

Copyright Made Easy: Empowering the Legalese Adverse

Clearance & Copyright: Everything You Need to Know for Film and Television

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By Michael C. Donaldson

By Cynthia Close

When I was asked to review a book on copyright, I cringed. Copyright: the Hydra-headed monster and bane of the existence of many a filmmaker. But I knew it would be good for me—like when a doctor prescribes some bitter-tasting medicine—so I bit the bullet and said “yes.”

In my work, acting as an advisor to independent documentary filmmakers and helping them to develop business, funding and distribution plans, I have found copyright to be one of the most misunderstood aspects of the entire filmmaking process. This holds true for both experienced as well as novice media makers. While I considered myself fairly well versed on the subject, I often wished I could just recommend a good book and be done with it. Luckily for us all, Michael Donaldson has written such a book.

Developments in technology and changes in how people access media have had a profound effect on copyright. It has become a battleground, a sort of David and Goliath struggle that is to some extent generational: Folks under 25 think everything is free and should be free, while those who have spent their professional careers making media to sell depend upon copyright control for their livelihoods. I also find myself at times wearing two hats when it comes to positions on copyright. When I am helping a producer look for ways to keep her expenses under control, I try to justify her use of that essential clip from Fox News in the opening sequence as Fair Use. As a distributor, however, who also controls the licensing of a historically important ethnographic film archive, I use every opportunity to exercise my copyright control to generate revenue from that material.

Donaldson’s book provides ammunition for us all, and his intelligent, jargon-free writing provides clear insight into the laws governing copyright—invaluable for any writer, producer, director or distributor whose ultimate goal is to produce the best, most creative work they can, while saving thousands of dollars on attorney’s fees.

I was pleased to see that one of my most often repeated mantras, “Get it in writing,” was also frequently repeated throughout Donaldson’s book. But then he follows up that admonition with samples, specific to each instance, of what exactly “Get it in writing” entails. What do you do when you find that someone has written a compelling autobiography and you want first dibs on trying to turn that story into a film? One way is to secure the rights for a limited time via an “Option to Purchase Agreement.” It’s what I call “taking possession of your idea.” Donaldson not only provides sample agreements, but in each case he clearly defines the terms used in that agreement, so even a “legalese adverse” person like myself feels empowered.

As so often happens when one is negotiating with another human being for control over some piece of intellectual property, nothing is black and white. But to help you navigate through these treacherous waters, Donaldson provides helpful hints along the way, such as how to strategize about the “option price.” (Placing a monetary value on

a “right” is always a challenge.) However, all the while he reminds you that the underlying force behind all legal agreements is trust, and sometimes that becomes the most valuable commodity. For instance, in the case of optioning someone else’s life story, Donaldson suggests that you can win over an author with an emotional appeal: “If you entrust your property to me, I will be as faithful to your work as possible. I will keep you advised every step of the way, and I will do my best to protect you.” I don’t know about you, but I would sooner entrust my life story to a producer who expressed himself like that, than someone who just waved his or her checkbook, asking me to “name my price.”

In Donaldson’s definition of terms at the beginning of the book, he makes it clear that copyright is inherent in the creation of the “work.” This is a fact that many artists find hard to accept. I’ve often been asked how one goes about actually registering your work (a good idea in order to further protect your control of the “work”). We need to look no further. Donaldson takes us through the process of registering copyright, with actual sample forms, right down to where it should be sent (the Library of Congress) and how long you might anticipate before you get a response.

By the time I reached Chapter 26, “Legal Referral Services,” I felt far more confident in my own understanding of copyright, and how to clear the rights for the use of the creative labors of others, thanks to the expertise and 30 years of experience in entertainment law that Michael Donaldson has shared in his newest and most valuable edition of *Clearance & Copyright*.

Cynthia Close is executive director of Documentary Educational Resources.