is 50% archival. And most of the archive shots are derived from commercial sources. The five year licenses expired and the company that made the film also expired. And now we have a situation where we have this series for which there are no rights licenses. *Eyes on the Prize* cannot be broadcast on any TV venue anywhere, nor can it be sold. Whatever threadbare copies are available in universities around the country are the only ones that will ever exist. It will cost \$500,000 to re-up all the rights for this film. This is a piece of landmark TV history that has vanished.

Changing rights clearance practices are changing documentary practice. Filmmakers believe that the craft is imperiled by the terms of the current rights environment.

"I don't think it's accidental," said **Jeffrey Tuchman**, "that what you now see are reality and makeover shows, where there are no encumbrances. There are other reasons why those shows are appealing, but I think that's one of them... Another problem category is arts and performance, where there's a complicated web of rights. Say you had a singer-songwriter who was willing to share their rights. There are often many embedded rights over which they have no control."

Historical documentaries in particular are at risk because of rights clearance issues, as well as because of other economic trends in the business. Costs of finding and acquiring archival footage make historical documentaries increasingly expensive, even as prices for documentary production in general fall. These days, in fact, existing historical documentaries are being mined

for their archival material rather than going to the time and expense of archival research, as a short-cut by filmmakers on very tight budgets. Among other things, this shrinks the pool of images used to recall history.

The economic and legal constraints are discouraging both newcomers and veterans in the historical genre.

Nancy Schesiari's first produced film, *Hansel Meith*, a broadcast documentary about an 80-year-old photographer, extensively used archive material. PBS's \$20,000 fee barely covered her archival rights costs, a reality that surprised her. "If I had done my budget properly, I probably would have said, 'No, I can't touch history. I can't make this film.'"

Rena Kosersky is concerned about the cost of historical music influencing historical documentaries. The PBS series *American Experience* is considering, she said, not using any more archive music because of cost. "You lose the sound of history. You will see less and less archive music in documentary. Music about American history is going to be gone."

"I make archival, historical films that I conceive and produce," said filmmaker **Jon Else** (*Cadillac Desert, Sing FASTER, Open Outcry*). "I made a conscious decision in the last decade to try to produce films that do not involve archive footage. There are some exceptions -- I'm involved in one now that is archive heavy. However, it's become so costly and cumbersome that who needs the aggravations. The problem is that it the costs discourage people from making films about our history as a culture. Plenty of people still make these films and that's good but my suspicion is that there are probably a lot of people, young people particularly, who know they don't have a chance in hell to make a 90 percent archive-based film because it's going to cost them \$100,000+ for the archive rights."

"There are fewer and fewer filmmakers with historical subjects," said **Robert Stone**. "Who's going to give you half a million dollars to make your first film? The budget for *Guerrilla: The Taking of Patty Hearst* was about that. And that was cheap. If I hadn't called in all the favors, it would have been a million dollars." In fact, Stone advises against the compilation format, because "it's become prohibitive. Why do you think the History Channel is what it is? Why do you think it's all WWII documentaries? It's because it's public domain footage. So the history we're seeing is being skewed towards what's fallen into the public domain."

Perhaps the greatest area of loss is unknown. Although we asked consistently about "dream" projects, filmmakers almost unanimously resisted the notion that there was anything they wanted to do that they would not attempt because of copyright clearance. Rather, they took pride in pointing out their professionalism in never entertaining un-executable thoughts. They do not even attempt films that pose large rights hurdles, because they are familiar enough with the business to know that the consequences can include the inability to sell the product or get it seen.

One of the few to cite specific projects was **Jeffrey Tuchman**: "There is a project I would like to do and would do on my own if the rights issues were not so extortionate. It's on politics and the media, looking at the evolution from the Daisy spot through *American Candidate*, of the way in which the line between politics as serious enterprise and politics as game show have disappeared.

It was a proposal before this circus of an election, which has gone far beyond my own imagination. I know I could find the material, and everyone I needed to tell this story would talk to me, but licensing the material would make this a half a million to a million dollar hour.

Tuchman noted that far more common than shelved or dream projects was

“self-censorship. You consider and then don’t pursue. You don’t try what’s not possible. This is a very expensive hobby. It’s an extraordinary trust. Whether it’s an investor or a foundation that hands an independent hundreds of thousands of dollars to tell a story, it is an extraordinary trust. Once people will give you that extraordinary money to tell stories, you can’t throw it away for legal reasons.”

Other interviewed filmmakers heartily endorsed this perspective.

“I don’t want to waste any time battling lawsuits,” said **Gerardine Wurzburg**. “I want to make movies. So we’re all very careful when we go in. We watch ourselves at every step.”

Several noted, however, that young filmmakers often learn the hard way. Student and novice filmmakers can experiment without observing current copyright law. They often borrow and use elements of popular culture with legal naïveté, regularly testifying by these acts to a widespread assumption that as participants of popular culture they have a right to re-use it. But of course such work cannot be seen outside their classrooms without clearance, and so they cannot get audiences for their work, even in a nonprofit environment.

“I’m surprised how many young people show me films, very good films that are often times fantastic, which will never see daylight because of rights issues,” said **Mark Moskowitz**. “In one particular case, they spent two years putting their film together. It was impactful and well thought out. Unfortunately, it will never be seen because they have 15-18 musical acts and to get the music rights released will be prohibitively expensive.”

Mediarights.org, a project of Big Mouth Films, seeks out activist, nonprofit and student work for its Media That Matters Film Festival. “We have a huge problem with rights,” said **Katy Chevigny**, “because they tend to be done by students or community organizations and they routinely just lift things from television to make a collage of ideas for their film. Then we want to stream it on the Web and they don’t have the rights to any of it and they don’t have the money to pay for them, so we can’t use half of them.”

Chris Wilcha noted that he never considered any rights questions in making his first film, which later was released on HBO after investment in rights clearance. “I was very naïve about the whole thing, and I just made it.” At first he had no permissions from the people or owners of the published music appearing in the movie. “I didn’t even know there was this thing called festival rights. I didn’t even know that I was shirking that responsibility.”

David Gray, maker of a film about a Black Sabbath tribute band, *Never Say Die*: “When we started, all we knew you needed to do was get talent releases signed, and that’s

nothing. I think you could spend your entire life learning about clearance and copyright stuff...It was definitely a growth experience on that end.”

Filmmakers strongly believed that there was loss both to individual creators and also to the wider society of harsh and unpredictable “clearance culture.”

Mirra Bank (*Last Dance* among many others) noted, while urging a great deal of legal caution, that it had a kind of chilling effect: “You have to put your brain in three parts.”

John de Graaf was concerned that the harsh terms of doing documentaries today means “we’re going to lose some very creative talent and people who really care, because you’ve got to really care about society to get into the documentary film world...So it’s those people, the very people who are idealistic and creative and young and starting out, who face the hardest time of it. And I’m afraid we will lose creative, concerned filmmakers, just because they can’t put up with this crap.”

Jack Walsh, both a filmmaker who enjoys exploring experimental form and a public TV programmer, believed that what is at risk is public availability, not the creation of work itself. He said, “I don’t think the current rights regime stops expression. I think what it’s really about is [whether you can move] in from the margins. If people want to move into more mainstream distribution, public TV or HBO, you either have to get rights or get another way around trying to recreate periods or feelings, or they just don’t end up there. This comes down to the cost of production--rights are translated into that language.”

Nancy Schesiari sees a clash between the cultural legacy left by artists and the privatized access to their work: “Archived film is very interesting because, culturally, it should belong to our society. All the cinematographers are like ghosts now. There’s no trace of who these people are. They’ve left us a legacy, a cultural, visual legacy that has been bought, shot-by-shot, second-by-second, commercially, and then is resold back only to the people who can afford to buy that stuff.”

John Sorenson, who has worked both in public affairs news and in documentary, noted that the historical record is hostage to archival methods and prices. “Because of the increasing consolidation of private footage sources like Getty, it is becoming increasingly difficult for small independent producers to obtain any leverage in negotiating rates and rights for hard to find images....If corporations restrict access to our common cultural heritage, it makes it difficult (or at least expensive) for filmmakers like me to make the stories that we want to.”

FILMMAKERS, WHILE SOMETIMES SEEING THEMSELVES AS HOSTAGES OF THE “CLEARANCE CULTURE,” ALSO ARE CREATORS OF IT.

What we came to call the “clearance culture”—the shared set of expectations that all rights must always be cleared—was both imposed upon filmmakers and imposed by them on themselves and colleagues.

We found filmmakers working in a broadcast and cablecast environment to be wholly in support of copyright law in principle, seeing it as a key property right that ultimately benefits them. They do not, typically, see it as an expression of balancing of interests, but as an almost absolute right.

They do not believe that it is right to take other people's work without paying for it, whether or not it is for a nonprofit purpose. They believe that if they are benefiting from the law, they should honor the rights of others to be paid. This is true even though every filmmaker interviewed pays much more in time and money for rights than he or she receives in fees from others for their own documentary work. Most accepted not only the inevitability but also the legitimacy of inconvenient and sometimes literally impossible clearance requirements.

Filmmakers have learned this attitude from their own production experience, dealing with gatekeepers and with rights holders, as well as from consultations with lawyers and in workshops and classrooms. They often anticipate the demands (sometimes because they are familiar from earlier negotiations) of the broadcasters and cablecasters that will use their work. And in a business where reputation is critical, one mistake can be fatal. For instance, filmmakers must have, or provide all the relevant information to those who have, errors and omissions insurance in order to get their works broadcast.

“If you ever have a claim on E&O insurance,” said historical filmmaker **Robert Stone** (*Radio Bikini, Guerrilla: The Taking of Patty Hearst*), “you might as well go into another line of work. You can never file a claim or you get blacklisted--and never be insured again.”

Furthermore, they perpetuate this attitude when they teach both informally and formally. Filmmakers said that they sternly educate interns and entry level workers in the imperative of rights clearance and ways to minimize risk (such as casing a scene for potential background music before filming). Filmmakers who are teachers said that they feel obliged to communicate the clearance culture to their students.

They maintain a commitment to the clearance culture, although their own experience shows it to be profoundly unbalanced even when they are rights holders. Power relations often ensure that they cannot receive payments for their own work, on a scale that is comparable to what they must pay. Filmmakers routinely reported that they do license rights from their own work, where possible. (For some, so many rights of others are imbedded in their work that such opportunities are rare.) But no one licenses material to others for the rates that they regularly pay, even when they sell to the same companies.

Meema Spadola's work *Breasts* was of interest to a Canadian broadcaster. “They interviewed me, and they said they wanted to use some clips from the documentary. I said, ‘Sure, you can use a few minutes.’” In fact, the broadcast, which was 30 minutes in its entirety, used 15 minutes directly cut from *Breasts*. “I mean they basically re-packaged my documentary, along with an interview with me and a few other people, and didn't pay me. ...We sent lot of angry letters to them via our pro bono attorney, [but he] didn't have the energy to keep hounding them, and nothing ever happened. ...It was unbelievable.” Today, she says, the company retains a lawyer, “but at \$275 an hour I can't afford to talk to him that much.”

Filmmakers sometimes accept such inequality, they say, because they lack bargaining power. Sometimes they find the bookkeeping involved to be more trouble and cost than simply settling for a smaller amount. Often they act collegially, especially with other documentary filmmakers, or in the hopes of buying good will for the next occasion.

Ron Merk has sued all three networks for unauthorized use of work he controls, and won. He is proud of his ability to control material he owns and outraged at the thought that networks can invoke fair use claims and excerpt his material. Nonetheless, even he makes exceptions for cases where he sees that no profit is being made.

A rarity is Pam Yates of Skylight Pictures, who has a boilerplate clause in contracts licensing footage from Skylight Pictures (Licensor):

“14. RECIPROCAL ACCESS. Licensee represents and warrants that, in consideration for Licensor's performance under this Agreement, Licensee will cooperate with Licensor in the production of Licensor's other television programs and projects and provide Licensor with film footage in the future at Licensor's request under similar terms and conditions as those set forth hereunder.”

Filmmakers teach the lessons of their harsh experience with rights clearance to students and interns.

Jan Krawitz, a film school professor as well as filmmaker, provides conservative advice to her students and notes, “Fair use has never been my friend—let’s put it that way—and my advice would be to cover your tracks.”

Jill Godmilow, also a film professor as well as independent maker, makes sure her students understand the harsh terms of copyright clearance. “I make a huge fuss about copyright in my classes. I didn’t for the first five years of teaching at Notre Dame. Then I made a commercial tape with [video distributor] Milos Stehlik, called The Loft Tapes, with about 15 student films on it. He said, ‘No unlicensed copyright material.’ I hadn’t been strict on copyright and one film had a clip with Marlene Dietrich in it, and I spent a whole summer cleaning up the film, and after that I read them the riot act about it... I tell them about fair use, too. I tell them the lawyers will never get them security. It’s very risky, you don’t want to be in court. And there’s little or no case law, people settle.” In her own work, she does invoke fair use, but believes this choice contributes to limiting distribution.

Katy Chevigny tells aspiring filmmakers, “The only film you can make for cheap and not have to worry about rights clearance is about your grandma, yourself or your dog.”

The memory of a previous era of filmmaking—one that made DA Pennebaker’s free use of musical quotes in *Dont Look Back* and Kartemquin Films’ use of historical imagery in *The Last Pullman Car* possible—is passing, and new filmmakers understand the current situation as normal.

Working filmmakers by and large “know” that fair use is not a tool they can use. Those who are most familiar with the law are also aware that it is ultimately the gatekeepers and insurers who will decide whether they can use fair use, and that those entities, being risk-averse, regularly reject the claim. Gatekeepers usually can achieve their goal (e.g. a broadcast that engages an audience) without taking higher risks of legal liability. In sharp contrast, filmmakers talk about the loss to a society’s memory, to the historical record, to creative quality.

Because “fair use is gray, it comes down to who has more money to spend on lawyers” and who can fight it longer in the courtroom, said **Sam Green**. “Might makes right.”

“I haven’t used fair use in the last ten years, because from the point of view of any broadcast or cable network, there is no such thing as fair use,” said **Jeffrey Tuchman**. “I’m not speaking here of news networks. Every headline I use, even historical headline, even without news photographs, even without the masthead, every magazine cover, I have to get the rights to. Is that true of every one of my colleagues? I know that some people play fast and loose, but it’s likely to come back and bite you, maybe because somebody is going to sue you, maybe because your rights bible is incomplete. Everyone is fearful of rights issues on every level.”

“If you’re doing a feature DVD or for theaters, you can’t invoke fair use,” said **Robert Stone**. “Or that is, you can say whatever you want, but at the end of the day you can’t sell your film—the corporations and the lawyers define what the terms are.”

“Fair use is a defense,” said **Kenn Rabin**. “If someone’s suing you, you’re already in the situation where you would have to have had the money to hire a lawyer, and do all that other stuff, which is already out of the range of most filmmakers.”

Filmmakers who have used it find that they can no longer do so.

Gerardine Wurzburg noted, “Fair use has become much more carefully defined. It used to be interpreted much more loosely. Now it’s defined in a way that people can get more revenue...I don’t think you can invoke fair use anymore, unless you’re using a piece that’s going on the news that night. And as you become more visible you have to be more careful. It’s been more than five years, I would say, since I’ve invoked it.”

Wurzburg was particularly outraged at having to pay a license fee, for a film on John F. Kennedy, for the Zapruder footage of the assassination, in spite of the fact that a first-generation print was donated by the family and is now housed in a public museum. The irony here is apparent. If there was ever an example of where “fair use” should apply, this is it. Thirty-five years ago a federal court decided that although the Zapruder film was copyrighted, it could be extensively quoted in connection with a book about the assassination. In *Time, Inc. v. Bernard Geiss Associates*, 293 F. Supp. 130 (S.D.N.Y. 1968), the court ruled that “the public interest in having the fullest information available....” outweighed the copyright owner’s interest.”

Filmmakers who invoke it may find resistance from broadcasters and cablecasters they cannot fight.

In making the anti-sweatshop film *Behind the Labels*, which uses hidden-camera images from a Saipan sweatshop, filmmaker **Tia Lessin** had planned on inserting pieces from a Gap commercial to stand in juxtaposition to the sweatshop conditions in which the Gap clothing was made. “It worked very well and it was very powerful but the lawyers for the broadcast entity [Oxygen] would not let us use it because of too much liability. That’s one case where we censored ourselves, even though we thought we had a case under the fair use guidelines.” The Gap footage was removed in the final stages of the editing process, in order to prepare the film for distribution.

FILMMAKERS NONETHELESS OFTEN EXERCISE FAIR USE, EVEN IF QUIETLY.

Many filmmakers are out of compliance at some point, no matter how much they try to comply with “clearance culture” expectations. The majority of filmmakers with whom we talked also mentioned incidents in which they were out of compliance and knew it, but were unable to clear rights. They further acknowledged many instances in their own work of invoking fair use. However, most of these comments were off the record. Even filmmakers working at the very edge of the commercial documentary field refused to provide details or be quoted on this practice, for fear of litigation and, worse, becoming a pariah in the production community. Public exceptions were rare:

In making *Flag Wars*, **Linda Goode Bryant** eventually resorted to a fair use claim because of intransigence from a news channel. A local reporter had interviewed one of the film’s lead characters in the African American community who objected to gays and lesbians moving in. “And basically the TV station just came up with a whole lot of excuses. They didn’t want us to have that footage, for whatever reason. We used something else from their news broadcast on a television set. So two of our characters are watching television and the news reporter’s on and we shot that.” Bryant did not get clearance for that sequence. “We were going to ask for rights, but they would not produce [the footage]. They came up with everything from ‘We’ve misplaced it,’ to ‘We changed computer systems and the document that would tell us where it is in our archives is lost.’ It took us 6 months--from the time the reporter’s interview aired on TV to when we started requesting it--before we threw up our hands and said, Forget about it!”

Robert Greenwald noted that he was forced into a fair use claim when he made *Outfoxed*, since in making *Uncovered*, he had already found that Fox was the only network to refuse him, apparently for ideological reasons. He openly made a fair use claim for all the clips from Fox News used in his film, which critiques the news network as biased, but did so with the protection of a major legal scholar, Lawrence Lessig, and a law firm ready to defend him if necessary. Greenwald noted that in previous films, including *Uncovered*, he had gotten clearances for everything he could, because it is easier that way.

Despite all the discouragement, some filmmakers successfully and openly use fair use. Filmmakers whose films directly critique commercial culture have invoked fair use successfully. Robert Greenwald in fact was not sued by Fox (although Greenwald did say that he was concerned about getting clearances from other organizations in the future as a result of the publicity).

Lori Cheatle, who herself ran an archive before becoming a filmmaker, has expertly employed fair use in a work that critiques corporate influence in American culture, *This Land Is Your Land*. “We wanted to use some news materials we knew we couldn’t license from the companies themselves. We used commercial spots, because we wanted to illustrate an interview with Naomi Klein about how companies changed from manufacturing products to having someone else manufacture products, and then they poured their money into advertising and creating the dream. The products became like props. It was very difficult to license a commercial spot, but it was an important point. We were advised that it was within fair use.”

John de Graaf used commercials in *Affluenza*, realizing there was a risk, and has not run into problems to date. He taped ads from the Superbowl and used newspaper ads, never using the entire ad. In *Affluenza*, he took tiny clips from many commercials and showed them in quick succession as a way of showing that we are being bombarded with images daily.

When faced with altering a project due to clearance troubles, **Jane Wagner** will consider using material with a fair use defense, although she gets legal advice. For example, she completed an ITVS funded series for PBS called *The Question of Equality: Culture Wars* (1995) using excerpts from *The 700 Club* and footage of Jerry Falwell under fair use.

Tia Lessin, both in her own work and as a producer for Michael Moore, has scrupulously researched her own invocations of fair use, and has employed it consistently. She estimated that 45 percent of *Bowling for Columbine* was acquired footage, much of which was cleared. However, there were sequences that were not, like one montage of local news anchors warning about black male criminal suspects. The clips, in this context, were used to show racism in the media. Lessin argues, "This is exactly why fair use exists, for critical uses like this." She continued, "The worst thing an artist can do is limit their own speech. You should certainly be aware of the law and the limits involved, but when you're making a critical statement, you've got to give yourself the leeway to do it. On the other hand you can't just include music or footage because it's pretty or because it's going to add production value to a piece if there isn't an underlying satirical or critical reason to do so."

Vivian Kleiman (editor, *Tongues Untied*, *Color Adjustment*) has successfully invoked fair use and even survived legal challenges without much cost. For example, a section of a film she worked on, *Black Is . . . Black Ain't*, by Marlon Riggs, discusses representation and identity issues in the media. For that short sequence of the hour-and-a-half documentary, Kleiman turned to the fair use doctrine. The copyright holders argued against Kleiman's use of their footage, "but when they received the letter from our attorney, they backed down pretty quickly," she said.

In *Six O'clock News*, **Ross McElwee** "used local news TV clips, but since my films was, among other things, a critique and analysis of the role of local news programming in the national psyche, the clips were used under 'fair use' and were never challenged - even after the film was shown on [PBS documentary series] *Frontline*."

Jack Walsh sought legal backup for his fair use claim. "*Hope along the Wind: The Life of Harry Hay* is a case where we went this route. We took a position on CBS News. It was a psychiatrist from a CBS film, on how homosexuality is an epidemic. I copied it off the air, we went to get the rights, and they said no, and we said, why, and they said we have a restriction on those rights, so we wanted the clip, and our issue was errors and omissions insurance, which we couldn't get without a legal read. Through Vivian Kleiman, we got the attorney she used for *Color Adjustment*. He looked at it, and he wrote a six-page opinion for this clip that's maybe 10 seconds. And because we had that, the insurance company approved it."

Despite the universal concern and frustration over music rights and about background music in particular, some filmmakers have been able to assert fair use when encountering found sound while filming.

Maria Finitzo invoked fair use when she was making the film *5 Girls*, which follows five teenage girls through their daily lives. The girls were often listening to music. When she talked to a lawyer and someone at PBS or CPB, she told them how they were using the film; they were able to claim fair use for the footage.

Finally, fair use may be more commonly used than people are willing to admit, precisely because of the surrounding legal ambiguities. The majority of filmmakers interviewed discussed or referred to, off the record, invocations of fair use that they refused to specify or go on the record about, for fear of attracting legal attention. A few, such as David Van Taylor, openly discussed their concerns:

“Basically, we do that [invoke fair use] if you are using it for an educational purpose or are using it to comment on or criticize the copyrighted material itself and you are not using it in a way that is directly competing with the exploitation of the copyright for other (commercial) uses.” But it’s risky. “Not clearing something is always a risk. But if you go to someone and ask for permission then they say, you can’t, or it’ll cost you a lot of money, then it weakens your case for fair use because by going to them you are admitting that you think that you need their permission in the first place. Fair use is a crap shoot because it really depends on the attitude of the particular companies that hold the rights.”

Some filmmakers believe that asserting fair use is an important act to expand opportunities for filmmakers themselves. Sam Green (*Weather Underground*) said, “It’s like a muscle. You have to use it.”

FILMMAKERS HAVE AN UNEXPRESSED CONSENSUS AROUND NOTIONS OF FAIRNESS, WHICH STAYS WELL WITHIN THE TERMS OF CLEARANCE CULTURE BUT THAT HINTS AT HOPE FOR IMPROVEMENT.

In the course of their conversations, filmmakers frequently alluded to terms they regard not merely as onerous, but in a deeply felt way, unjust. That did not mean they believed conditions could or should be changed; filmmakers typically endorsed the status quo, however frustrating for them.

First, filmmakers noted ways that they thought, in a better world, the high cost and the ambiguity of rights clearance might be mitigated. For instance, filmmakers regularly expressed the hope that rights holders would take into consideration the scope, budget and purpose of a project.

“For documentaries and public TV and all sorts of things that are not primarily commercial--they’re nonprofit organizations, they’re funded by foundations, not by investors and so forth--this can get very problematic,” said **John de Graaf**, “because the foundations don’t want to see their limited money going just to lawyers to make contracts, they want as much as possible to go into production.”

Maria Finitzo, an independent documentarian (*5 Girls*) who has worked with Kartemquin Films, noted, “While I believe it is important for musicians to be paid for their work, it would be great to have a different scale for documentary filmmakers so creatively might have more options.”

They also believed that incidental music, signs and other evidence of mass culture should not have to be licensed for verité scenes (or, alternatively, struck from them).

Vivian Kleiman noted that avoiding incidental music is almost impossible. “How can I, as a documentary filmmaker who is documenting my reality or somebody’s reality, be restricted from using music? It’s like saying I can’t film the clouds.”

They also believed that in some situations, especially the retelling of history, that there should be some way to recognize the rights of the society and later generations to historically-critical material.

Kenn Rabin, after an arduous and inconclusive battle with the Martin Luther King, Jr. estate, said, “I didn’t really believe they had the right to go back 30, 40 years in time and trademark or copyright this material after all these years. I thought that they had the right to copyright the underlying literary rights to his speeches, and I was willing to pay literary rights to the text of the speech that he was making in the clip.”

“We live in a visual culture and history is told visually,” said **Sam Green**. “Those who own images should not be allowed to control that power in a way that keeps people from using them. I’m not advocating that people be able to use any footage for free, because they are valuable items and people should pay a reasonable amount of money” for the hard work that the filmmakers have done. But he feels that historically important images should be able to be used by filmmakers.

Implications

The thicket of rights documentary filmmakers confront, and the clearance culture that generally shapes their responses, have significant implications for the work of documentary filmmakers. These rights practices consume time that might be better spent on the creative enterprise of the film itself, and sap already-strained budgets. More importantly, filmmakers often shape their film projects to avoid the problem of rights clearance, omitting significant details. On some occasions, the avoidance of clearance problems may help to dictate filmmakers’ choices of subject-matter, influencing them (for example) to avoid projects involving current events or modern history – which tend to be minefields rather than mere thickets because strict compliance through licensing is required.

Filmmakers in this study demonstrated both that they highly respect intellectual property rights and also find them a significant creative impediment. They universally showed themselves to be professional and scrupulous in honoring the need to clear rights to work cited in their own work. They also demonstrated insecurity and/or lack of knowledge about current law and specifically their own rights as creators. Although a minority of filmmakers appears to be asserting the use rights that current law affords them, many more do not—at least publicly. Many who in fact invoke them are afraid to admit to doing so publicly, for fear of drawing attention and legal

action, whether frivolous or not—thus robbing the recourse of fair use from public precedent. Fear is amplified by rigid policies they encounter on the part of gatekeepers.

Recommendations

Our recommendations fall into three categories:

- Making the most of fair use;
- Facilitating the clearance process;
- Building greater awareness of filmmakers' use rights.

MAKING THE MOST OF FAIR USE

Is fair use in copyright worth defending? Its utility recently has become controversial. Currently, respected critical analysts of the copyright system such as Prof. Lawrence Lessig (most notably in his 2004 book *Free Culture* and his congressional testimony the Digital Media Consumers Rights Act) have argued that fair use doesn't strike an adequate balance in copyright law. The statutory formulation, they say, is too vague and open-ended to be relied upon effectively; its real utility is severely limited because fair use claims can be tested only after the fact of use and then only when a creator relying on the doctrine is able to retain legal counsel and willing to expose himself or herself to considerable economic risk in the event that the defense fails. Prof. David Lange, in turn, has speculated about the possibility of new legislation that would supplant fair use and lighten the burden of copyright clearance on documentary filmmakers by providing them with a special "compulsory license" (see the webcase of the April 2, 2004 legal panel from the "Full Frame" conference at www.law.duke.edu/framed).

Evidence in this study suggests, however, that fair use-based strategies generally have been successful for those who employ them. We also believe that a general guideline such as the fair use doctrine, interpreted on a case-by-base basis, offers creators more opportunity than any more narrowly drafted new legislative exception. However reasonable and unthreatening proposals like Prof. Lange's may be in fact, there is little likelihood that the motion picture or music industries, who exercise considerable sway in these matters, would tolerate their enactment.

In any case, filmmakers must work with the tools they have, and it may be possible to sharpen them. This observation leads recommendations that we regard as the most important to emerge from this project.

Development of "Best Practices"

The development and dissemination of models of "best practices" for the incorporation of preexisting copyrighted materials by documentary filmmakers, based on collective discussions by distinguished creators of the ways in which they actually do and reasonably could use such materials, consistent with the law. The imprimatur of leading professional associations on such models would provide crucial legitimacy.

We believe that a comprehensive and balanced statement of this kind on documentary practice and fair use would have the following purposes:

- 1) To encourage filmmakers to rely upon fair use where appropriate,
- 2) To persuade gatekeepers to accept well-founded assertions of fair use in place of affirmative rights clearance,
- 3) To discourage copyright owners from threatening or bringing lawsuits relating to documentary projects, and
- 4) In the unlikely event that such suits were brought, to provide the defendant with a basis on which to show that her or his uses were both objectively reasonable and undertaken in good faith. As a practical matter, such demonstrations probably count more than any other showing that a copyright defendant can make in asserting fair use.

The “best practices” approach has been used with some success in other disciplines. A relevant example is the 1993 Society for Cinema Studies Report on “Fair Usage Publication of Film Stills,” in 32 *Cinema Journal* at 3 (1993), which proved instrumental in persuading publishers to relax their strictures on rights clearances for frame reproductions and other stills in film scholarship. A more recent case, somewhat farther afield, is the library community’s statement on “Electronic Reserves and Fair Use” (2003), at ar1.org/newsltr/232/ereserves.html

Nevertheless, it is essential to be prepared in case of litigation, and that necessity is the basis of our second recommendation:

Legal Resource Centers

The establishment of one or more “legal resource centers” to provide free or low-cost defense to documentary filmmakers (and other creators) who have been sued for copyright infringement despite good faith reliance on fair use; these could be variously housed, either in combination with the facilities for pre-production legal advice recommended below, or separately.

As a practical matter, especially in light of what we believe is the low likelihood of actual litigation challenging documentary filmmakers practices under a code of agreed-upon best practices, the legal resource centers we recommend would have to offer services not only to filmmakers but to a wide range of other artists and scholars – many of whom work in areas associated with considerably higher vulnerability to legal attack.. The mere availability of such free or low-cost defense services to filmmakers, however, should help to effectively warn off potential copyright plaintiffs.

FACILITATING THE CLEARANCE PROCESS

Making it easier for filmmakers to do so would reduce costs and encourage creative work. In particular, being able to track down ownership of what are sometimes called “orphan works”—older snapshots, commercial and industrial films, historic advertising art, for example—would be of great aid. Two approaches would help:

- 1) A non-profit rights clearinghouse to which filmmakers could turn for advice and (where necessary) assistance in identifying rights-holders. By its nature, such an office could increase the ability of filmmakers to deal effectively with those rights holders with whom

they must or should attempt to negotiate.

- 2) A legislative solution to the problem of orphan works, benefiting not only filmmakers but many other classes of contemporary creators and scholars. Several models for such legislation are under discussion.

BUILDING GREATER AWARENESS OF FILMMAKERS' USE RIGHTS

Filmmakers would benefit from access to reliable information and expert legal advice generally, and particular in the early stages of the process through which a documentary project is developed. Gatekeepers would also benefit from a better understanding of generally prevailing legal rules. We therefore recommend:

- 1) An initiative to make pre-production legal advice more generally available, not only to filmmakers with established reputations and significant budgets, but to rising professionals as well. This might take the form of a free-standing advice center; alternatively, services could be offered through existing legal clinics.
- 2) A campaign to educate gatekeepers about limitations on intellectual property, directed at funders, broadcasters, DVD distributors, and others. This might take the form of workshops or other invitational meetings at which various gatekeepers were brought together with legal experts and legally sophisticated filmmakers to discuss the problem of the clearance culture.
- 3) The development of learning materials--a handbook, website and/or study exercises--to provide a balanced general account of intellectual property, emphasizing the various use rights that are built into current legal structures in various doctrinal areas (trademark, right of publicity, copyright), with a particular emphasis on documentary practice. Such documents could be used in university-based film programs and other professional training activities. Filmmakers-in-training could benefit from information that, besides explaining rights clearance requirements, also emphasizes the use rights that creators enjoy under intellectual property doctrines such as copyright 'fair use,' discusses historical precedent such as some of those uncovered in this study, and suggests the use of tools such as the models of best practices recommended above.

WHAT WE ARE NOT RECOMMENDING

It is important to emphasize that we are not suggesting that documentary filmmakers, supported by pro bono counsel, should seek out opportunities for "test case" litigation, at least at this time. Current case law is unsettled, see *Elvis Presley Enters. v. Passport Video*, 349 F.3d 622 (9th Cir 2003). Testing its limits at this time would be a high-risk proposition. In our view, if filmmakers ever should choose to do such litigation, they should first lay down a stronger foundation of agreed-upon principles and actual good practices before judicial clarification is sought.

Conclusion

These measures, taken as a whole, provide a commercially practical, politically practicable way to address the deformities in creative practice that currently plague independent production. They focus specifically on documentary work, but they do not presume that documentary filmmakers

are a separate species of creator. Indeed, just the opposite. Documentarians offer specifically egregious examples of the consequences of abuses, accidentally created or not, of an unbalanced legal and customary regime of intellectual property management. The import of these measures should extend to independent creative production of any kind. Independent producers of audio-visual material can be re-enfranchised as legitimate voices of a culture that is pervaded by commercial claims to intellectual property, but not defined entirely by them.

We welcome feedback on this report at socialmedia@american.edu.

Filmmakers Interviewed

(Biographies available on the web at <http://centerforsocialmedia.org/rock/filmgallery.htm>)

| | |
|--------------------|-------------------------------|
| Daniel Anker | Jan Krawitz |
| Mirra Bank | Jeff Krulik |
| Mitchell Block | Tia Lessin |
| Peter Broderick | Ross McElwee |
| Linda Goode Bryant | Ron Merk |
| Lori Cheattle | Scott Michnick |
| Katy Chevigny | Mark Moskowitz |
| John de Graaf | Gordon Quinn |
| Alice Elliott | Kenn Rabin |
| Jon Else | Kevin Rafferty |
| Maria Finitzo | Nancy Schiesari |
| Peter Gilbert | John Sorensen |
| Erica Ginsberg | Meema Spadola |
| Jill Godmilow | Ellen Spiro & Karen Bernstein |
| David Gray | Robert Stone |
| Sam Green | Karen Thomas |
| Robert Greenwald | Jeff Tuchman |
| Grace Guggenheim | David Van Taylor |
| Karin Hayes | Jane Wagner |
| Aviva Kempner | Jack Walsh |
| Judy Kinberg | Chris Wilcha |
| Vivian Kleiman | Gerardine Wurzburg |
| Rena Kosersky | |

We also thank other filmmakers who conversed with us more informally about this project, including Douglas Block, Nancy Kates, Linda Morgenstern, Pam Yates and other filmmakers who both shared insights and helped us connect with our interviewees.

Further Resources

For more information, please visit the “Untold Stories” page on the Center for Social Media website at:

<http://www.centerforsocialmedia.org/rock/resources.htm>

Here you can find:

- Complete report;
- Recommendations;
- Complete summaries of interviews with filmmakers;
- Filmmaker biographies;
- Questionnaire and information for interviewers;
- *Stories Untold*, a short film by Brigid Maher.

This report is also available on DVD, which includes as well the summaries of all interviews, short film *Stories Untold* by Brigid Maher, and video interviews with several of the filmmakers interviewed for the study. For DVD copies, please contact socialmedia@american.edu.

As well, for feedback on this report, please write socialmedia@american.edu.