





RIGHTS CLEARANCE?	PROBLEMS	POSSIBLE SOLUTIONS
<p>Incidental Capture</p> <p>Documentarian filming dorm room happens to capture “The Simpsons” playing on television or Madonna on the radio</p> 	<p>Fair use? Most incidental captures should be covered by fair use, but rights to these are often cleared anyway</p> <p>Private Gatekeepers: E&O insurance companies or distributors may require rights clearances even though these are fair use</p>	<ul style="list-style-type: none"> • Clarify and educate: create accurate resources about fair use for filmmakers • Best Practices: develop statement of best practices for filmmakers (American University’s Center for Social Media is working on these ideas.) <ul style="list-style-type: none"> • Alternative Institutions: create a non-profit insurer or clearinghouse • Build Awareness: educate gatekeepers about fair use • Technology: distribute works through other channels, for example via the internet
<p>Deliberate Inclusion</p> <p>Documentarian wishes to use newsreel footage, photographs, movie clips, music for soundtrack, etc.</p>      	<p>“Orphan works”: the copyright holder is difficult or impossible to find, or doesn’t care if you use the work</p>  <p>The copyright holder refuses permission; clearance is too expensive; filmmaker has no negotiating leverage; rights thickets are impenetrable</p>   <p>Disappearing History? Even if rights are cleared, licenses can expire, leaving historical documentaries like <i>Eyes on the Prize</i> out of circulation</p>	<p>Comments to the Copyright Office propose solutions enabling uses of orphan works:</p> <ul style="list-style-type: none"> • www.law.duke.edu/cspd/orphanworks • www.publicknowledge.org/issues/ow • www.copyright.gov/orphan/comments/OW0595-Glushko-Samuelson.pdf <p>Fair Use: uses for criticism, commentary or other “transformative” (new and valuable) purposes can be fair use</p> <ul style="list-style-type: none"> • End the Permissions Arms Race: just say no to excessive licensing practices (for example demanding payments for small fragments, or charging exorbitant prices) • A Licensing Scheme could ensure that rights holders get paid while enabling filmmakers to use copyrighted works for fair prices. (A panel at the 2005 Full Frame Festival explored this idea.) <ul style="list-style-type: none"> • Special terms or licenses for historical documentaries that take into account heavy reliance on archival footage and importance of historical record • Best practice codes for historical documentaries