NEW EXPANDED EDITION

keith AOKI
james BOYLE
jennifer JENKINS

DUKE
CENTER FOR THE STUDY OF THE PUBLIC DOMAIN

TALES FROM THE PUBLIC DOMAIN

BOUND BY LAW?

TRAPPED IN A STRUGGLE SHE DIDN'T UNDERSTAND

BY DAY A FILMMAKER...

BY NIGHT SHE FOUGHT FOR FAIR USE!

WITH A NEW FOREWORD BY DAVIS GUGGENHEIM
AND A NEW INTRODUCTION BY CORY DOCTOROW

Foreword

by Davis Guggenheim, Academy Award-winning director
of the documentary "An Inconvenient Truth"

As a director and producer of both commercial and non-commercial projects, I find myself on both sides of the war that rages around copyright and the public domain. In my last movie, "An Inconvenient Truth," we had a terrible time clearing footage of all kinds. Simply finding the source and status of archival footage nearly brought my production to its knees. We faced stressful and urgent questions like: Who owns this? Will anyone who thinks they own this sue me? Even though it was considered public domain ten years ago, is there a possibility someone might claim this? Will the lawyers for the production company and studio accept the conclusion I have carefully drawn and allow me to use it in the film? I have lost many shots and sequences because I wasn't able to answer these questions.

The worst example of this happened when I was making a film called "The First Year," a documentary which followed five teachers through their treacherous first year of teaching public school. In the climactic scene, one of the teachers, who is taking his kids on a field trip for the first time, hears the song "Stairway to Heaven" by Led Zeppelin. It is both funny and tragic when he announces to his kids, "This is the greatest song ever written," as he cranks the volume in his rental van. He is possessed with joy, expressing himself for the first time to his students. They are simply bored. Everything in the movie leads up to this moment and when audiences see this scene, they laugh and cry at the same time because it is touching and tragic. But most audiences don't get to see this scene in the film. On the DVD, which is still for sale, that scene has been omitted because I have not been able to secure the rights to "Stairway to Heaven." Through archaic loopholes I could use the song in festival screenings and on PBS, but when it came to any commercial use I was forbidden to use it. Not because I couldn't afford to license the song, but because I could never find the rights holders or their representatives (of which there are many, which is another sad story).

Ten years ago, I would have used the song, citing fair use. Now lawyers for distributors are scared about the chance, just the chance, of a claim against the movie. The problems are twofold. The first is the diminishing world of fair use as the mainstream legal world interprets it. In real terms this means that now when I lift my camera and look through the lens, there is less and less that is free to use: do I have to clear that soda can, that poster, that car or that highrise? What happens to our culture when some of us can pay and others can't?

The other disturbing thing is the uncertainty of it all. Even most legal

experts who work on the issue have to roll the dice trying to interpret where the current line of fair use is drawn. You can feel the handwringing when we propose even the most rock solid interpretation to an errors and omissions lawyer. The truth is that most of us just don't know. And that not knowing means that the most stringent interpretation wins. No responsible lawyer wants to expose his client to the possibility of a lawsuit, even if it's only an outside chance.

And so, wonderful moments of magic are cut from movies—simple ones and profound ones. But this doesn't have to happen. Creative Commons helps artists who want to protect their work and to clearly define the way in which their work can be shared. And this wonderful, funny and clever comic makes a very complex issue simple for people like me to understand. I keep a copy in my desk, for when I get confused.

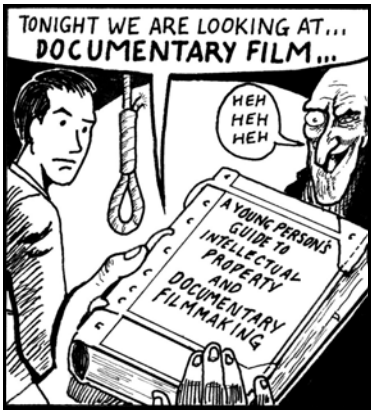
Introduction

by Cory Doctorow, award-winning science fiction author
and co-editor of the blog Boing Boing

Who owns photons? When your camera opens its aperture and greedily gobbles all the light reflecting off the surfaces of buildings, faces, t-shirts, paintings, sculptures, movies, and photos, are you breaking the law? Does your camera's mic infringe when it captures the perturbations made by speech, song and soundtrack?

If these seem like silly questions, blame the law, not the questions. Copyright, a system that is meant to promote creativity, has been hijacked by a few industrial players and perverted. Today, copyright is as likely to suppress new creativity as it is to protect it.

Documentary filmmakers have it tough. The job of a good documentary is to *document*: to set down on video the world as it exists, to tell the story of the world, to lay bare its bones and its deeds.



With every passing year, documenting the world gets more fraught.

Everyone, it seems, has his hand out, asking for a license to merely recount the truth: this billboard stands over that city, this logo appears on that man's t-shirt, this TV program was playing when this event took place.

Some of them don't just want you to take a license. Some of them don't want you to report on them at all.

What's a filmmaker to do?

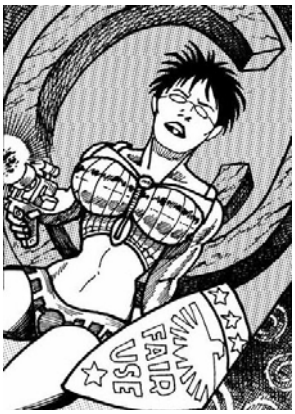
Before copyright, there was patronage. You were allowed to make art if the Pope or some duke could be convinced that you had a good idea. This generated some lovely ceilings and frescos, but it wasn't exactly democratic.

Copyright industrialized the practice. Now art could be made if an artist could convince a wealthy industrialist that the exclusive right to market the work was worth funding its production. This radically decentralized the decision-making process for art: there are lots more industrialists than Popes, after all.

Today, the industrialists have reinvented themselves as Popes and dukes and kings. If you're signed to a big label—if you have the patronage of a king—that label will clear your way to using samples from the other labels' catalogs in your songs. If you're an indie, forget about it.

If you're a filmmaker working for a big studio, you've got rabid packs of attack-lawyers at your disposal, employed to go forth and negotiate your licenses when you need them. Or even when you don't need them: if you're a studio lawyer, it makes sense to act as though even the most casual or attenuated reproduction requires a license—that way, people will pay you for licenses to your employer's works, too.

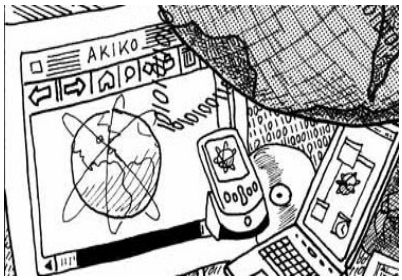
If you're an indie, this leaves you out in the cold. You're not on the inside, you don't have white-shoe attorneys standing by to negotiate your "use" of the logo on the shirt of a guy caught on video in a riot.



This isn't how copyright is supposed to work.

This isn't how copyright works. If you've got lawyers on your side and you're willing to fight, you're likely to find that most of the uses that someone wants you to pay for

are in fact permitted without payment or permission, under the doctrine of "Fair Use." But chances are, if you can't afford a license, you can't afford the lawyer to prove that you don't need to pay for the license.



And yet, at this moment, the cost of raw materials of documentary making are in free-fall. Last year's editing suites are being replaced by this year's laptops—the $1500 laptop I'm typing this on has more RAM, processor and hard-drive than the $100,000 Avid suite I used to babysit at a documentary film-house. Democracy Player and Dabble, YouTube and Google Video, the Internet Archive and Dijjer are the leading edge of a movement to make sharing video free and easy. Our pockets bulge with devices that let us watch low-resolution, short videos wherever we are—the perfect small screen for the indie documentary.

Copyright law might work well when it's practiced by corporate attorneys from Fortune 100 companies, but once it impinges on the normal activity of creative people documenting their world, it creates more problems than it solves.

This is a sensible book about a ridiculous subject. It's an example of the principle it illustrates: that taking from the culture around us to make new things is what culture is all about, it's what culture is for. Culture is that which we use to communicate.

The comic form makes this issue into something less abstract, more concrete, and the Duke Public Domain folks who produced this have not just written a treatise on copyright, they've produced a loving tribute to the form of comics.

It's a book whose time has come. Read it, share it. Get angry. Do something. Document your world.

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Aoki, Keith, 1955–
Bound by law? : tales from the public domain / Keith Aoki, James Boyle, and Jennifer Jenkins —New expanded ed.
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1. Fair use (Copyright)—United States—Caricatures and cartoons. 2. Public domain (Copyright law)—United States—Caricatures and cartoons. 3. Copyright—United States—Caricatures and cartoons. I. Boyle, James, 1959–. II. Jenkins, Jennifer.
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WELCOME TO THE CENTER... THE CENTER FOR THE STUDY OF THE PUBLIC DOMAIN.
TONIGHT WE ARE DISCUSSING A SUBJECT THAT MAKES STRONG MEN AND WOMEN TREMBLE. OUR SUBJECT IS NOT DEATH OR EVIL...OOO
THE CATHEDRAL AND THE BAZAAR
SHAMANS, SOFTWARE AND SPLEENS
WHAT IS AN AUTHOR?
CODE AND OTHER LAWS OF CYBERSPACE
THE LESTER V. ANDTHE NINE BALL
COPYRIGHT AND COPYWRONGS
THE CULTURAL LIFE OF INTELLECTUAL PROPERTY
THE CENTRAL LIFE OF INTELLECTUAL PROPERTY
THE AUTHOR, ART AND THE MARKET
THE ANARCHIST IN THE LIBRARY
THE UNINTENDED WAY OF COPYRIGHT
ARCHIVES
OUR SUBJECT IS...
CREAK
THE LAW!!
PLEASE DO COME IN...


EACH EPISODE IN OUR LITTLE SERIES ABOUT THE ARTS WILL EXAMINE ONE PORTION OF A LEGAL BOUNDARY, A KIND OF TWILIGHT ZONE.
THIS IS THE LINE BETWEEN INTELLECTUAL PROPERTY AND THE PUBLIC DOMAIN,
THE MYSTERIOUS REALM WHERE MATERIAL IS FREE FOR ALL TO USE WITHOUT PERMISSION.
OUR GUIDES, TWO OBSCURE FIGURES WHO DWELL IN THESE SHADOWS...
WHOSE LIVES ARE SPENT IN AN OBSESSIVE QUEST TO CHART THIS LINE, ALMOST AS IF THEY WERE CONDEMNED BY SOME GHASTLY CURSE TO BE THE MAPMAKERS OF LIMBO.
CREAK
REVEAL YOURSELVES PLEASE!!
CREAK
CLICK CLACK
CLICK CLACK
CLICK CLACK
CLICK!
HI
HI


AND WHICH OF THESE ARTS SHALL WE DISCUSS TONIGHT?
WILL IT BE MUSIC?
OR ANIMATION?
WILL IT BE COMIC BOOKS?
Pink Panther
NO...
TONIGHT WE ARE LOOKING AT THE PLACE WHERE ART MEETS HISTORY, WHERE REPORTING MEETS THE FEATURE FILM...
TONIGHT WE ARE LOOKING AT... DOCUMENTARY FILM...
HEH HEH HEH
A YOUNG PERSON'S GUIDE TO INTELLECTUAL PROPERTY AND DOCUMENTARY FILMMAKING
CRUMB
SHOAH
Harlan County USA
ACADEMY AWARD WINNER!
A FILM BY SPIKE LEE
4 Little Girls
WOODSTOCK
Depeche Mode
SO, TO BEGIN...

DOCUMENTARIES ARE RECORDS OF OUR CULTURE. BUT OUR CULTURE IS FULL OF ARTIFACTS PROTECTED BY INTELLECTUAL PROPERTY RIGHTS --MUSIC, IMAGES, PHOTOGRAPHS.

FILMMAKERS ARE SOMETIMES ASKED TO CLEAR RIGHTS TO THESE CULTURAL FRAGMENTS, EVEN IF THEY APPEAR ONLY INCIDENTALLY.

"CLEARING RIGHTS" IS THE PROCESS OF FINDING THE RIGHTS HOLDER, AND GETTING PERMISSION OR PAYING TO USE MATERIAL.

BUT DOCUMENTARIANS ARE NOT MERELY IN THE POSITION OF DEALING WITH OTHER PEOPLE'S RIGHTS, THEY'RE ALSO IN THE POSITION OF ASSERTING THEIR OWN -- THEY MAY WANT TO RECEIVE PAYMENT, OR PREVENT CERTAIN USES OF THEIR FOOTAGE.

HOW SHOULD THE LAW DRAW LINES BETWEEN FILMMAKERS' NEED TO PORTRAY A CULTURE FULL OF LEGALLY PROTECTED MATERIAL, AND THEIR DESIRE TO PROTECT THEIR OWN WORKS?

LET'S HEAR FROM A FILMMAKER

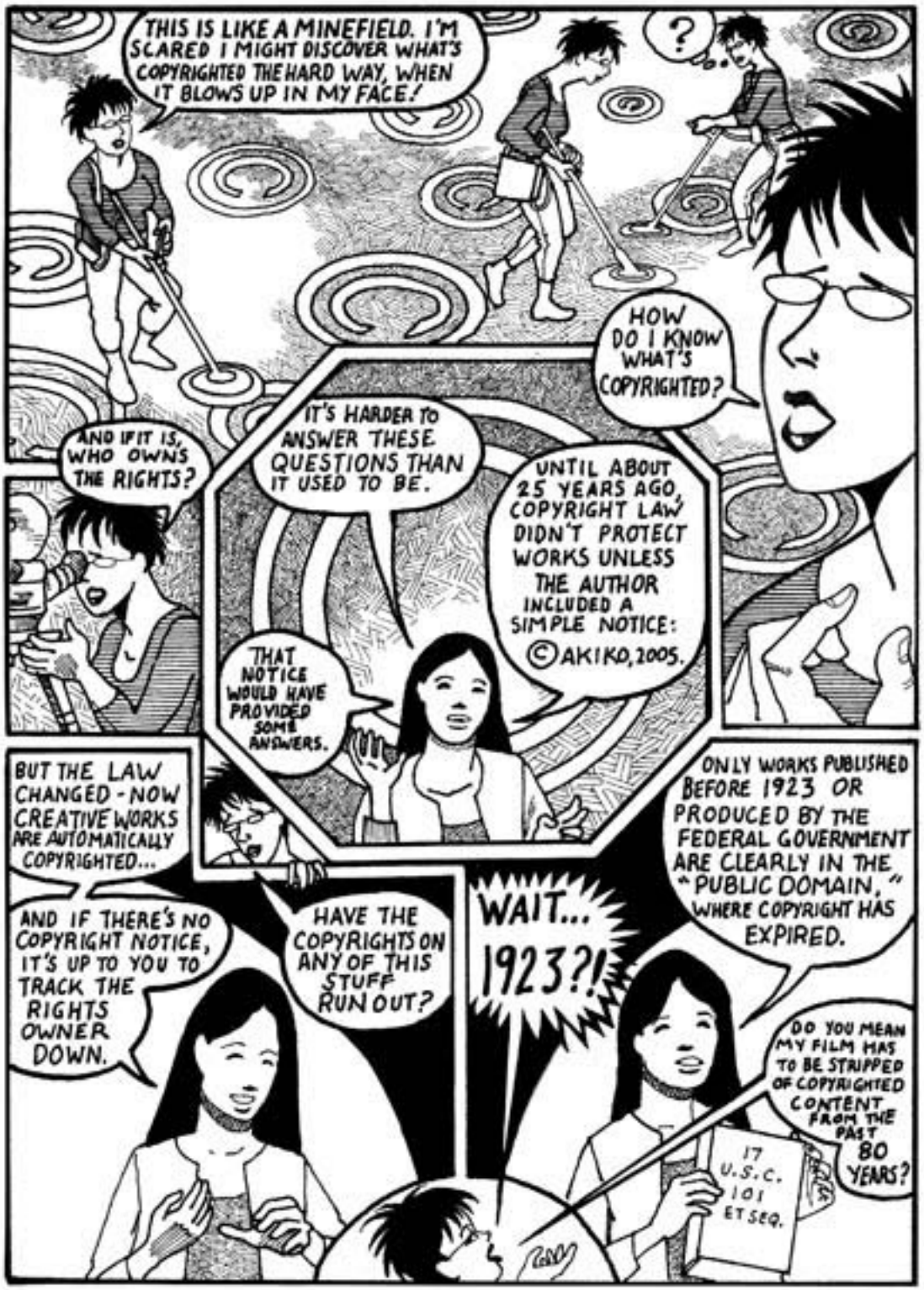
MEET AKIKO...

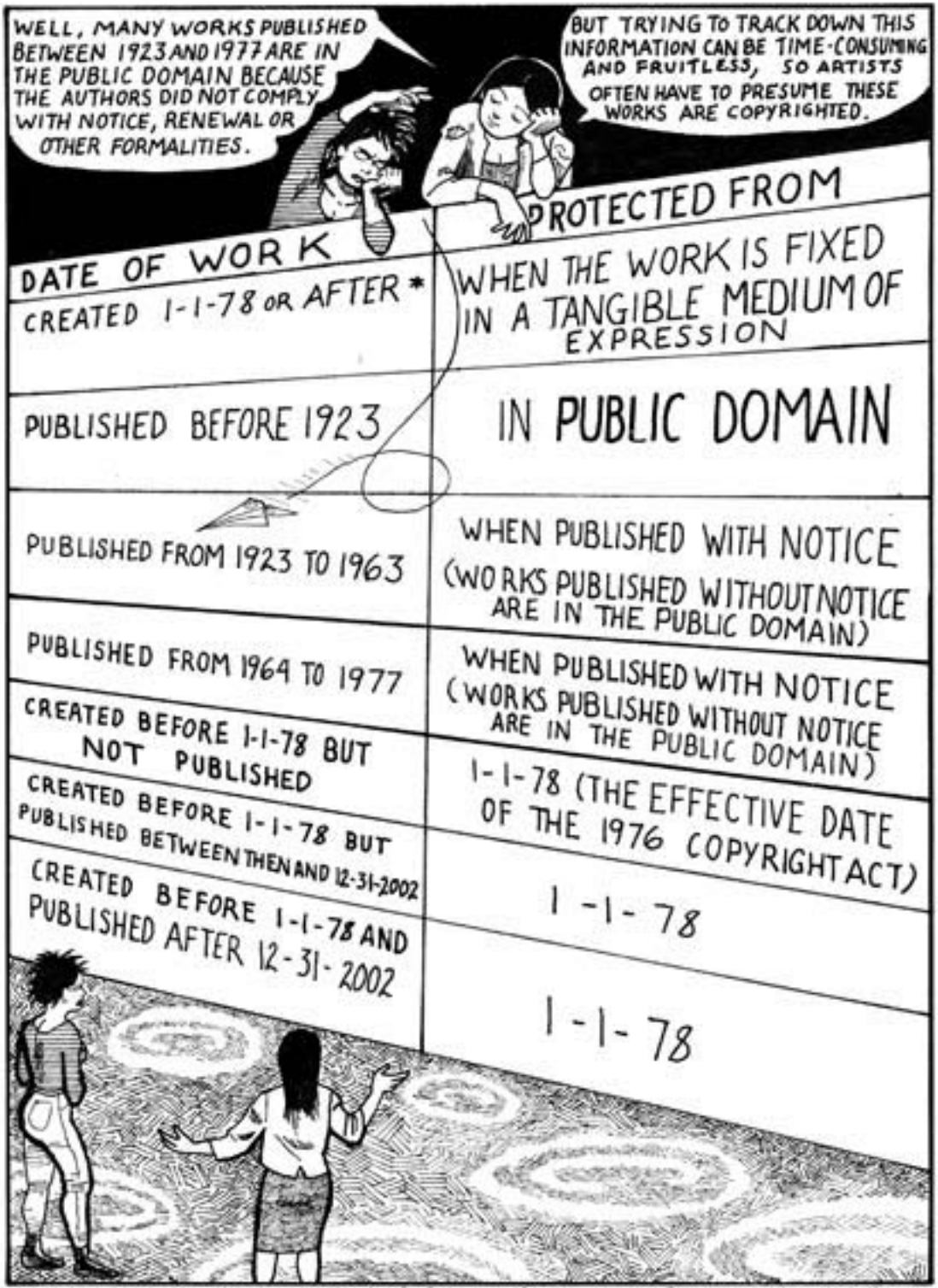

HI! I WANTED TO MAKE A FILM CAPTURING A DAY IN THE LIFE OF NEW YORK.
I KNOW, NEW YORK'S SUCH A BROAD CANVAS...
MY DOCUMENTARY WOULD LET THE CITY SPEAK FOR ITSELF
SCRIPT
THE GAPS BETWEEN RICH AND POOR, THE MIX OF "HIGH" AND "LOW" CULTURE -- THE HUMAN COMEDY (OR IS IT TRAGEDY?)


CATS
CATS
CATS Winter Garden
LET THE MEMORY LIVE AGAIN...
...EX NIHILO
BROADWAY THEATRES...
ART GALLERIES...
SUBWAY GRAFFITI...
I GUESS THAT'S OK...
JAZZ BUSKERS...
LEXINGTON AV
8619
I ♥ NY
DO I NEED TO CLEAR RIGHTS?

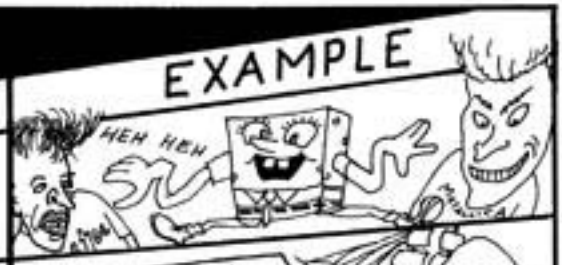

THE SIGHTS AND SOUNDS OF THE CITY...
©
©
©
EXIT
PRETTY WOMAN WALKIN' DOWN THE STREET
FRANKFU
HAMBU
I DID IT MY WAY...
PAINTINGS, MUSIC, SCULPTURE... IS ALL THIS STUFF COPYRIGHTED?


SING US A SONG YOU'RE THE PIANO MAN...
BOOM
AH HA HUSH THAT FUSS...
BOOM
HAPPY BIRTHDAY TO YOU
Budweiser
WILL I BE ABLE TO KEEP THESE MOMENTS? OR WILL THEY HAVE TO COME OUT?


THIS IS LIKE A MINEFIELD. I'M SCARED I MIGHT DISCOVER WHAT'S COPYRIGHTED THE HARD WAY, WHEN IT BLOWS UP IN MY FACE!
?
HOW DO I KNOW WHAT'S COPYRIGHTED?
AND IF IT IS, WHO OWNS THE RIGHTS?
IT'S HARDER TO ANSWER THESE QUESTIONS THAN IT USED TO BE.
UNTIL ABOUT 25 YEARS AGO, COPYRIGHT LAW DIDN'T PROTECT WORKS UNLESS THE AUTHOR INCLUDED A SIMPLE NOTICE: ©AKIKO, 2005.
THAT NOTICE WOULD HAVE PROVIDED SOME ANSWERS.
BUT THE LAW CHANGED - NOW CREATIVE WORKS ARE AUTOMATICALLY COPYRIGHTED...
ONLY WORKS PUBLISHED BEFORE 1923 OR PRODUCED BY THE FEDERAL GOVERNMENT ARE CLEARLY IN THE "PUBLIC DOMAIN," WHERE COPYRIGHT HAS EXPIRED.
AND IF THERE'S NO COPYRIGHT NOTICE, IT'S UP TO YOU TO TRACK THE RIGHTS OWNER DOWN.
HAVE THE COPYRIGHTS ON ANY OF THIS STUFF RUN OUT?
WAIT... 1923?!
DO YOU MEAN MY FILM HAS TO BE STRIPPED OF COPYRIGHTED CONTENT FROM THE PAST 80 YEARS?
17 U.S.C. 101 ET SEQ.



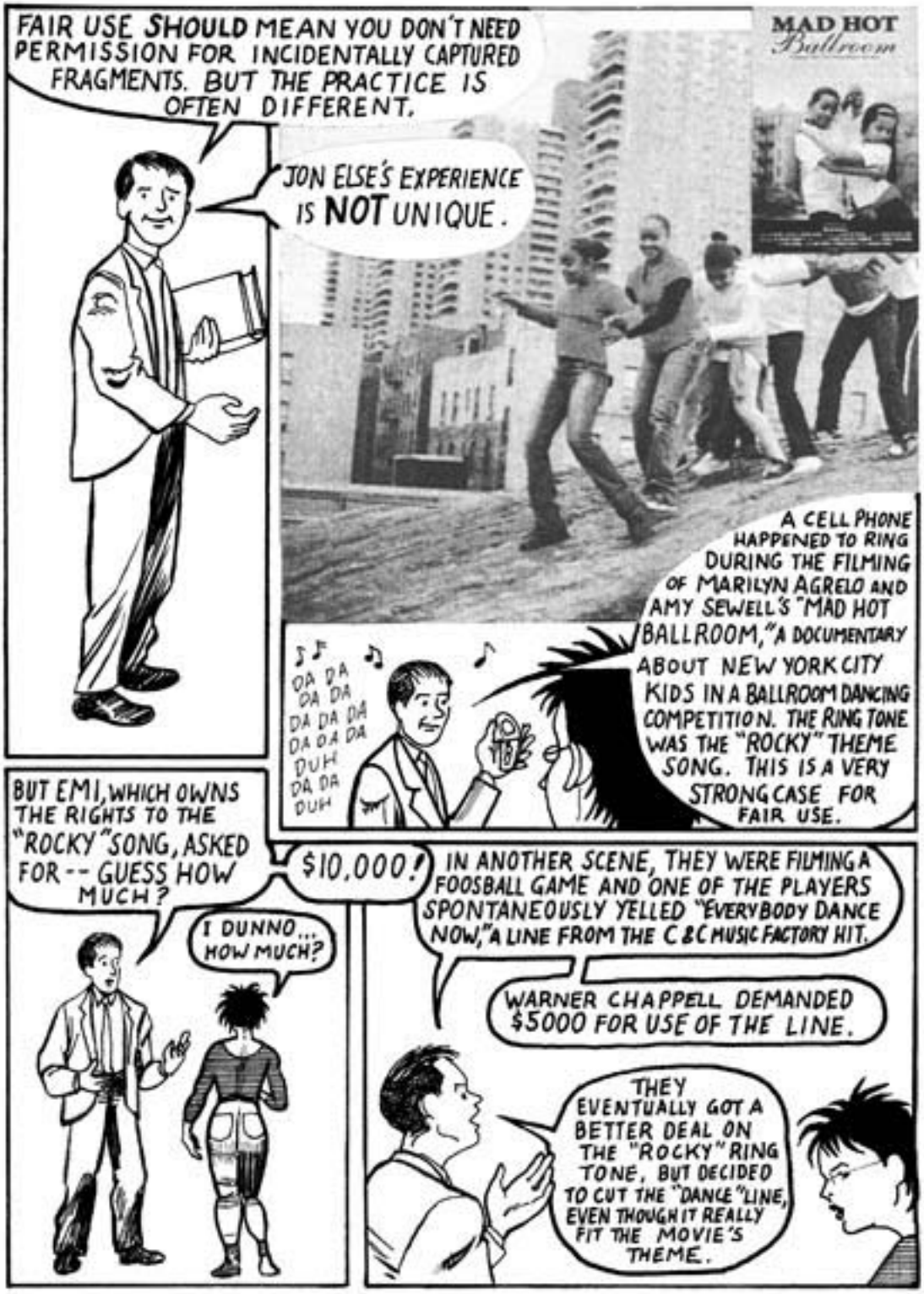
*WORKS PUBLISHED WITHOUT NOTICE BETWEEN 1-1-78 AND 3-1-89 RETAINED COPYRIGHT ONLY IF THE OMISSION OF NOTICE WAS CORRECTED.

TERM OF PROTECTION	EXAMPLE
LIFE OF AUTHOR + 70 YEARS (FOR WORKS OF CORPORATE OR ANONYMOUS AUTHORSHIP THE SHORTER OF 95 YEARS FROM PUBLICATION OR 120 YEARS FROM CREATION)	
NONE	
95 YEARS AFTER PUBLICATION DATE; HOWEVER IF COPYRIGHT WAS NOT RENEWED, WORK IS NOW IN PUBLIC DOMAIN	
95 YEARS AFTER PUBLICATION DATE	
LIFE + 70 YEARS	
LIFE + 70 YEARS, OR 12-31-2047, WHICHEVER IS GREATER	
LIFE + 70 YEARS	

* BASED ON PROFESSOR LOLLY GASAWAY'S CHART "WHEN U.S. WORKS PASS INTO THE PUBLIC DOMAIN."


SO THE ONLY WAY I CAN USE COPYRIGHTED WORKS WITHOUT PERMISSION IS TO FIND OUT WHETHER THEY'RE IN THE PUBLIC DOMAIN?
NO, THERE ARE EXCEPTIONS BUILT INTO COPYRIGHT LAW SUCH AS "FAIR USE" - WHICH PERMITS USES FOR CRITICISMS, COMMENTARY AND OTHER PURPOSES...
FLEETING AND INCIDENTAL USES OF COPYRIGHTED MATERIAL SHOULD USUALLY BE FAIR ... BUT RIGHTS HOLDERS, DISTRIBUTORS AND INSURERS CAN BE CONSERVATIVE ABOUT WHAT'S FAIR, AND REQUIRE CLEARANCES ANYWAY.
SO TO MANY ARTISTS THE QUESTION OF "FAIR USE" CAN SEEM LIKE A GAME OF BLIND MAN'S BLUFF...
OR A SURREALIST GARDEN OF INTELLECTUAL PROPERTY DELIGHTS.

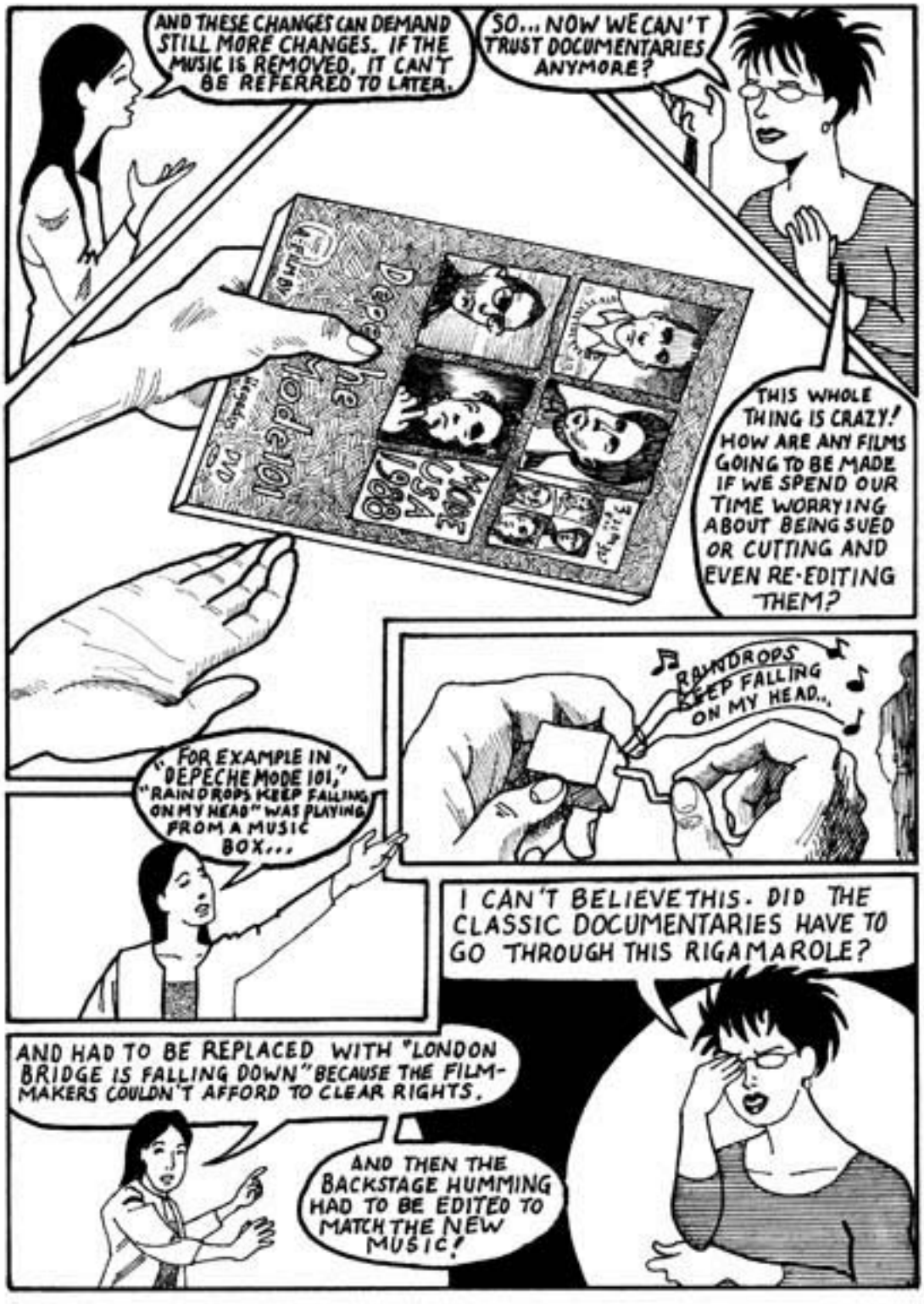

FILMMAKER JON ELSE RAN INTO COPYRIGHT CLEARANCE PROBLEMS WITH "SING FASTER"- HIS DOCUMENTARY ABOUT THE STAGE HANDS' VIEW OF WAGNER'S RING CYCLE.
ELSE DOES GREAT STUFF - I LOVED "OPEN OUTCRY." WHAT KIND OF PROBLEMS?
WELL, HE NEEDED TO CUT AND REPLACE 4½ SECONDS FROM "THE SIMPSONS" THAT WERE ACCIDENTALLY CAPTURED IN ONE OF THE SCENES...
THE SIMPSONS?
STAGEHANDS WERE PLAYING CHECKERS BACKSTAGE WHILE THE OPERA WAS PERFORMED, AND A SMALL TV IN THE BACKGROUND WAS SHOWING "THE SIMPSONS." MATT GROENING DIDN'T OBJECT, BUT FOX DEMANDED $10,000 FOR RIGHTS TO THE 4½ SECONDS!
$10,000
THIS WAS CLEARLY A "FAIR USE," BUT ELSE WAS TOLD FOX WOULD MAKE LITIGATING THE ISSUE DIFFICULT AND COSTLY.
HE TOOK IT OUT - EVEN THOUGH HE THOUGHT IT WAS IMPORTANT FOR THE SCENE.
WOW! SO JUST BECAUSE "THE SIMPSONS" WAS PLAYING IN THE BAR I FILMED, I MIGHT HAVE TO PAY FOR IT?
EVEN IF I DIDN'T USE IT DELIBERATELY, AND WAS JUST TRYING TO CAPTURE "REALITY"?

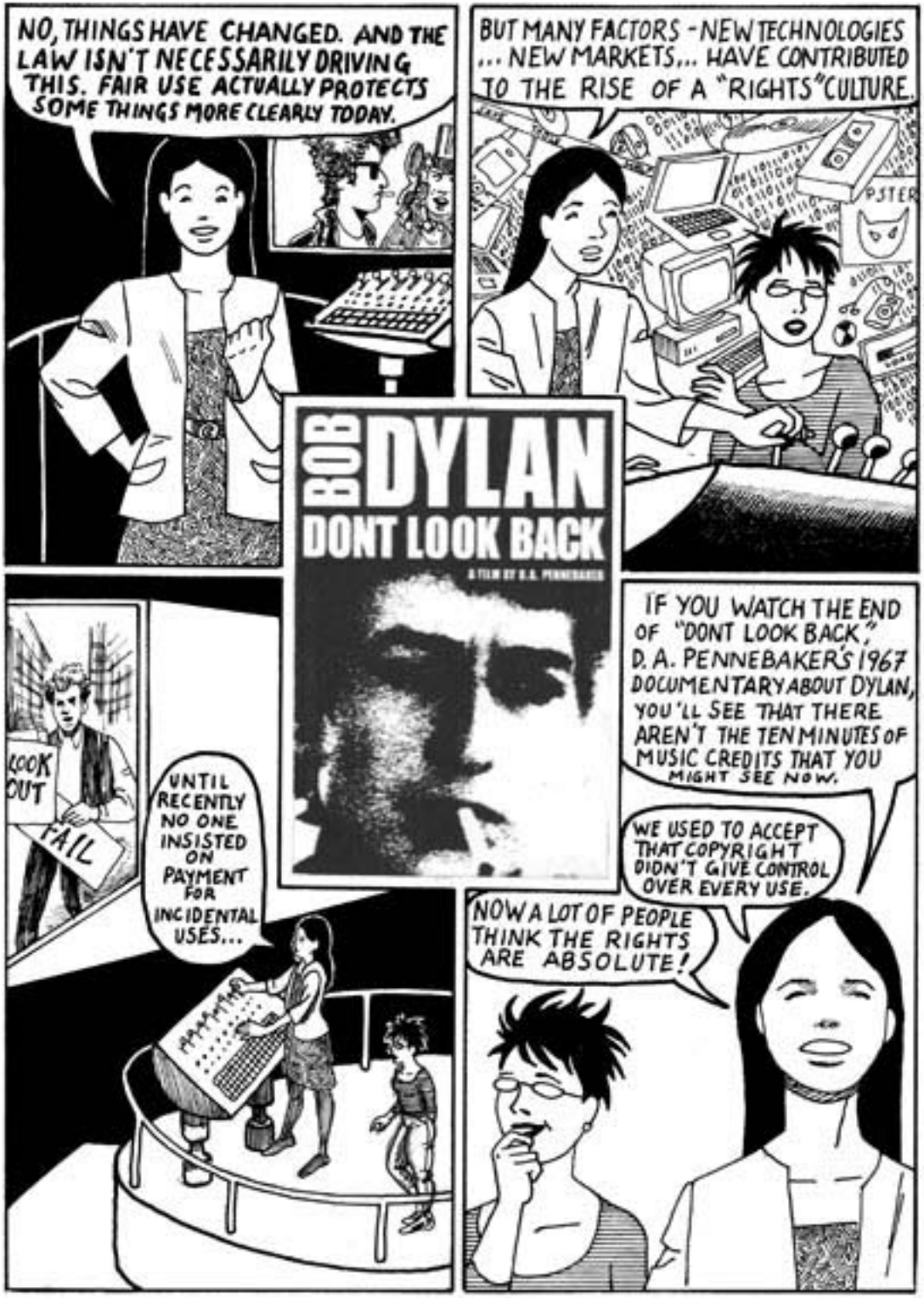

FAIR USE SHOULD MEAN YOU DON'T NEED PERMISSION FOR INCIDENTALLY CAPTURED FRAGMENTS. BUT THE PRACTICE IS OFTEN DIFFERENT.
JON ELSE'S EXPERIENCE IS NOT UNIQUE.
MAD HOT Ballroom
A CELL PHONE HAPPENED TO RING DURING THE FILMING OF MARILYN AGRELO AND AMY SEWELL'S "MAD HOT BALLROOM," A DOCUMENTARY ABOUT NEW YORK CITY KIDS IN A BALLROOM DANCING COMPETITION. THE RING TONE WAS THE "ROCKY" THEME SONG. THIS IS A VERY STRONG CASE FOR FAIR USE.
DA DA DA DA DA DA DA DA DA DUH DA DA DUH
BUT EMI, WHICH OWNS THE RIGHTS TO THE "ROCKY" SONG, ASKED FOR -- GUESS HOW MUCH?
I DUNNO... HOW MUCH?
$10,000!
IN ANOTHER SCENE, THEY WERE FILMING A FOOSBALL GAME AND ONE OF THE PLAYERS SPONTANEOUSLY YELLED "EVERYBODY DANCE NOW," A LINE FROM THE C&C MUSIC FACTORY HIT.
WARNER CHAPPELL DEMANDED $5000 FOR USE OF THE LINE.
THEY EVENTUALLY GOT A BETTER DEAL ON THE "ROCKY" RING TONE, BUT DECIDED TO CUT THE "DANCE" LINE, EVEN THOUGH IT REALLY FIT THE MOVIE'S THEME.


IN "THE FIRST YEAR," A PBS DOCUMENTARY ABOUT LOS ANGELES PUBLIC SCHOOL TEACHERS IN THEIR FIRST YEAR OF TEACHING, LED ZEPPELIN'S "STAIRWAY TO HEAVEN" CAME ON THE RADIO WHILE A TEACHER WAS DRIVING A VAN FULL OF STUDENTS TO AN OUTING.
THE TEACHER TURNED THE SONG UP AND CALLED TO THE CLASS TO LISTEN. THE STUDENTS ROLLED THEIR EYES. IT WASN'T THEIR MUSIC. IT WAS A PIVOTAL MOMENT--A LIVE GENERATION GAP.
the first year
DAVIS GUGGENHEIM, THE FILMMAKER, WAS UNABLE TO CLEAR RIGHTS TO THE SONG AND HAD TO CUT IT OUT...
the first year
WOW, THAT'S DEMORALIZING. THERE'S A LOT OF MUSIC PLAYING IN THE BACKGROUND OF MY FILM. I DIDN'T CHOOSE TO INCLUDE IT. IT WAS JUST THERE, EVERYWHERE I FILMED.
WHAT ARE MY OPTIONS?
WELL, YOU COULD ASSERT FAIR USE AND KEEP IT IN THE FILM...
OR TRY TO FIND THE RIGHTS OWNERS AND ASK FOR PERMISSION...
OR OVERDUB IT WITH MUSIC THAT'S IN THE PUBLIC DOMAIN...

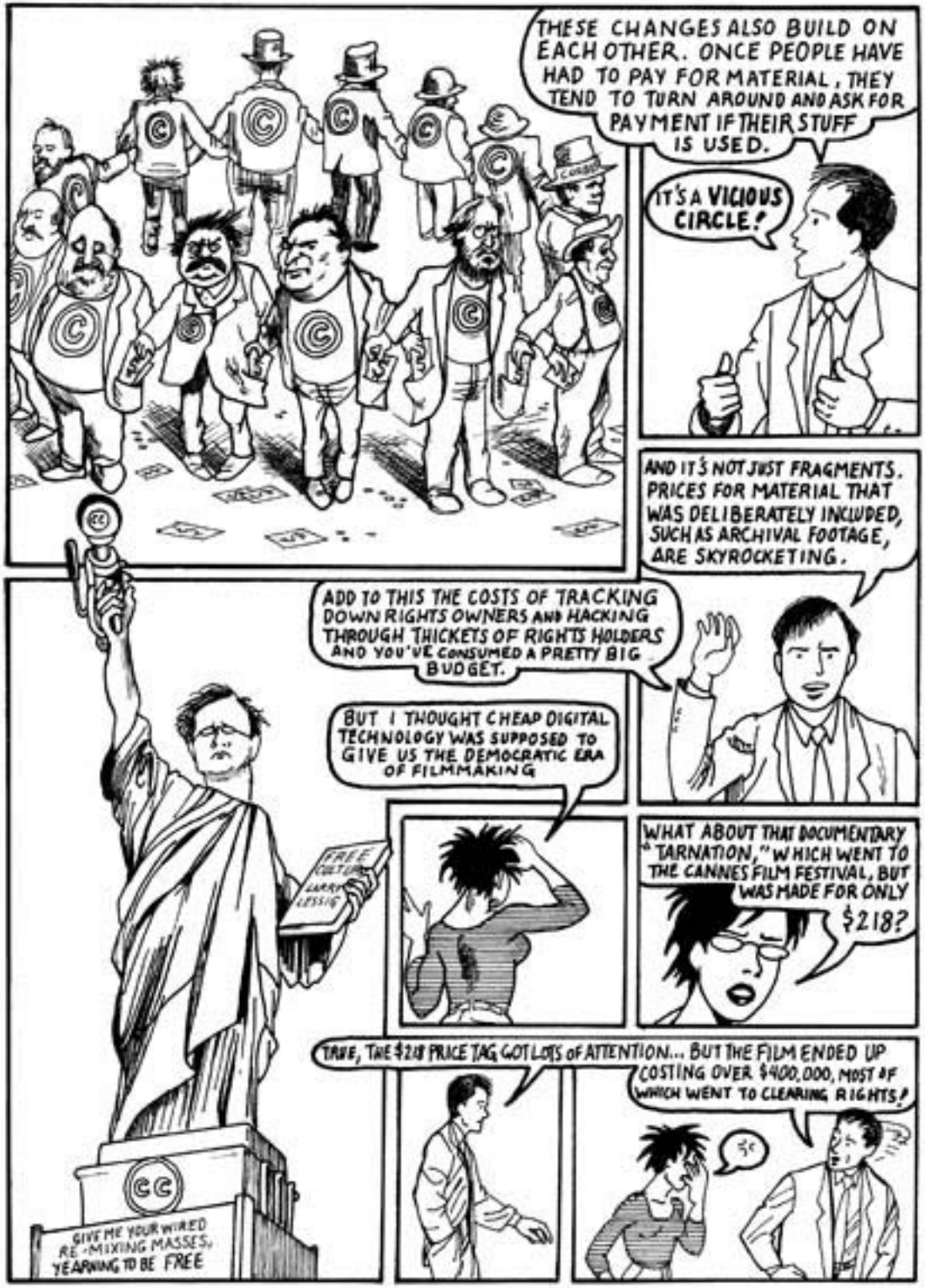

HMMM... LET'S SEE...
COULD THE SAX PLAYER IN THE SUBWAY BE PLAYING MOZART INSTEAD OF "I LOVE NEW YORK?"
LEXINGTON AVE
I ♥ NEW YORK
REPLACE THE ROY ORBISON SUNG BY THE STREET MUSICIAN WITH "OH SUSANNAH..."
OH PRETTY WOMAN, WALKIN' DOWN THE STREET
AND THE DUELLING HIP HOP SONGS IN TIMES SQUARE WITH JOHN PHILLIP SOUSA...
BOOM THAK
BAM
AND REPLACE THE HOT DOG VENDOR'S SINATRA WITH "YES! WE HAVE NO BANANAS..."
I DID IT MY WAY!
AKIKO... UM... THAT SONG WAS SET TO GO INTO THE PUBLIC DOMAIN IN 1999, BUT THEN CONGRESS EXTENDED THE TERM FOR ANOTHER 20 YEARS...
?
THE THING IS, THE MUSIC IS AN IMPORTANT PART OF THESE SCENES. REPLACING IT WOULD REALLY DISRUPT THE FILM.
HMMM...


LEXING AVE.
ALL OF THIS IS A LITTLE FREAKY -AS IF I WERE "DISAPPEARING" EVERYTHING IN NYC THAT WAS CONNECTED TO COPYRIGHTED CULTURE.
Winter Garden


AND THESE CHANGES CAN DEMAND STILL MORE CHANGES. IF THE MUSIC IS REMOVED, IT CAN'T BE REFERRED TO LATER.
SO... NOW WE CAN'T TRUST DOCUMENTARIES ANYMORE?
DEPECHE MODE 101
THIS WHOLE THING IS CRAZY! HOW ARE ANY FILMS GOING TO BE MADE IF WE SPEND OUR TIME WORRYING ABOUT BEING SUED OR CUTTING AND EVEN RE-EDITING THEM?
RAINDROPS KEEP FALLING ON MY HEAD...
"FOR EXAMPLE IN "DEPECHE MODE 101," "RAINDROPS KEEP FALLING ON MY HEAD" WAS PLAYING FROM A MUSIC BOX...
I CAN'T BELIEVE THIS. DID THE CLASSIC DOCUMENTARIES HAVE TO GO THROUGH THIS RIGAMAROLE?
AND HAD TO BE REPLACED WITH "LONDON BRIDGE IS FALLING DOWN" BECAUSE THE FILM-MAKERS COULDN'T AFFORD TO CLEAR RIGHTS.
AND THEN THE BACKSTAGE HUMMING HAD TO BE EDITED TO MATCH THE NEW MUSIC!


NO, THINGS HAVE CHANGED. AND THE LAW ISN'T NECESSARILY DRIVING THIS. FAIR USE ACTUALLY PROTECTS SOME THINGS MORE CLEARLY TODAY.
BUT MANY FACTORS - NEW TECHNOLOGIES ... NEW MARKETS... HAVE CONTRIBUTED TO THE RISE OF A "RIGHTS" CULTURE.
BOB DYLAN
DONT LOOK BACK
A FILM BY D.A. PENNEBAKER
IF YOU WATCH THE END OF "DONT LOOK BACK," D. A. PENNEBAKER'S 1967 DOCUMENTARY ABOUT DYLAN, YOU'LL SEE THAT THERE AREN'T THE TEN MINUTES OF MUSIC CREDITS THAT YOU MIGHT SEE NOW.
LOOK OUT
FAIL
UNTIL RECENTLY NO ONE INSISTED ON PAYMENT FOR INCIDENTAL USES...
WE USED TO ACCEPT THAT COPYRIGHT DIDN'T GIVE CONTROL OVER EVERY USE.
NOW A LOT OF PEOPLE THINK THE RIGHTS ARE ABSOLUTE!

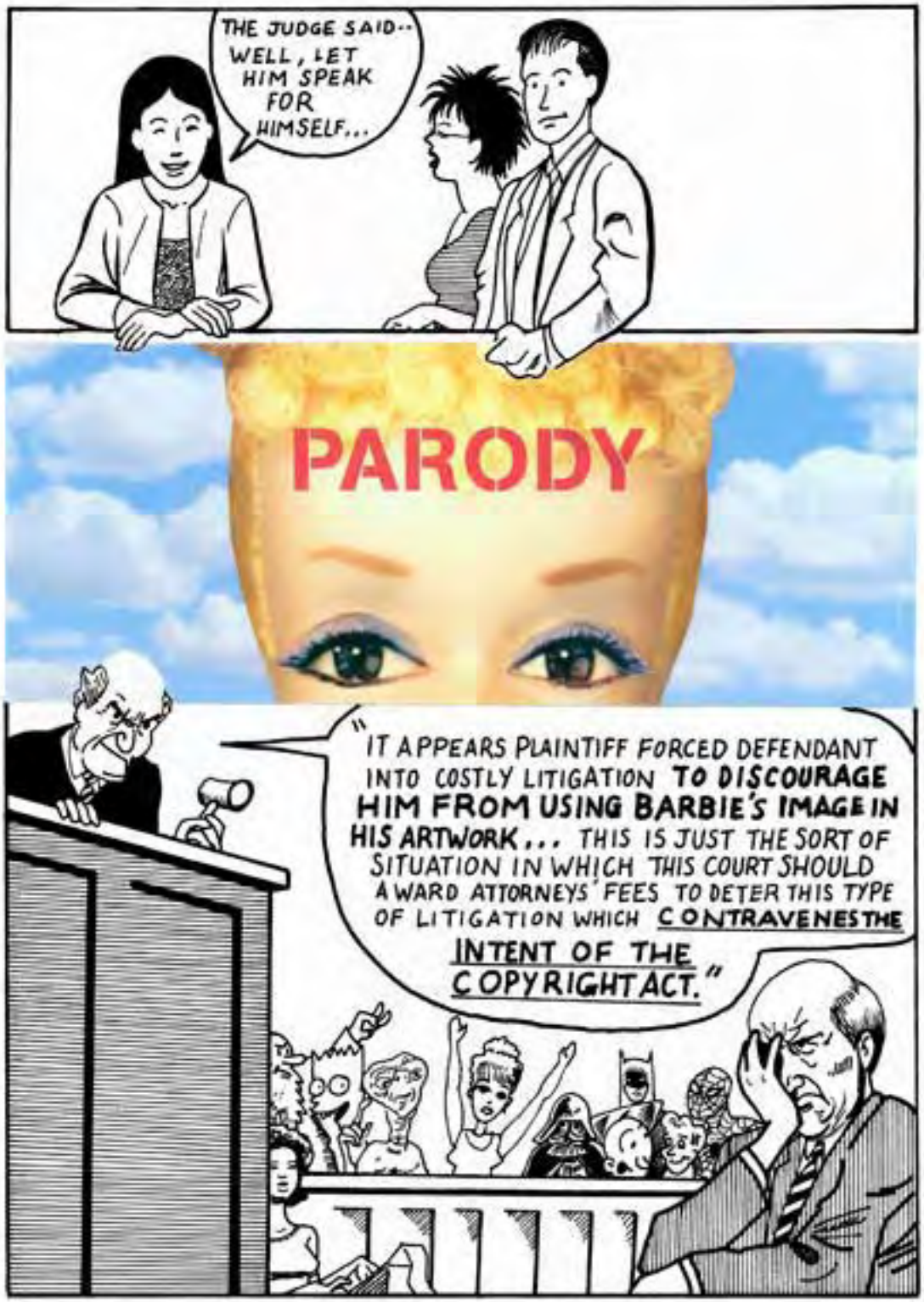

REMEMBER MONTY PYTHON?
SURE. WHY?
IN THE EARLY 70s, TERRY GILLIAM MAY HAVE BORROWED HUNDREDS OF IMAGES FOR HIS MONTY PYTHON ANIMATIONS...
HE DIDN'T HAVE TO GET PERMISSION.
TIMES CHANGE. 20 YEARS LATER, A COURT STOPPED DISTRIBUTION OF HIS MOVIE "12 MONKEYS" ... FINDING THAT GILLIAM HAD BASED A SET DESIGN ON A COPYRIGHTED DRAWING.
REPORTEDLY, HE HAD TO PAY SIX FIGURES TO USE THE SET DESIGN.
12 MONKEYS
WHAT'S IRONIC IS THAT TERRY GILLIAM SUPPOSEDLY ALSO HAD TO PAY FOR A BACKGROUND APPEARANCE OF WARHOL'S XEROX OF DAVINCI'S "LAST SUPPER" -ITSELF A COPY OF A PRE-EXISTING WORK!!
THAT IS IRONIC!! AND IMAGINE LOSING THOSE MONTY PYTHON COLLAGES!


THESE CHANGES ALSO BUILD ON EACH OTHER. ONCE PEOPLE HAVE HAD TO PAY FOR MATERIAL, THEY TEND TO TURN AROUND AND ASK FOR PAYMENT IF THEIR STUFF IS USED.
IT'S A VICIOUS CIRCLE!
AND IT'S NOT JUST FRAGMENTS. PRICES FOR MATERIAL THAT WAS DELIBERATELY INCLUDED, SUCH AS ARCHIVAL FOOTAGE, ARE SKYROCKETING.
ADD TO THIS THE COSTS OF TRACKING DOWN RIGHTS OWNERS AND HACKING THROUGH THICKETS OF RIGHTS HOLDERS AND YOU'VE CONSUMED A PRETTY BIG BUDGET.
BUT I THOUGHT CHEAP DIGITAL TECHNOLOGY WAS SUPPOSED TO GIVE US THE DEMOCRATIC ERA OF FILMMAKING
FREE CULTURE
LARRY LESSIG
WHAT ABOUT THAT DOCUMENTARY "TARNATION," WHICH WENT TO THE CANNES FILM FESTIVAL, BUT WAS MADE FOR ONLY $218?
TRUE, THE $218 PRICE TAG GOT LOTS OF ATTENTION... BUT THE FILM ENDED UP COSTING OVER $400,000, MOST OF WHICH WENT TO CLEARING RIGHTS!
GIVE ME YOUR WIRED RE-MIXING MASSES, YEARNING TO BE FREE

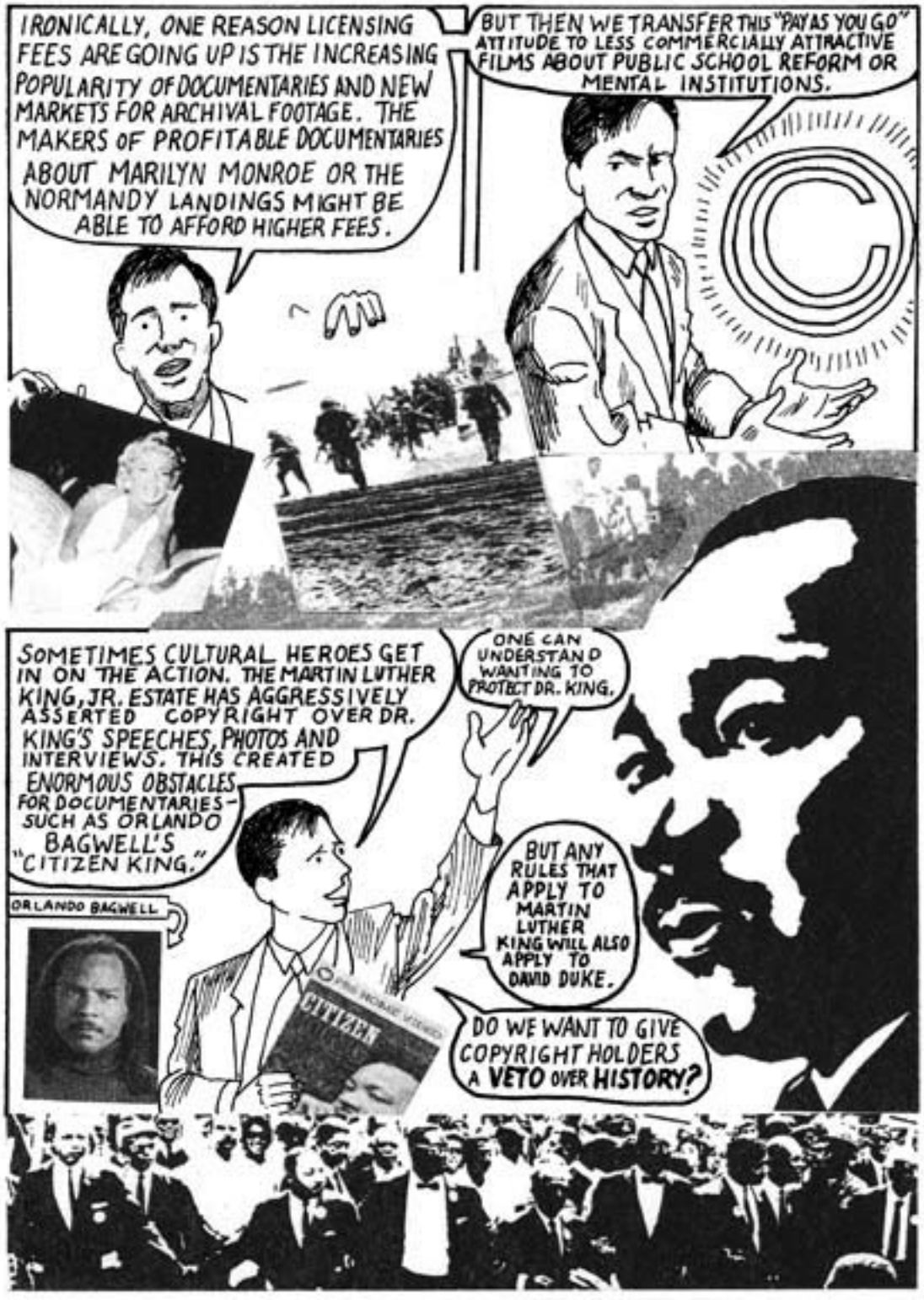

THE TIMES THEY ♪ ARE A-CHANGIN' BACK... ♪
NOT EVERYONE IS GOING ALONG WITH THE "RIGHTS" CULTURE THOUGH. FOR EXAMPLE, D.A. PENNEBAKER SAW MANY ARTISTS ECHO THE CUE CARD SCENE FROM "DONT LOOK BACK," AND VIEWED THAT KIND OF BORROWING AS ENTIRELY APPROPRIATE.
GOP
AND YOU DON'T ALWAYS HAVE TO PAY...
OR ASK PERMISSION.
FILMMAKERS REGULARLY KEEP THINGS IN THEIR FILMS AS "FAIR USE," INCLUDING INCIDENTAL USES...
FOR EXAMPLE, IN CHRIS HEGEDUS AND D.A. PENNEBAKER'S FILM, "THE WAR ROOM"...
ROSS PEROT QUITS THE 1992 PRESIDENTIAL RACE...
AND IN THE BACKGROUND ON TV, PATSY CLINE SINGS "CRAZY".
THEY DIDN'T ASK PERMISSION ... IT WAS A FAIR USE!
AH FIND IT FASCINATIN'
♪♪ CRAZY... I'M CRAZY FOR FALLING...
THE WAR ROOM


AND THEN THERE ARE CRITICAL USES...
RELYING ON FAIR USE, ROBERT GREENWALD MADE EXTENSIVE USE OF FOX NEWS CLIPS IN HIS CRITICAL DOCUMENTARY "OUTFOXED."
IN A DISCUSSION OF RACISM IN THE MEDIA, "BOWLING FOR COLUMBINE" USED UNCLEARED FOOTAGE OF NEWS ANCHORS WARNING ABOUT BLACK MALE SUSPECTS.
AND NEITHER USE WAS CHALLENGED!
BOWLING FOR COLUMBINE
OUTFOXED:
Rupert Murdoch's War on Journalism
IN FACT, SEVERAL FILMMAKERS' ORGANIZATIONS HAVE JOINTLY PRODUCED A STATEMENT OF BEST PRACTICES IN FAIR USE TO CLARIFY HOW PROFESSIONAL FILMMAKERS INTERPRET FAIR USE IN DAILY PRACTICE.
FILMMAKERS COULD CHANGE THE "RIGHTS" CULTURE BY LEARNING MORE ABOUT FAIR USE, AND EVEN MAKING SOME COLLECTIVE DECISIONS ABOUT WHAT'S FAIR.


ARTISTS MAY ALSO HAVE SOME AMMUNITION AGAINST UNREASONABLE DENIALS OF FAIR USE.
MATTEL SUED ARTIST TOM FORSYTHE FOR USING TRANSFORMED IMAGES OF BARBIE DOLLS.
THE COURT FOUND THAT THIS WORK WAS A PARODY -- ONE KIND OF FAIR USE.
SO FORSYTHE COULD MAKE IMAGES LIKE...
"MARGARITA BARBIE"
OR
"LAND OF MILK AND BARBIE!"
IN FACT, A JUDGE IN THIS CASE SAID THAT MATTEL'S LAWSUIT WAS...
"OBJECTIVELY UNREASONABLE" AND FRIVOLOUS,
AND EVEN AWARDED FORSYTHE SUBSTANTIAL ATTORNEYS' FEES.


THE JUDGE SAID-- WELL, LET HIM SPEAK FOR HIMSELF...
PARODY
"IT APPEARS PLAINTIFF FORCED DEFENDANT INTO COSTLY LITIGATION TO DISCOURAGE HIM FROM USING BARBIE'S IMAGE IN HIS ARTWORK... THIS IS JUST THE SORT OF SITUATION IN WHICH THIS COURT SHOULD AWARD ATTORNEYS' FEES TO DETER THIS TYPE OF LITIGATION WHICH CONTRAVENES THE INTENT OF THE COPYRIGHT ACT."


OK, SO I HAVE CERTAIN RIGHTS UNDER FAIR USE. FOR OTHER CONTENT, IF I CAN MANAGE TO PAY FOR IT, THEN I'M OK, RIGHT?
NOT EXACTLY.
NORMALLY YOU PAY FOR RIGHTS THROUGH A LICENSE, AND THESE LICENSES CAN RUN OUT. YOUR FILM WON'T BE DISTRIBUTED ANY MORE UNLESS YOU ARE WILLING TO PAY TO RENEW THEM.
WHAT? SO IF I GET LICENSES FOR SONGS ON MY SOUNDTRACK, OR PHOTOGRAPHS AND MOVIE CLIPS, THEY CAN EXPIRE?
YES, AND RELATIVELY QUICKLY.
GETTING RIGHTS "IN PERPETUITY" CAN BE EXPENSIVE, AND FILMMAKERS WITH LIMITED FUNDS OFTEN HAVE TO SETTLE FOR SHORT TERM LICENSES. "EYES ON THE PRIZE," THE GREAT CIVIL RIGHTS DOCUMENTARY, DISAPPEARED FROM CIRCULATION BECAUSE THE COST OF RENEWING EXPIRED LICENSES WAS SO HIGH, THE PRODUCERS COULD NOT AFFORD TO PAY THE ESCALATED FEES.
I WAS GOING TO BUY "EYES ON THE PRIZE" AND SHOW IT TO MY KIDS. I CAN'T BELIEVE THAT IT'S OUT OF CIRCULATION --IT'S SUCH AN IMPORTANT RECORD OF HISTORY.
THAT'S DISCOURAGING. IMAGINE TRYING TO TELL THE STORY OF THE CIVIL RIGHTS MOVEMENT IN THE 50s AND 60s WITHOUT THE MUSIC OR FOOTAGE OF THE TIMES.
CAN YOU COPYRIGHT HISTORY?
EYES ON

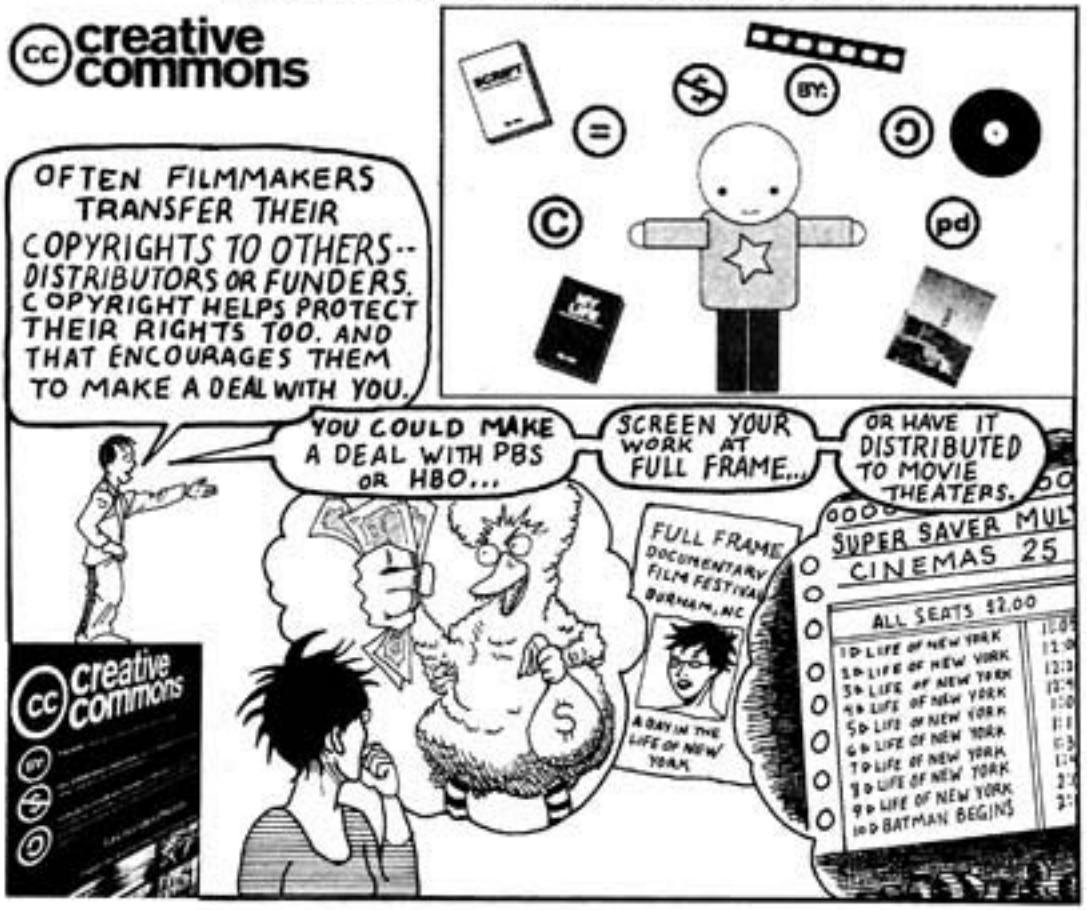

IRONICALLY, ONE REASON LICENSING FEES ARE GOING UP IS THE INCREASING POPULARITY OF DOCUMENTARIES AND NEW MARKETS FOR ARCHIVAL FOOTAGE. THE MAKERS OF PROFITABLE DOCUMENTARIES ABOUT MARILYN MONROE OR THE NORMANDY LANDINGS MIGHT BE ABLE TO AFFORD HIGHER FEES.
BUT THEN WE TRANSFER THIS "PAY AS YOU GO" ATTITUDE TO LESS COMMERCIALLY ATTRACTIVE FILMS ABOUT PUBLIC SCHOOL REFORM OR MENTAL INSTITUTIONS.
SOMETIMES CULTURAL HEROES GET IN ON THE ACTION. THE MARTIN LUTHER KING, JR. ESTATE HAS AGGRESSIVELY ASSERTED COPYRIGHT OVER DR. KING'S SPEECHES, PHOTOS AND INTERVIEWS. THIS CREATED ENORMOUS OBSTACLES FOR DOCUMENTARIES— SUCH AS ORLANDO BAGWELL'S "CITIZEN KING."
ONE CAN UNDERSTAND WANTING TO PROTECT DR. KING.
ORLANDO BAGWELL
CITIZEN
BUT ANY RULES THAT APPLY TO MARTIN LUTHER KING WILL ALSO APPLY TO DAVID DUKE.
DO WE WANT TO GIVE COPYRIGHT HOLDERS A VETO OVER HISTORY?


DISAPPEARING HISTORY, FRIVOLOUS LAWSUITS... THIS SYSTEM DOESN'T MAKE ANY SENSE.
AND YOU KNOW WHAT?
I FEEL LIKE I'M IN A BAD SUPERHERO COMIC...
OUR CULTURE UNDER ASSAULT...
FAIR USE
BY A CRAZED OUT-OF-CONTROL "RIGHTS-MONSTER."
HOW DID WE GET TO THIS STATE OF AFFAIRS? WHAT'S THIS SYSTEM FOR? IS COPYRIGHT ACTUALLY BAD FOR ARTISTS?


NOT AT ALL. LOOK, HERE'S SOME BACKGROUND. U.S. COPYRIGHT PROTECTS 8 TYPES OF WORKS ONCE THEY ARE "FIXED IN ANY TANGIBLE MEDIUM OF EXPRESSION."
BUT REMEMBER COPYRIGHT DOESN'T PROTECT IDEAS, ONLY SPECIFIC EXPRESSIONS OF IDEAS ...
LITERARY WORKS
MUSICAL WORKS
DRAMATIC WORKS
PANTOMIMES AND CHOREOGRAPHY
PICTORIAL, GRAPHIC AND SCULPTURAL WORKS
MOTION PICTURES
SOUND RECORDINGS AND
ARCHITECTURAL WORKS ...
THE CONSTITUTIONAL GOAL OF COPYRIGHT IS TO ENCOURAGE PEOPLE TO MAKE AND DISTRIBUTE NEW WORKS.
Art I, Section 8, Clause
TO DO SO, COPYRIGHT LAW GIVES AUTHORS, INCLUDING FILMMAKERS, THE EXCLUSIVE RIGHT TO...
MAKE COPIES
MAKE ADAPTATIONS, TRANSLATIONS AND OTHER "DERIVATIVE WORKS"
PUBLICLY DISTRIBUTE
PUBLICLY DISPLAY AND
PUBLICLY PERFORM
THEIR WORKS


EACH OF THOSE RIGHTS MEANS THAT COPYRIGHT HOLDERS CAN EXERCISE A CERTAIN KIND OF CONTROL.
THAT'S A GOOD THING, ISN'T IT?
WHAT'S GOING ON DOWN THERE?
IMAGINE IF YOU DIDN'T HAVE A COPYRIGHT IN YOUR FILM...
IF YOU SEND A COPY OF YOUR DOCUMENTARY TO PBS, WHAT'S TO STOP THEM FROM SHOWING IT WITHOUT PAYING YOU?
WHAT'S UP WITH THAT?
HEY!
NICE FILM THERE, TOOTS.
NOW IT'S OURS!
HA! HA! HA!
OR SOMEONE POSTING IT ON THE INTERNET WITHOUT YOUR PERMISSION?
DOWNLOADS.COM
FREE FILM DOWNLOADS
AKIKO'S NEW YORK
Download
1.05M
AKIKO REMIXED
Download
2.75
AKIKO UNPLUGGED
Download
RAW
OR SOMEONE SELLING COPIES OF YOUR FILM ON E-BAY-- WITHOUT PAYING YOU!!
WE... THIRST...
ebay
AKIKO'S DAY IN THE LIFE OF NEW YORK
BID
PAYPAL
?!?!
OR THE NEW YORK TOURIST BOARD USING A 5-MINUTE SEGMENT OF YOUR WORK AS AN ADVERTISEMENT FOR THE CITY?
TAKE A VACATION IN NEW YORK
BY
AKIKO (SORT OF)
BROUGHT TO YOU BY
THE NEW YORK TOURIST BOARD

Creative Commons is a nonprofit that offers a flexible copyright for creative work.

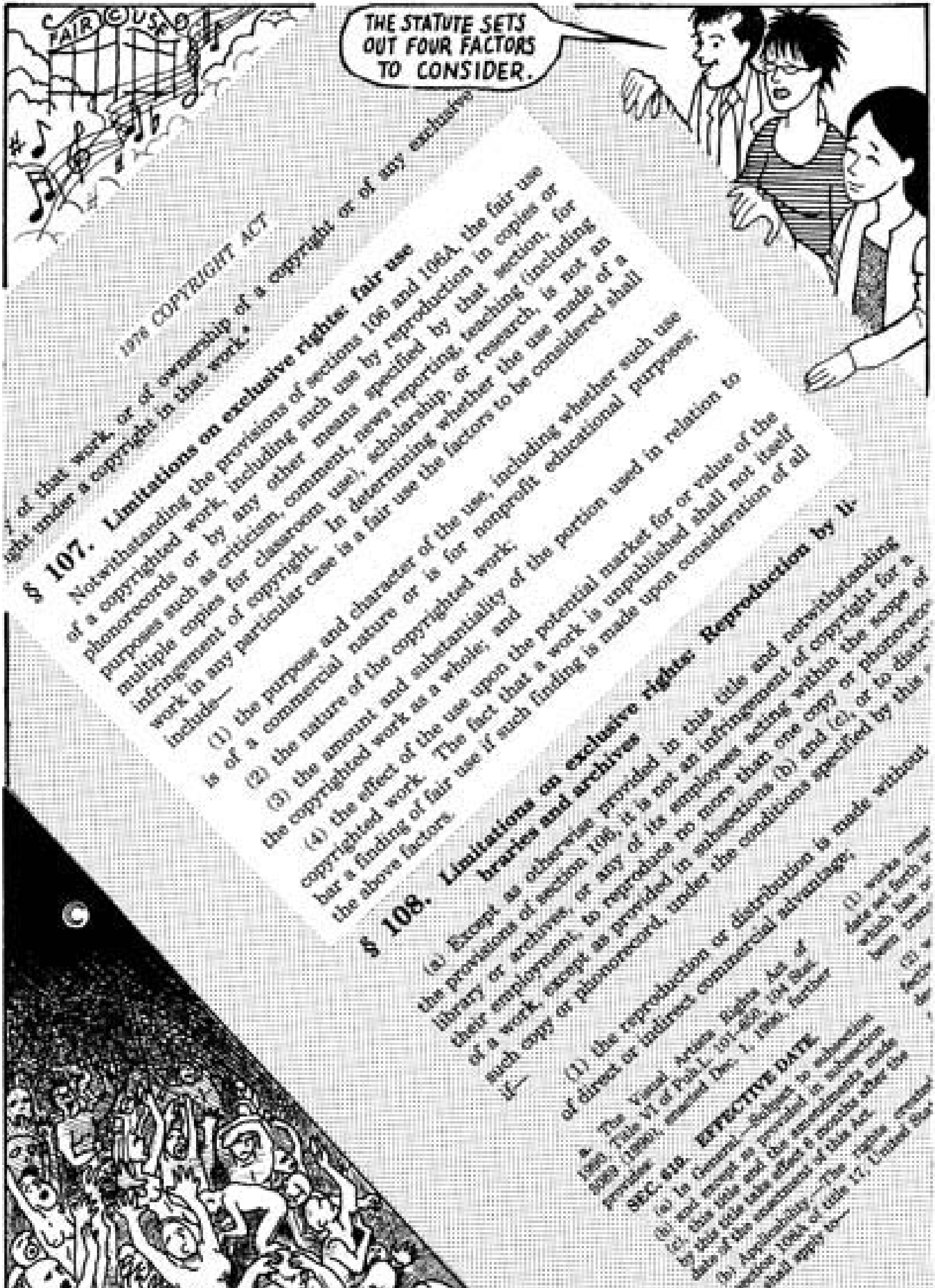



SO, COPYRIGHT GIVES YOU RIGHTS THAT YOU CAN USE TO CONTROL AND GET PAID FOR YOUR WORK.
AT ITS BEST, IT PRODUCES A BRILLIANT DECENTRALIZED SYSTEM OF CREATIVITY!
ARTISTS SOMETIMES THINK THEY WANT TO HAVE AS MUCH COPYRIGHT PROTECTION AS POSSIBLE.
WELL, THIS MAY BE GREAT ON THE OUTPUT SIDE; BUT WHAT ABOUT THE INPUT SIDE?
IF EVERYTHING IS PROTECTED BY COPYRIGHT, THEN WHERE DO YOU GET YOUR RAW MATERIALS?
BOINK!
NIMMER ON COPYRIGHT
MANS ARE
LEENS
COPYRIGHT LAW ALSO TRIES TO GIVE ARTISTS ACCESS TO THE RAW MATERIALS THEY NEED TO CREATE IN THE FIRST PLACE.


SO WHO IS THIS?
THAT'S JUDGE ALEX KOZINSKI, OF THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT.
JUDGE KOZINSKI SAID: "OVERPROTECTING INTELLECTUAL PROPERTY IS AS HARMFUL AS UNDERPROTECTING IT. CREATIVITY IS IMPOSSIBLE WITHOUT A RICH PUBLIC DOMAIN. ...OVERPROTECTION STIFLES THE VERY CREATIVE FORCES IT'S SUPPOSED TO NURTURE."
THE JUDGE EXPLAINS: "NOTHING TODAY, LIKELY NOTHING SINCE WE TAMED FIRE, IS GENUINELY NEW: CULTURE, LIKE SCIENCE AND TECHNOLOGY, GROWS BY ACCRETION, EACH NEW CREATOR BUILDING ON THE WORKS OF THOSE WHO CAME BEFORE."
HMMM...


SO COPYRIGHT LAW ISN'T JUST ABOUT LOCKING THINGS UP?
NOT AT ALL.
COPYRIGHT ALSO PROTECTS THE RIGHTS OF USERS AND FUTURE CREATORS.
TO ENCOURAGE CREATIVITY, COPYRIGHT LAW MUST STRIKE A CAREFUL BALANCE.
ALLOWING ARTISTS TO PROTECT THEIR WORKS.
BUT ALSO ENSURING THE AVAILABILITY OF RAW MATERIALS FOR FUTURE CREATION.
IT STRIKES THIS BALANCE IN SEVERAL WAYS. CERTAIN THINGS- FACTS AND IDEAS - AREN'T COPYRIGHTABLE AT ALL...
FACT
IDEA!


WHEN YOU'RE MAKING MOVIES, THOUGH, A LOT OF WHAT YOU ARE CAPTURING IS COPYRIGHTABLE EXPRESSION.
SO...
...FAIR USE...
...A FLEXIBLE CATEGORY, LETS YOU USE COPYRIGHTED MATERIAL FOR MANY PURPOSES —
TO REPORT ON NEWS,
TO MAKE A PARODY,
TO COPY FOR CLASS,
TO QUOTE FOR SCHOLARLY PURPOSES,
TO CRITICIZE,
FOR RESEARCH, AND MORE!!
DAILY


THE STATUTE SETS OUT FOUR FACTORS TO CONSIDER.
FAIR © USE
1976 COPYRIGHT ACT
§ 107. Limitations on exclusive rights: fair use
Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—
(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
(2) the nature of the copyrighted work;
(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
(4) the effect of the use upon the potential market for or value of the copyrighted work. The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.
§ 108. Limitations on exclusive rights: Reproduction by libraries and archives
(a) Except as otherwise provided in this title and notwithstanding
the provisions of section 106, it is not an infringement of copyright for a
library or archives, or any of its employees acting within the scope of
their employment, to reproduce no more than one copy or phonorec
of a work, except as provided in subsections (b) and (c), or to distri
such copy or phonorecord, under the conditions specified by this
if—
(1) the reproduction or distribution is made without
of direct or indirect commercial advantage;
SEC. 610. EFFECTIVE DATE.

Sony v. Universal Studios (1984)
Fair use: home videotaping of television shows.

"Time-shifting," or videotaping television shows in order to watch them later, was fair use, said the Supreme Court, even though VCR users were copying the entire programs. One key reason was that the time-shifting was private and non-commercial. That meant that the film companies had to prove market harm. The Court did not believe they had done so.

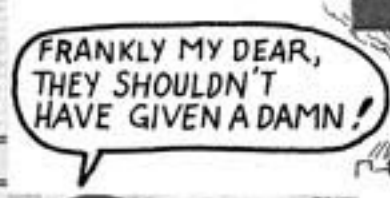
Campbell v. Acuff-Rose (1994)
Fair use: a rap parody of "Pretty Woman".

The rap group 2 Live Crew made a song called "Pretty Woman" that borrowed the bass riff, much of the tune and some lyrics from Roy Orbison's "Oh, Pretty Woman." 2 Live Crew seemed to have 2 strikes against them. They used a lot of the song, and their use was "commercial." The Supreme Court said that even so, this could be fair use. They saw the song as a parody. It "juxtaposes the romantic musings of a man whose fantasy comes true, with degrading taunts, a bawdy demand for sex, and a sigh of relief from paternal responsibility." Because the song was a parody, 2 Live Crew was also allowed to copy more of it – as effective parodies need to "conjure up the original."

Suntrust v. Houghton Mifflin (2001)

Fair use: a parody of "Gone with the Wind" from a slave's point of view.

Author Alice Randall wrote a parody of *Gone with the Wind* criticizing its romanticized depiction of slavery and the antebellum South, and in doing so alluded to copyrighted characters and scenes from *Gone with the Wind*.



The Court of Appeals held that this could be fair use: "It is hard to imagine how Randall could have specifically criticized *Gone with the Wind* without depending heavily upon copyrighted elements of that book. A parody is a work that seeks to comment upon or criticize another work by appropriating elements of the original..."

Harper & Row v. Nation Enterprises (1985)

Not a fair use: scooping President Ford's memoirs.

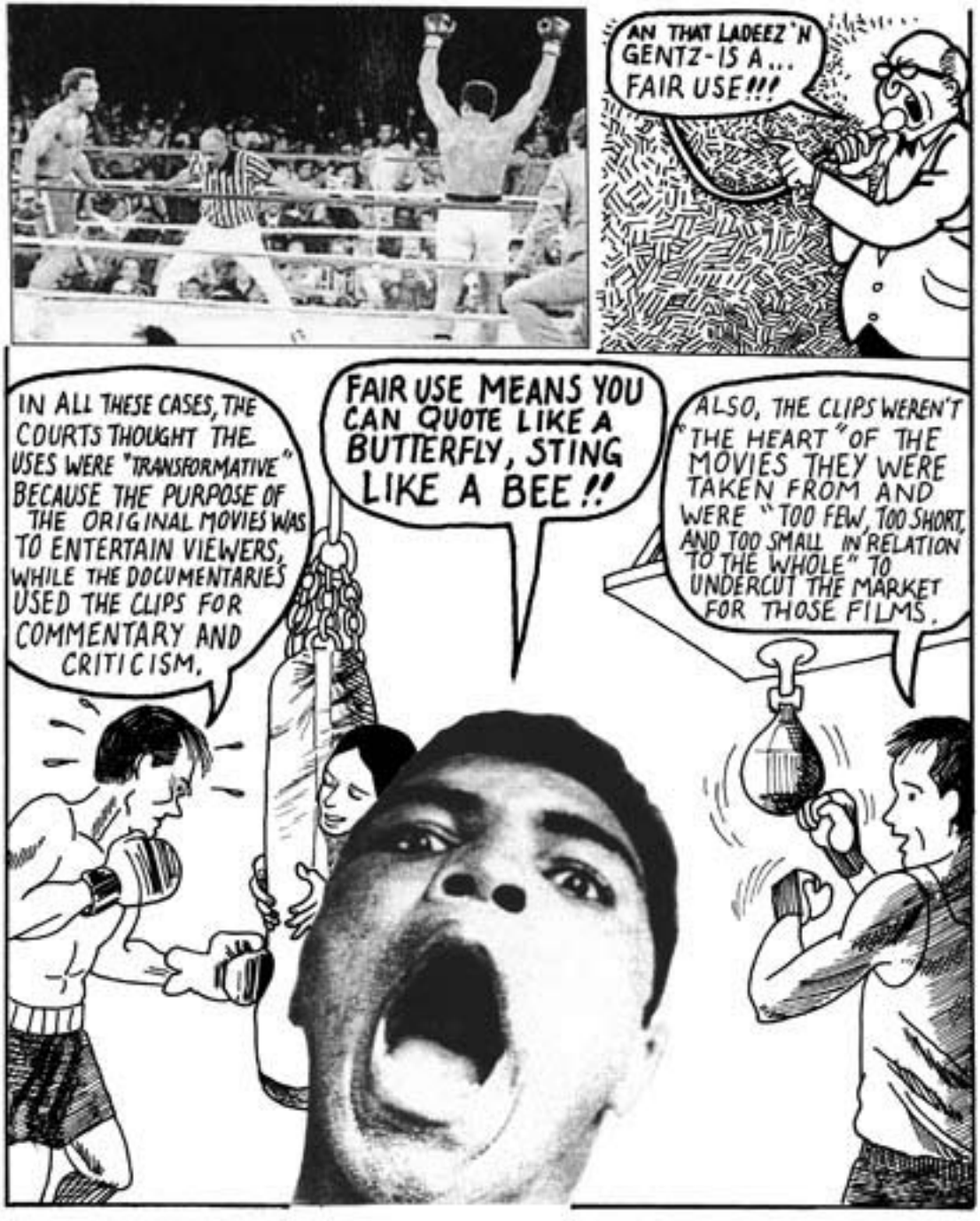
The Nation.

Time Magazine agreed to purchase the exclusive right to print a pre-publication excerpt of ex-president Ford's autobiography. Before Time's article came out, the political magazine The Nation got an unauthorized copy of the manuscript. The Nation published its own article, which included 300-400 words from Ford's autobiography about his decision to pardon President Nixon. The Supreme Court said this was not a fair use. Why? The memoirs had not been published yet, and authors have a right to decide whether and when their work will be published. The Court found that The Nation had "effectively arrogated to itself the right of first publication" for the purpose of "scooping" Time's planned article. (Time then canceled the article.) The Court also said that the parts of Ford's book used, though small, were its "heart" – the most powerful and interesting part.

The documentary *Aliens Invade Hollywood* could use 3 clips totaling 48 seconds (1%) from *Invasion of the Saucermen* to show early film portrayals of alien visitations and government cover-ups.

An A&E biography of Peter Graves could use 20 seconds (less than 1%) of *It Conquered the World*, which starred Graves, to show his modest beginnings in the film business.

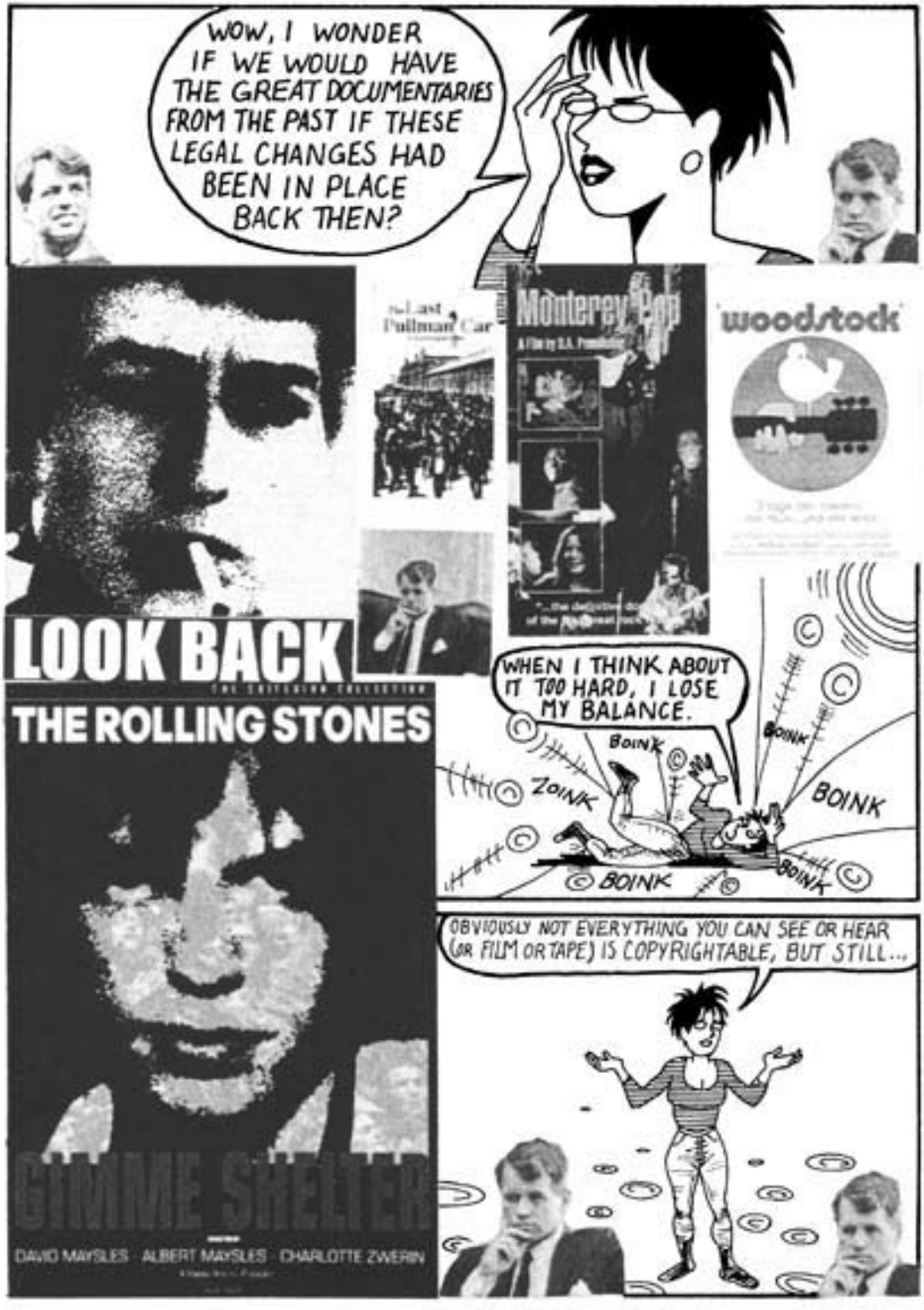
A TBS biography of Muhammad Ali could use 9-14 clips totaling between 41 seconds and 2 minutes (between .7 and 2.1%) from *When We Were Kings*, a documentary focusing on the "Rumble in the Jungle" fight in Zaire between Ali and George Foreman. (The parties disagreed about the number of clips, so the court used the 9-14 range.)



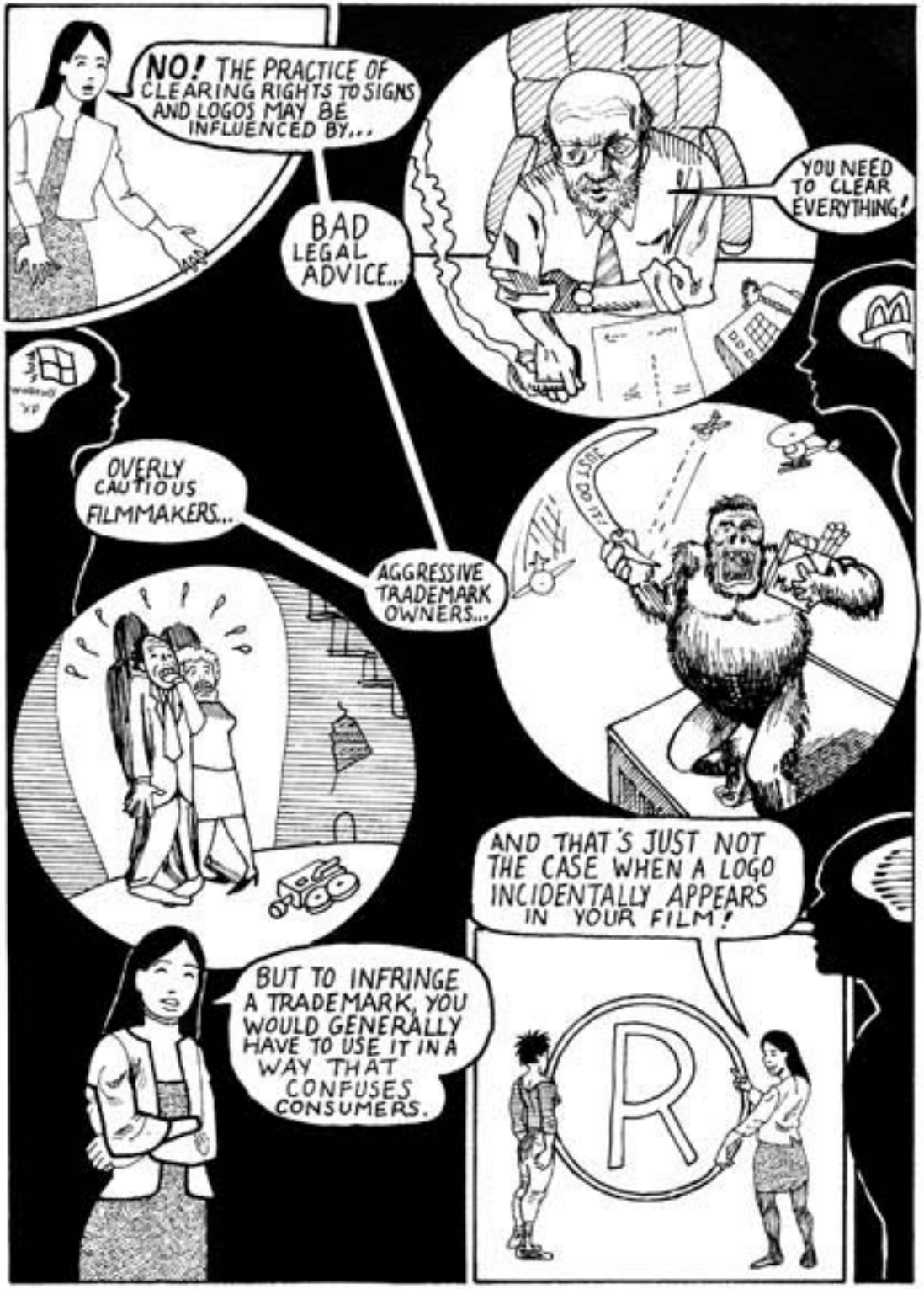
The Definitive Elvis, a 16-hour documentary that advertised its "all-encompassing" collection of Elvis appearances, used clips from *The Ed Sullivan Show*, *The Steve Allen Show*, and Elvis TV specials. The court thought that these uses went beyond biographical reference and were just rebroadcast as entertainment, often without commentary or interruption. Even though the clips were short – ranging from a few seconds to a minute, many were "the heart" of the original shows, including the moments when Elvis sang his most famous songs.


FAIR USE IS ONE WAY COPYRIGHT LAW MEDIATES BETWEEN THE NEED TO GIVE INCENTIVES TO CREATORS AND THE NEED TO USE CONTENT TO CREATE AND COMMENT ON THE WORLD.
TERM LIMITS ARE ANOTHER.
AS RECENTLY AS 1977, THE TERM WAS 28 YEARS WITH THE OPTION TO RENEW FOR ANOTHER 28...
TICK
TOCK
TICK
TOC
TICK
TICK
BUT NOW THE TERM LASTS 70 YEARS PAST THE DEATH OF THE AUTHOR AND 95 YEARS FOR CORPORATE AUTHORS.
ORIGINALLY COPYRIGHT EXPIRED AFTER FOURTEEN YEARS...
TICK
TICK
TICK
TICK
TICK
TICK
THIS EFFECTIVELY ROPES OFF MOST OF 20TH CENTURY CULTURE... EVERY BOOK, EVERY MOVIE, EVERY POEM, EVERY SONG IS PROTECTED FOR NEARLY 100 YEARS AND SOMETIMES MORE.
1790
1831
1909
1923
1978
1998
14 + 14 YEARS
28 + 14 YEARS
28 + 28 YEARS
AUTHOR'S LIFE + 50 YEARS
20 MORE YEARS
NOW ONLY WORKS PUBLISHED BEFORE 1923 ARE CLEARLY IN THE PUBLIC DOMAIN.


THE EVER-LENGTHENING COPYRIGHT TERM SEEMS TO BE HAVING THE OPPOSITE EFFECT FROM WHAT THE CONSTITUTION INTENDED...
1998
2018
2038
2078
?
IT HINDERS ARTISTS WHO WANT TO USE OLDER WORKS, EVEN WHEN THE COPYRIGHT OWNER CAN'T BE FOUND OR WOULDN'T CARE.
THE LONGER TERM ALSO PUTS MORE PRESSURE ON "FAIR USE."
TRADITIONALLY, WE HAD A THIN LAYER OF INTELLECTUAL PROPERTY PROTECTION SURROUNDING A LARGE AND RICH PUBLIC DOMAIN.
IT DIDN'T COVER VERY MUCH, AND IT DIDN'T COVER IT FOR VERY LONG.
COPYRIGHT LAW
PUBLIC DOMAIN
NOW THE BALANCE BETWEEN WHAT IS AND ISN'T PROTECTED HAS BEEN UPSET. COPYRIGHT LAW MAY NO LONGER SERVE THE INTERESTS OF CREATORS.
CRACK

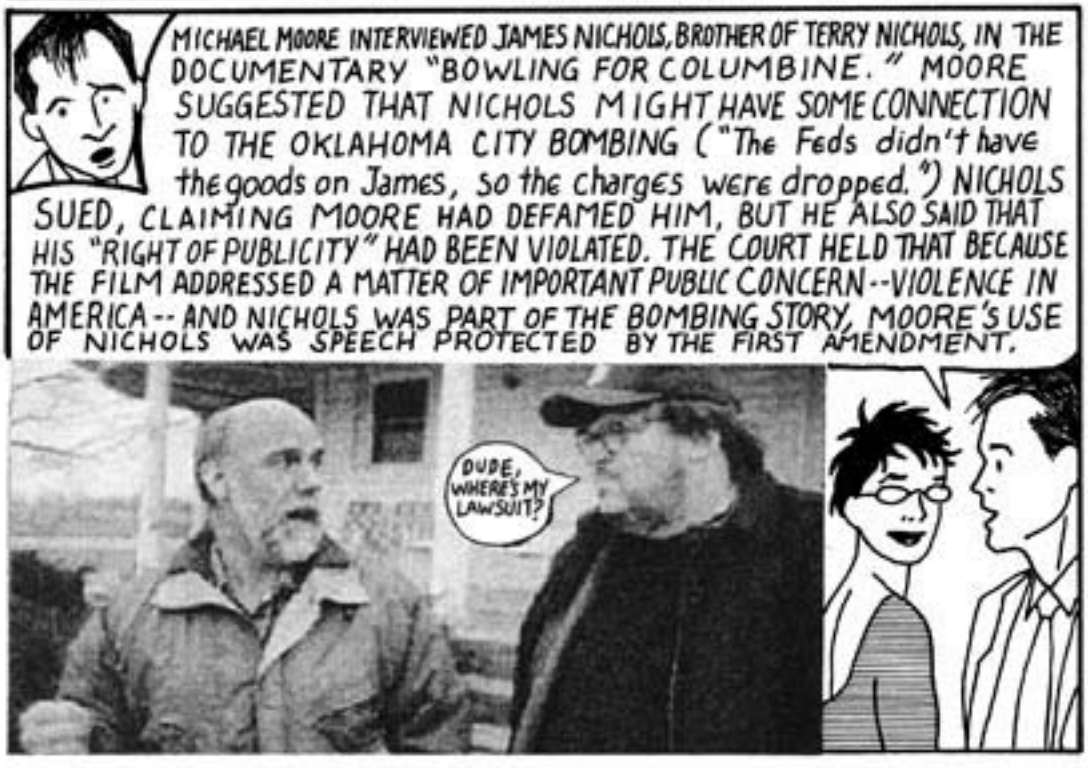

WOW, I WONDER IF WE WOULD HAVE THE GREAT DOCUMENTARIES FROM THE PAST IF THESE LEGAL CHANGES HAD BEEN IN PLACE BACK THEN?
The Last Pullman Car
Monterey Pop
woodstock
LOOK BACK
THE CRITERION COLLECTION
THE ROLLING STONES
GIMME SHELTER
DAVID MAYSLES · ALBERT MAYSLES · CHARLOTTE ZWERIN
WHEN I THINK ABOUT IT TOO HARD, I LOSE MY BALANCE.
BOINK
ZOINK
BOINK
BOINK
BOINK
BOINK
OBVIOUSLY NOT EVERYTHING YOU CAN SEE OR HEAR (OR FILM OR TAPE) IS COPYRIGHTABLE, BUT STILL...


I'M ALMOST AFRAID TO ASK: WHAT ELSE IS THERE TO WATCH OUT FOR?
WELL COPYRIGHT ISSUES ARE A HANDFUL, BUT FILMMAKERS MAY ALSO RUN INTO TRADEMARK ISSUES.
WHILE COPYRIGHT LAW PROTECTS ARTISTIC WORKS, TRADEMARK LAW PROTECTS BRAND NAMES AND LOGOS THAT TELL CONSUMERS WHERE PRODUCTS CAME FROM.
SOMETIMES IT MAKES MY HEAD SPIN...
EVEN WHEN IT'S NOT REQUIRED BY LAW, FILMMAKERS ARE SOMETIMES TOLD TO CLEAR TRADEMARKS.
WHAT?
WE LIVE IN A LOGO WORLD!
I CAN'T FILM WITHOUT CATCHING THEM! DO I NEED TO BLUR OR AIRBRUSH THEM OUT?
NASDAQ
STARBUCKS COFFEE
BURGER KING
Kodak


NO! THE PRACTICE OF CLEARING RIGHTS TO SIGNS AND LOGOS MAY BE INFLUENCED BY...
BAD LEGAL ADVICE...
YOU NEED TO CLEAR EVERYTHING!
OVERLY CAUTIOUS FILMMAKERS...
AGGRESSIVE TRADEMARK OWNERS...
JUST DO IT!
BUT TO INFRINGE A TRADEMARK, YOU WOULD GENERALLY HAVE TO USE IT IN A WAY THAT CONFUSES CONSUMERS.
AND THAT'S JUST NOT THE CASE WHEN A LOGO INCIDENTALLY APPEARS IN YOUR FILM!
R


EVEN IN FEATURE FILMS, THE USE OF TRADE MARKS TO DEPICT "REALITY" HAS BEEN PROTECTED BY COURTS.
CATERPILLAR SUED DISNEY CLAIMING THAT "GEORGE OF THE JUNGLE 2" INFRINGED ITS TRADEMARKS.
IN THE FILM, THE EVIL INDUSTRIALIST TRIES TO DESTROY GEORGE'S JUNGLE WITH "CATERPILLAR" BULLDOZERS. A FEDERAL COURT REFUSED TO BLOCK THE FILM'S RELEASE.
HA! HA! HAHA!!
CAT
THE COURT SAID:
"THE APPEARANCE OF PRODUCTS BEARING WELL KNOWN TRADEMARKS IN CINEMA AND TELEVISION IS A COMMON PHENOMENON."


WHAT ABOUT GETTING PERMISSION FROM PEOPLE WHO APPEAR IN THE DOCUMENTARY?
PERMISSION IS NORMALLY REQUIRED -- PRIVACY IS A LEGITIMATE CLAIM.
WHAZZUP?
BUT THERE IS AN IMPORTANT FIRST AMENDMENT EXCEPTION THAT LETS YOU SHOW PEOPLE INVOLVED IN MATTERS OF PUBLIC INTEREST, WITHOUT PERMISSION.
CONSIDER FILMMAKER MICHAEL MOORE...


MICHAEL MOORE INTERVIEWED JAMES NICHOLS, BROTHER OF TERRY NICHOLS, IN THE DOCUMENTARY "BOWLING FOR COLUMBINE." MOORE SUGGESTED THAT NICHOLS MIGHT HAVE SOME CONNECTION TO THE OKLAHOMA CITY BOMBING ("The Feds didn't have the goods on James, so the charges were dropped.") NICHOLS SUED, CLAIMING MOORE HAD DEFAMED HIM, BUT HE ALSO SAID THAT HIS "RIGHT OF PUBLICITY" HAD BEEN VIOLATED. THE COURT HELD THAT BECAUSE THE FILM ADDRESSED A MATTER OF IMPORTANT PUBLIC CONCERN -- VIOLENCE IN AMERICA -- AND NICHOLS WAS PART OF THE BOMBING STORY, MOORE'S USE OF NICHOLS WAS SPEECH PROTECTED BY THE FIRST AMENDMENT.
DUDE, WHERE'S MY LAWSUIT?


EVEN WHEN THE DOCUMENTARY ISN'T ABOUT SUCH CONTROVERSIAL ISSUES, SOME STATE LAWS ALLOW THE FILMMAKER TO USE A PERSON'S PICTURE WITHOUT PERMISSION IF THE SUBJECT IS "NEWS" OR "PUBLIC AFFAIRS." AND "PUBLIC AFFAIRS" CAN BE DEFINED PRETTY BROADLY.
A DOCUMENTARY ABOUT THE EARLY DAYS OF MALIBU USED SOME FOOTAGE OF FAMOUS SURFER MICKEY DORA, WHO SUED FOR UNAUTHORIZED USE OF HIS IMAGE.
THE CALIFORNIA LAW HAD AN EXCEPTION FOR PUBLIC AFFAIRS AND THE JUDGE SAID A SURFING DOCUMENTARY QUALIFIED.
TO SAY NOTHING ABOUT CREATING AN INTERGALACTIC SUPERHERO!!
"[SURFING] HAS CREATED A LIFESTYLE THAT INFLUENCES SPEECH, BEHAVIOR, DRESS, AND ENTERTAINMENT, AMONG OTHER THINGS."


SO, AS LONG AS I UNDERSTAND THE LIMITS OF THE LAW, I'M SET, RIGHT?
YOU'VE HEARD OF ERRORS AND OMISSIONS INSURANCE?
YES, E&O INSURANCE.
WELL, REGARDLESS OF WHAT THE LAW SAYS, RIGHTS CLEARANCES MAY PLAY OUT DIFFERENTLY IN PRACTICE...
HBO
ALL RIGHTS RESERVED
INSURANCE COMPANIES, UNDERSTANDABLY RISK AVERSE, TYPICALLY REQUIRE A DETAILED LIST OF THE SOURCE AND LICENSING STATUS OF THE MATERIAL IN THE FILM ...
TO SHOW YOUR FILM TO A BROADER PUBLIC THROUGH CONVENTIONAL DISTRIBUTION CHANNELS -LIKE HBO OR PBS - YOU NEED E&O INSURANCE TO COVER POSSIBLE LAWSUITS.
SO, WHAT I CAN AND CANNOT USE DEPENDS ON WHAT THE BROADCASTER, DISTRIBUTOR, INSURANCE COMPANY, BROKERS AND LAWYERS ARE COMFORTABLE WITH?
AND BECAUSE THEY GENERALLY DON'T ACKNOWLEDGE "FAIR USE" CLAIMS, THEY MAY REQUIRE CLEARANCES WELL BEYOND THOSE REQUIRED BY THE LAW.
FAIR USES MAY HAVE TO BE CLEARED BY AN ARMY OF LAWYERS OR CUT FROM THE FILM?


NO
THAT'S NOT ALWAYS THE CASE...
FOR EXAMPLE, THE PRODUCERS OF THE 2004 FILM "SUPER SIZE ME" ASSUMED THE RISK OF BEING SUED AND WENT FORWARD WITH AN E&O POLICY, THAT EXCLUDED CLAIMS FROM McDONALD'S.
McDonald's
ALSO, A FEW E&O BROKERS MAY BE MORE WILLING TO RECOGNIZE FAIR USE CLAIMS THAN THE INDUSTRY IN GENERAL.
McDONALD'S DIDN'T SUE THEM...
OVER TEN BILLION SUED!
OF COURSE, A LAWSUIT COULD HAVE UNWITTINGLY PROMOTED THE FILM'S CRITICISMS.
Daily Bugle
Mc DONALDS SUES!!!
"RIDICULOUS," PROF SAYS
LAWSUIT!!


AND E&O INSURANCE IS ONLY REQUIRED TO GET ACCESS TO CONVENTIONAL DISTRIBUTION CHANNELS.
NOW WITH THE INTERNET AND ALTERNATIVE METHODS OF DISTRIBUTION, FILMMAKERS CAN REACH A BROAD AUDIENCE WITHOUT GETTING INSURANCE.
VIAGRA
AKIKO
DOWNLOAD
5 MINUTES


WITH OR WITHOUT INSURANCE, THOUGH, SOMETIMES PEOPLE GET SCARED OUT OF USING STUFF THAT THEY HAVE A PERFECT RIGHT TO USE.
HOW'S THAT?
THEY MIGHT RECEIVE A "CEASE AND DESIST" LETTER WITH FAR-FETCHED CLAIMS AND DEMANDS...
AND COMPLY OUT OF FEAR OF STIFF PENALTIES OR UNCERTAINTY ABOUT THE LAW.
IF YOU RECEIVE ONE OF THESE LETTERS, YOU SHOULD GO TO www.chillingeffects.org FOR HELPFUL INFORMATION.
BILKEM & BOREM, LLP
NOVEMBER 2005
DEAR FILMMAKER:
CEASE and DESIST!!! (OR ELSE!)
Signed Bill Bilkem
PS WE MEAN IT!!
HMMM...
ALSO, FAIR USE QUESTIONS OFTEN COME UP WHEN FILMS ARE NEARING COMPLETION...
AND YOU'RE RUNNING OUT OF TIME AND MONEY!
THE LINE BETWEEN FAIR AND UNFAIR USE CAN BE FUZZY, AND LAWSUITS CAN BE EXPENSIVE AND UNPLEASANT.
SO ARTISTS MAY SHY AWAY FROM ACTS THAT ARE ACTUALLY LEGAL.
Y'KNOW, IT SOUNDS LIKE THE LAW IS SETTING UP NOTHING BUT OBSTACLES!
NOT AT ALL. IT'S THE LAW THAT GIVES YOU THE RIGHT TO CONTROL AND SELL YOUR FOOTAGE, AND ALSO GIVES YOU USERS' RIGHTS, INCLUDING FAIR USE.
HMMM... I MIGHT WANT TO SELL MY FOOTAGE TO SOMEONE MAKING A TV SHOW ABOUT NEW YORK.


... BUT I WOULDN'T EXPECT PAYMENT IF MY DOCUMENTARY WAS PLAYING IN THE BACKGROUND OF ANOTHER SHOT!
IF THE GOAL OF COPYRIGHT IS TO ENCOURAGE PEOPLE TO CREATE, THEN THESE KINDS OF RIGHTS CLEARANCES DON'T MAKE ANY SENSE...
IS ANYONE BETTER OFF WITH ALL THESE PAYMENTS FOR TINY FRAGMENTS OF CULTURE?
IS THE IDEA THAT ARTISTS WON'T MAKE FILMS OR MUSIC, UNLESS THEY HAVE THE RIGHT TO CONTROL A FEW SECONDS IN A DOCUMENTARY?


IF THE POINT OF COPYRIGHT IS TO PROMOTE CREATIVITY IS IT WORKING?!!


ACTUALLY THE ANSWER ISN'T CLEAR...
OF COURSE FILMMAKERS AND DISTRIBUTORS SHOULD GET PAID AND COPYRIGHT SHOULD PREVENT WHOLESALE APPROPRIATION.
YOU CAN'T JUST MAKE A FILM ADAPTATION OF SOMEONE ELSE'S NOVEL OR PUT SONGS ON YOUR SOUNDTRACK WITHOUT PERMISSION AND YOU SHOULDN'T BE ABLE TO.
BUT DOCUMENTARIANS NEED TO DEPICT A WORLD FULL OF COPYRIGHTED CULTURE. DEMANDING PAYMENT FOR EVERY USE CAN HINDER THE VERY CREATIVITY THAT COPYRIGHT IS SUPPOSED TO ENCOURAGE.
SO... I SHOULDN'T AVOID, REPLACE OR AIRBRUSH EVERYTHING OUT?
NO! THAT WOULD MEAN GIVING UP DOCUMENTARY FILMMAKING!

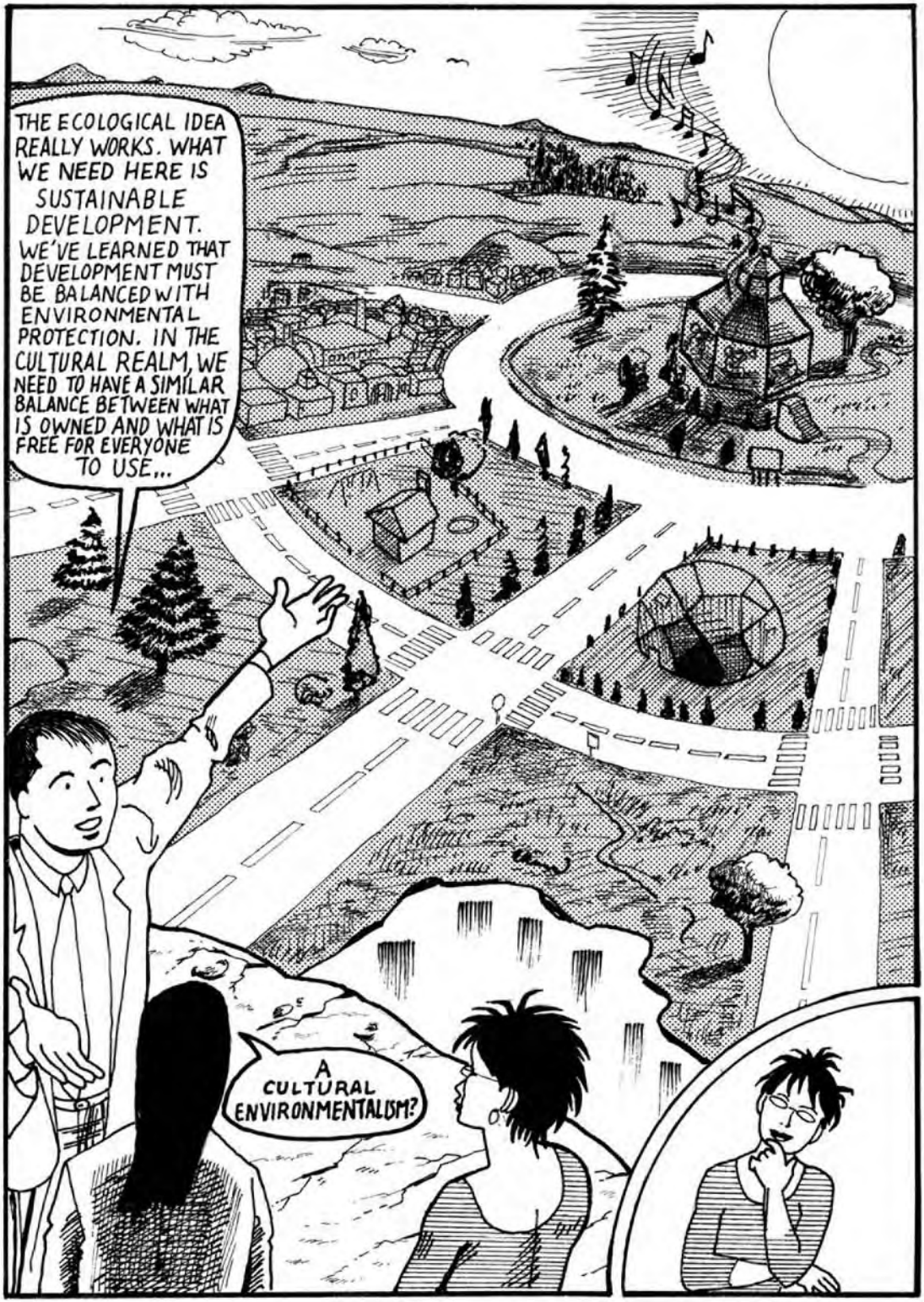

YOU NEED TO UNDERSTAND THE LAW, WHICH INCLUDES UNDERSTANDING WHAT YOUR RIGHTS ARE.
REMEMBER, THE COPYRIGHT SYSTEM ALLOWS YOU TO PROTECT YOUR WORK, BUT ALSO HAS IMPORTANT LIMITATIONS THAT ALLOW YOU TO CREATE IN THE FIRST PLACE.
FAIR USE -- USE IT OR LOSE IT!!
TO PRESERVE THE SYSTEM, WE HAVE TO PRESERVE FAIR USE.

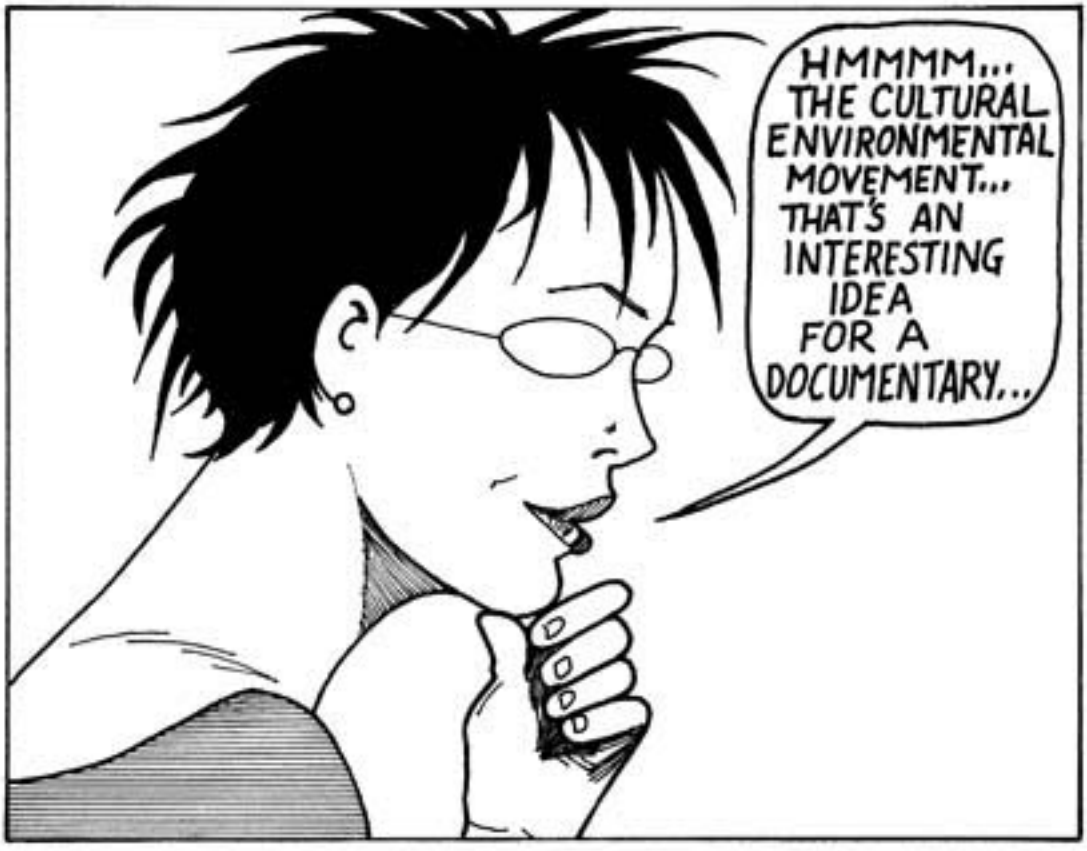

ALL OF THIS INFORMATION HAS BEEN REALLY USEFUL. WHEN I'M DEALING WITH RIGHTS CLEARANCE ISSUES, I'LL HAVE A MUCH BETTER IDEA OF WHAT'S GOING ON.
AND WE'VE ONLY BEEN DISCUSSING WHAT THE LAW AND PRACTICES CURRENTLY ARE ···· ONE REASON THEY'RE THIS WAY IS BECAUSE PEOPLE ASSUME THAT'S WHAT ARTISTS WANT. BUT THE LAW AND THE "RIGHTS" CULTURE CAN CHANGE IF ENOUGH ARTISTS ARE UNHAPPY WITH THEM!
WHATEVER HAPPENS YOU'VE CONVINCED ME OF THIS, I'M NOT GOING TO PRODUCE AN AIRBRUSHED OR FICTIONALIZED VERSION OF THIS DOCUMENTARY!
BUT WHAT ABOUT THE BIGGER ISSUE?
WHAT KIND OF COPYRIGHT SYSTEM DO WE WANT?


WELL, COPYRIGHT REFLECTS A SET OF SOCIAL CHOICES. YOU COULD CHOOSE A WORLD WHERE EVERY SNIPPET AND FRAGMENT IS OWNED.
THAT SEEMS TO BE THE WAY WE ARE GOING NOW.
THERE ARE WAYS THIS COULD BENEFIT YOU, IF YOUR MATERIAL IS IN DEMAND--SAY YOU OWNED SOMETHING LIKE "HAPPY BIRTHDAY" --AND YOU'RE LARGELY A SELLER AND NOT A BUYER. YOU COULD BE PAID FOR IT AGAIN AND AGAIN AND MAKE LOTS OF MONEY.
NO TRESPASSING
VIOLATORS WILL BE SHOT
SURVIVORS WILL BE SHOT AGAIN
OPERTY
OUT
LOOK OVER THERE...


THE IDEA THAT CREATIVITY IS GOING TO FLOURISH IN A WORLD WHERE EVERYTHING IS CONTROLLED JUST DOESN'T RING TRUE TO ME.


I IMAGINE A RATHER DIFFERENT KIND OF LANDSCAPE WHERE SOME THINGS NEED TO BE PRIVATE, BUT WE NEED A LOT OF OPEN PUBLIC SPACE IN BETWEEN-- SPACE THAT EVERYONE CAN USE...
THAT'S A NICE IMAGE. IT'S AS IF WE WERE ZONING AN ENVIRONMENT OF THE MIND. WHO WOULD WANT TO DO WITHOUT ROADS AND PARKS?
GET YOUR CLIPS ON ROUTE 66


THE ECOLOGICAL IDEA REALLY WORKS. WHAT WE NEED HERE IS SUSTAINABLE DEVELOPMENT. WE'VE LEARNED THAT DEVELOPMENT MUST BE BALANCED WITH ENVIRONMENTAL PROTECTION. IN THE CULTURAL REALM, WE NEED TO HAVE A SIMILAR BALANCE BETWEEN WHAT IS OWNED AND WHAT IS FREE FOR EVERYONE TO USE...
A CULTURAL ENVIRONMENTALISM?


HMMMM... THE CULTURAL ENVIRONMENTAL MOVEMENT... THAT'S AN INTERESTING IDEA FOR A DOCUMENTARY...


THESE SHADOWS HAVE DANCED FOR YOU FOR A FRAGMENT OF TIME.
PERHAPS SOMETHING IN THEIR WORDS HAS CAUGHT YOUR ATTENTION, TAUGHT YOU SOMETHING, GIVEN YOU AN IDEA?
A YOUNG PERSON'S GUIDE TO INTELLECTUAL PROPE
BUT NOW THEIR MOMENT IN THE LIGHT IS OVER.
UNTIL THE NEXT TIME WE MEET, ALL THAT IS LEFT IS...
NOT YET...
WAIT...
SILENCE.

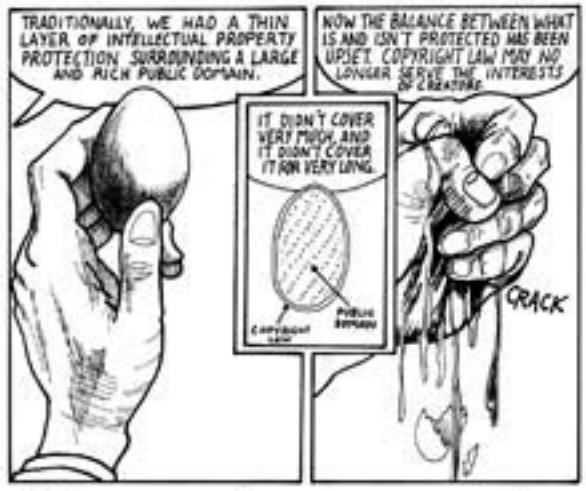
Afterword

The True Story of *Bound By Law*

(or 'Why Three Stodgy Academics Wrote a Comic Book')

James Boyle

The authors of this book are frequent, and for the most part, appreciative users of the law of copyright. Keith trained as an artist, has published several comic books and many scholarly articles, and is the bass player for The Garden Weasels – a band that is generally described as being "pretty good considering it is made up entirely of law professors." Apart from her academic work, Jennifer is also a pianist, filmmaker and short story writer. James has written books and numerous articles, and is a columnist for the *Financial Times* online. He also serves on the Board of Creative Commons, a non-profit organization that provides simplified copyright tools for artists and creators. We have all authored copyrighted works, cashed royalty checks, and benefitted from the ability to make "fair use" of copyrighted material in our own creations, whether artistic or scholarly. And we are all also scholars and teachers of copyright law – studying its history, its goals, its constitutional basis, and its impact on the arts. In the process, we have come to admire the way that copyright law has adapted to new media and new technologies through history, maintaining its balance between the realm of ownership and the realm of the public domain – where material is free for all to use without permission or fee. So count us as stodgy believers in the copyright system, not revolutionaries eager to scrap the whole thing.



But from the depths of our stodginess comes this little message – the system appears to have gone astray, to have lost sight of its original goal. Does anyone believe that

"the progress of science and the useful arts" is furthered by requiring documentary filmmakers to clear every fragment of copyrighted material caught in their films – even a copyrighted ring-tone on a phone, or a fleeting fragment of TV in the background of a shot? To be fair, in many – perhaps most – cases these demands for payment or clearance have nothing to do with copyright law as it stands. Instead, they are a manifestation of a "permissions culture" premised on the belief that copyright gives its owners the right to demand payment for *every* type of usage, no matter its length, or its purpose, or the context in which it is set. But that is not, and never has been the law. Copyright may also be adjusting poorly to a world in which everyone can have their own digital printing press; the citizen publishers of cyberspace, the young digital artists, filmmakers and musicians, are unlikely to have high-priced lawyers advising them. The flourishing of digital media has been seen by policymakers mainly as a threat – as the rise of a "pirate culture of lawlessness." That threat is real. But what is missing is a sense of the corresponding opportunity.

Copyright is not an end in itself. It is a tool to promote the creation and distribution of knowledge and culture. What could be a better manifestation of this goal than a world in which there are few barriers to entry, where a blog can break a major political scandal, a $218 digital film can go to the Cannes Film Festival, a podcast can reach tens of thousands of listeners, a mash-up can savagely criticize the government's response to a hurricane, where recording and remixing technology better than anything Phil Spector ever had may come bundled free with your laptop? Yet for many of these new digital creators, copyright appears more

as an obstacle than as an aid. Sometimes – as with many of the examples we described in this comic book – that may be the result of simple misinformation, a culture of fear and legal threats, or private gatekeepers using copyright law as an excuse to impose deals on artists who lack the information and power to protest. At other times, it seems the law genuinely has lost its internal balance and needs to be reformed – one example might be the extraordinary retrospective lengthening of the copyright term. Just as the digital revolution allows us to offer cheap access to the texts, movies, music and images of the twentieth century, we have extended the length of copyright terms so that most of those cultural artifacts are off limits, even though they are commercially unavailable and their authors cannot be found. But if copyright has sometimes failed, or been applied so that it fails, the answer is not to ignore it, to lose respect for it, to violate it.

One of the under-appreciated tragedies of the permissions culture is that many young artists only experience copyright as an impediment, a source of incomprehensible demands for payment, cease and desist letters, and legal transaction costs. Technology allows them to mix, to combine, to create collages. They see law as merely an obstacle. This is a shame because copyright can be a valuable tool for artists and creators of all kinds – even

for many of those who are trying to share their work without charge. Copyright can work in the culture of mash-ups, parodies and remixes, of hypertext links and online educational materials. But it can do so only if we do not let the system slide further out of balance.

We thought about how to present these messages to an audience of artists and filmmakers, how to pass on the information that they need to make the system work for them. But at the same time we wanted to reach a wider audience – an audience of citizens and policymakers who generally hear nothing about copyright except the drumbeat of "Piracy! Piracy! Piracy!" The story of documentary film is vitally important in its own right. Documentaries are the most vivid visual record of our history, our controversies and our culture. But their story is also a manifestation of a wider problem and one that we thought could enrich the public debate on the subject.

For some strange reason, none of our intended audiences seem eager to read scholarly law review articles. What's more, there is something perverse about explaining an essentially visual and frequently surreal reality in gray, lawyerly prose. Finally, what could better illustrate the process we describe than a work which has to feature literally hundreds of copyrighted works in order to tell its story, a living exercise in fair use? Hence this book. It is the first in a series from Duke's Center for the Study of the Public Domain dealing with the effects of intellectual property on art and culture. We hope you enjoy it. For those who are interested in the wider debate on the ownership and control of science and knowledge, or the ideas behind "cultural environmentalism," links to other resources are given on the next page.

Center for the Study of the Public Domain
Duke Law School http://www.law.duke.edu/cspd

"The mission of the Center is to promote research and scholarship on the contributions of the public domain to speech, culture, science and innovation, to promote debate about the balance needed in our intellectual property system and to translate academic research into public policy solutions." An online version of this work is available for free at our website.

Further Reading on Intellectual Property and Culture

James Boyle, The Second Enclosure Movement & the Construction of the Public Domain
http://www.law.duke.edu/pd/papers/boyle.pdf
"It may sound paradoxical, but in a very real sense protection of the commons was one of the fundamental goals of intellectual property law. In the new vision of intellectual property, however, property should be extended everywhere - more is better. Expanding patentable and copyrightable subject matter, lengthening the copyright term, giving legal protection to "digital barbed wire" even if it is used in part to protect against fair use: Each of these can be understood as a vote of no-confidence in the productive powers of the commons...."

Collected Papers on the Public Domain (Duke: L&CP 2003)
http://www.law.duke.edu/journals/lcp/indexpd.htm
"What does the public domain do? What is its importance, its history, its role in science, art, and in the building of the Internet? How is the public domain similar to and different from the idea of a commons? Is it constitutionally protected, or required by the norms of free expression? This edited collection, the first to focus on the public domain, seeks to answer those questions. Its topics range across a broad swath of innovation and creativity, from science and the Internet to music and culture jamming. Its list of authors includes prominent environmental scholars, appropriation artists, legal theorists, historians and literary critics."

Lawrence Lessig, Free Culture (The Penguin Press, New York 2004)
"A technology has given us a new freedom. Slowly, some begin to understand that this freedom need not mean anarchy. We can carry a free culture into the twenty-first century, without artists losing and without the potential of digital technology being destroyed.... Common sense must revolt. It must act to free culture. Soon, if this potential is ever to be realized."

A Sampling of Legal Resources: These are not a substitute for legal advice. For specific legal questions please consult a lawyer.

- **Center for Social Media at American University: Best Practices in Fair Use** http://www.centerforsocialmedia.org/fairuse.htm "Documentary filmmakers have created, through their professional associations, a clear, easy to understand statement of fair and reasonable approaches to fair use."
- **Chart on Rights Clearance Problems and Possible Solutions** http://www.law.duke.edu/cspd/pdf/docfilmchart.pdf
- **Copyright Overview** http://www.law.cornell.edu/wex/index.php/Copyright
- **The Copyright Act: 17 U.S.C. §§ 101-1332** http://www.law.cornell.edu/uscode/html/uscode17/usc_sup_01_17.html
- **Copyright and Fair Use** http://fairuse.stanford.edu
- **Copyright Term and the Public Domain** http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm
- **United States Copyright Office** http://www.copyright.gov

Selected Organizations

- **Center for the Study of the Public Domain** http://www.law.duke.edu/cspd
  The home of the Arts Project that brought you this comic.
- **Center for Social Media** http://www.centerforsocialmedia.org
  The home of the Best Practices Statement.

- **Chilling Effects Clearinghouse** http://www.chillingeffects.org
  Chilling Effects aims to help Internet users understand the protections that the First Amendment and intellectual property laws give to online activities, with a particular focus on cease and desist letters.
- **Creative Commons** http://creativecommons.org
  Creative Commons builds upon the "all rights reserved" of traditional copyright to create a voluntary "some rights reserved" copyright. It is a nonprofit and all of the tools are free.
- **Electronic Frontier Foundation** http://www.eff.org
  The premier online civil liberties organization.
- **Full Frame Documentary Film Festival** http://www.fullframefest.org/main.html
  The leading documentary film festival in the United States. Takes place each spring in Durham, North Carolina.
- **Motion Picture Association of America** http://www.mpaa.org
  Founded in 1922, the *MPAA* is the trade association of the American film, video and television industry.
- **Public Knowledge** http://www.publicknowledge.org
  Representing the public interest in intellectual property policy.
- **Volunteer Lawyers for the Arts** http://www.vlany.org
  VLA provides *pro bono* legal services, and educational programs, to the arts community in New York and beyond.

ACKNOWLEDGMENTS

Bound By Law grew out of a conference on the effects of intellectual property law on music and film, which was held in conjunction with the Full Frame Documentary Film Festival. Both the conference and the production and distribution of this book were made possible by a grant from the Rockefeller Foundation. Other support was also provided by the Center for the Study of the Public Domain and by the Office of the President, Duke University.

Debts of gratitude are owed to many people: At Duke, to Garrett Levin, David Lange, Richard Riddell, Eileen Wojciechowski, Jordi Weinstock, Wayne Miller, Nick Drury, Jennifer Carpenter, Scott Lenger and Hiroki Nishiyama. In the filmmaking community Chris Hegedus, Orlando Bagwell and Davis Guggenheim gave us vital material while John Sloss offered a unique legal perspective. Laurie Racine and Joan Shigekawa offered vital support. Peter Jaszi and Pat Aufderheide's work on fair use was invaluable. Larry Lessig's work provided the impetus to focus on documentary film and his scholarship is a vital resource in outlining problems in the area. Along the way, others supplied key encouragement or advice. Thanks to Cory Doctorow, Sham B., Brandt Goldstein, Megan Taylor, the people at Full Frame, and everyone else who made this project possible. Mona Aoki deserves special mention for patience verging on the saintly.

About the Authors

This book was written by James Boyle and Jennifer Jenkins, designed by all of its authors in innumerable, hilarious and occasionally manic conference calls, and drawn by Keith Aoki, a person who (in the opinion of his co-authors) is far too talented to be a law professor.

Keith Aoki is a longtime cartoonist who loves the late 1960s comic work of Jack Kirby, Steve Ditko, Jim Steranko and earlier greats like Will Eisner, Chester Gould and Al Capp. He has also been influenced by the vibrant contemporary work of Robert Crumb, Scott McCloud, Art Spiegelman and Jamie Hernandez. In the mid-1980s, Aoki decided to leave the bohemian art demimonde to go to Harvard Law School. He is now the Philip H. Knight Professor of Law at the University of Oregon School of Law, where he has taught since 1993 and specializes in the area of intellectual property. He has published law review articles in the Stanford, California, Iowa and Boston College Law Reviews and is author of the forthcoming book *Seed Wars: Cases and Materials on Intellectual Property and Plant Genetic Resources*.

James Boyle is the William Neal Reynolds Professor of Law at Duke Law School and one of the founders of the Center for the Study of the Public Domain. He is a Board Member of Creative Commons, and a columnist for the online *Financial Times*. Boyle was the winner of the 2003 World Technology Award for Law for his work on the "intellectual ecology" of the public domain, and on the "second enclosure movement" that threatens it. He is the author of *Shamans, Software and Spleens: Law and the Construction of the Information Society* as well as a depressingly large number of law review articles, and is the special editor of *Collected Papers on the Public Domain*.

Jennifer Jenkins is Director of Duke's Center for the Study of the Public Domain, where she heads its "Arts Project" and teaches a seminar on Intellectual Property, the Public Domain and Free Speech. As a lawyer, she was a member of the team that defended the copyright infringement suit against the publisher of the novel "The Wind Done Gone" (a parodic rejoinder to "Gone With the Wind"). As an artist, she co-authored "Nuestra Hernandez," a fictional documentary addressing copyright and appropriation, and has authored several short stories, one of which was published in Duke's Tobacco Road literary magazine.

Inquiries about the book? Send press, book review, and other inquiries to: cspd@law.duke.edu .

Bulk orders? Educational and other bulk users can order 50 or more copies for classes or conferences at a discounted rate. See www.law.duke.edu/cspd/comics for more information on placing bulk orders.

What's next? Keep up with the activities of the Center for the Study of the Public Domain, including our next comic book on intellectual property and music, by visiting www.law.duke.edu/cspd .

The Center for the Study of the Public Domain is a non-profit organization.

A documentary is being filmed. A cell phone rings, playing the "Rocky" theme song. The filmmaker is told she must pay $10,000 to clear the rights to the song. Can this be true? "Eyes on the Prize", the great civil rights documentary, was pulled from circulation because the filmmakers' rights to music and footage had expired. What's going on here? It's the collision of documentary filmmaking and intellectual property law, and it's the inspiration for this comic book. Follow its heroine Akiko as she films her documentary, and navigates the twists and turns of intellectual property. Why do we have copyrights? What's "fair use"? *Bound By Law* reaches beyond documentary film to provide a commentary on the most pressing issues facing law, art, property and an increasingly digital world of remixed culture.

Advance Praise for Bound By Law

"Will a spiky-haired, camera-toting super-heroine... restore decency and common sense to the world of creative endeavor?... [*Bound By Law*] exercises the fair-use doctrine in a romp through popular culture." -Paul Bonner, *The Herald-Sun*

"'Bound by Law?' stars Akiko, a curvaceous, muscular filmmaker (think Tomb Raider's Lara Croft with spiky hair) planning to shoot a documentary about a day in the life of New York City... [It] translates law into plain English and abstract ideas into 'visual metaphors.' So the comic's heroine, Akiko, brandishes a laser gun as she fends off a cyclopean 'Rights Monster' - all the while learning copyright law basics, including the line between fair use and copyright infringement." -Brandt Goldstein, *The Wall Street Journal online*

"'Bound By Law' riffs expertly on classic comic styles, from the Crypt Keeper to Mad Magazine, superheros to Understanding Comics, and lays out a sparkling, witty, moving and informative story about how the eroded public domain has made documentary filmmaking into a minefield." -Cory Doctorow, *BoingBoing.net*

For more information, and free digital versions of this book, please visit www.law.duke.edu/cspd/comics

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