

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

4th Edition, Revised, Updated and Expanded 2014

By Michael C. Donaldson and Lisa A. Callif

By Cynthia Close published in *Documentary* magazine 2014

It takes a combination of self-confidence and chutzpa to include “*Everything You Need to Know...*” in the title of any book, but in the case of authors Michael Donaldson and Lisa A. Callif, that self-confidence is well earned. It was on the pages of this magazine back in 2011 when I enthusiastically reviewed the 3rd edition of *Clearance and Copyright: Everything You Need to Know for Film and Television*. Then, I regarded issues surrounding clearance and copyright with some trepidation, even though such knowledge was very central to my work in documentary film production and distribution. Discovering that such a complex area of entertainment law could be made accessible was a revelation. I could immediately see how this one book could potentially save filmmakers thousands of dollars along with many hours of pain and suffering that can plague film projects when their makers neglect such rudimentary legal requirements as obtaining written releases from interviewees, or failing to secure work-for-hire agreements.

Whether filmmakers are the products of formal training in film schools, or come to the medium as natural born storytellers, it is usually curiosity driven by creative energy and a desire to connect with a large audience that leads to the declaration “Let’s make a movie about...”. That initial energy and excitement can carry you too far too fast. After the light-bulb idea for a film enters your mind, I would strongly suggest you sit down with this latest updated copy of *Clearance & Copyright* and think about how you need to proceed even before you shoot one frame.

In the introduction Donaldson informs us that he wrote the first edition of this book in 1995 and it was a mere 150 pages long. The broad acceptance of this first attempt by film schools, other lawyers and professionals in the field of obtaining clearances encouraged Donaldson to quickly follow-up with the second edition which doubled the page count, and a third, lengthier edition. In this the fourth iteration, “A Book for the Internet Age” we are brought up to date and treated to over 540 pages packed with invaluable, money and time saving information that includes case studies and more importantly, links to actual legal documents that can be used as templates and adapted to your particular situation. This edition also includes a new chapter on hidden cameras and journalist privilege, so essential in this new age of surveillance where we are dealing with the public’s right to know balanced by our individual right to privacy.

As with everything else in life, technology has forced rapid changes and those changes eventually affect things that we may have thought immutable, like copyright, statutory law, case law etc. While technology has facilitated easy access to visual images, written material and music; the stuff filmmakers make use of to create their

works, there has also been an overbearing exercising of copyright law, particularly by corporate entities, that was having a stifling effect on the creativity of the independent filmmaker. In response, Michael Donaldson, along with Pat Aufderheide became primary movers several years ago in looking at the way fair use is addressed by the entertainment industry. He served on the Advisory Committee for the “Documentary Filmmakers Statement of Best Practices in Fair Use” and currently serves on the Advisory Committee of the Stanford Fair Use Project. The American Bar Association Journal dubbed him the “fair use guru of the documentary film set”. I found this refreshing, as here is a lawyer with clout who has chosen to give away for free, information that he could be charging big bucks for, and that is indeed an important factor in what makes this book so valuable.

In my workshops on the business of film one of the first lessons deals with the importance of taking possession of your story. This involves some basic knowledge of copyright law and Donaldson provides that overview in Chapter 1, Copyright and Ideas: The Big Picture. The original American copyright law was just two pages long. It now spans over 352 densely written pages. Donaldson invites the curious to plow through it, but recognizes that your time could be better spent reading his book. After you have a sense of what copyright is, what it was meant to protect and why, then you can start thinking about how to protect your own copyright in and control of your work. Coming up with a good title and buying the domain name is a good start but what if your film is based on a book written by someone else? What rights do you need, who do you contact, and how do you go about negotiating those rights? The answers are all covered in chapter 6: *Acquiring the Rights to Someone Else's Property*.

A related subject to claiming “fair use” and an equally important one for creators, is understanding “Public Domain” which is covered in Chapter 4. Donaldson tells us “Public domain literally means ‘owned by the public.’ No individual or corporation owns the copyright in public domain material, so no one needs to be asked to use it. As a member of the public, you are as free to use the material as anybody else.” But then you may ask how do I verify that a work is in the public domain? Donaldson provides the answer; which is to purchase a copyright report that gives a detailed history of the work in question. He then goes to tell you the exact email address for contact information of companies that provide copyright reports. This is free and another reason why I love this book. The information you need to take action is embedded in the text. It is there when you want it. That is in addition to the incredibly useful sample contracts and agreements, the case studies, and detailed appendix.

Another issue, partly due to the evolution of technology's influence on the way we do business today is the globalization of the entertainment industry. Filmmakers shoot films and distribute films in every corner of the world. What happens when as a producer, you run into rights issues with your film in foreign territories? Chapter 24 covers International Copyright, which can be rather intimidating especially when informed that each country has its own, different set of copyright laws. To guide you through this morass, Donaldson supplies a few simple concepts that will help you to

understand how the international copyright system functions. He also is involved in a “growing global movement to unite in the common pursuit of defining clearer international fair use rules” and he leaves us with the promise of coming out with yet another edition of *Copyright and Clearance* that he hopes will contain a summary of the as yet unwritten *Documentary Filmmakers Statement of International Best Practices in Fair Use*.

This book is the most thorough, accessible book on legal matters for the filmmaker that I have encountered. Donaldson modestly states in Chapter 25 “certainly you will have many legal questions down the road” that “may be personal to your situation and fall beyond the scope of this book.” He does not leave it at that but offers a “compiled list of bar associations and non-profit referral services that can help point you toward a lawyer in your area.” Finally, perhaps my favorite piece of advice is the last line of the last chapter, “If you choose your friends and your business associates with uncompromising care, you won’t have to spend so much time with lawyers.”