

## RESOLUTION

### ON FREEDOM OF EXPRESSION AND INFORMATION IN DOCUMENTARIES

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We, Documentary Filmmakers of Europe, having met in Rome on October 19th, 2007 under the auspices of **Doc IT** (Italian Documentaries Association) and **IDA** (International Documentary Association) in order to discuss the proposal for a "**European Best Practice on Fair Use in Documentaries**",

1. *Considering* that **freedom of expression and information** are fundamental principles of a democratic society, as such recognized within article 19 of the Universal Declaration of Human Rights, article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the 1982 Council of Europe's Declaration on the Freedom of Expression and Information;
2. *Considering* that audiovisual works, and **film documentaries** in particular, are essential today for the effective realization of freedom of expression and information, as they greatly enhance the possibility of representing other people's ideas and criticism and review on such ideas;
3. *Considering* that the ability of film documentaries, as creative treatments of actuality, to perform such critical functions depends on their ability to quote or otherwise use **third party copyrighted works** (i) as the object of criticism or review, or (ii) to illustrate an argument or point, or (iii) when they are captured in the process of filming something else, or (iv) to tell an historical sequence (this, and other similar uses of third party works, being hereinafter referred to as "Fair Use", and the right to adopt them regardless of the copyright owner's consent as "Fair Use in Documentaries");
4. *Considering* that the right of quotation is regulated by Article 10.2 of the Berne Convention for the Protection of Literary and Artistic Works ("Berne Convention"), and within the European Union most recently by the European Directive 2001/29 on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society;
5. *Considering* that international and EU legislation only set forth **some harmonized principles** on Fair Use, leaving ample room to national states for the implementation of said principles as well as for the introduction of exceptions to them;
6. *Considering* that, as a result of such an approach, Fair Use within the EU is still little harmonized, and mostly regulated at a **national level**;

7. *Considering* that national laws on Fair Use differ from each other, being based on different legal concepts such as "fair practice", "good practice", "fair dealings", etc., and *noting* that this creates considerable legal uncertainty;
8. *Considering* that, because of such legal uncertainty, European documentary filmmakers rarely claim Fair Use and either accept to pay a fee for rights clearance or remove uncleared work, and *noting* that this results in undue costs and constraints to European documentary filmmakers' rights of expression and information;
9. *Considering* that, as a result of market convergence and consolidation, copyright holders' requests for clearance of their rights through **licensing** have become increasingly aggressive in the past decade, and their licensing fees expensive compared to documentary production budgets;
10. *Considering* that the increasing demand from international broadcasters and distributors for "**Error & Omissions**" ("E&O") insurance policies as a pre-requisite to broadcast or distribute documentaries represents a further cost and constraint for documentaries productions, especially so because the market for such insurance policies is not yet developed in Europe;
11. *Believing* that the above-evidenced costs and constraints are **excessive and unreasonable, and** affect European documentaries filmmakers' freedom of expression and information, and should therefore be limited through appropriate actions, as suggested below;
12. *Noting* that the United States has a uniform doctrine which both provides legal certainty and are more flexible than the European equivalents, and *believing* that this creates an advantage for US documentary productions compared to European documentary productions;
13. *Noting* that the development in the United States of the "*Documentary Filmmakers' Statement of Best Practices in Fair Use*" ("**US Best Practices**") generated positive effects in the United States, increasing legal certainty as to which cases of fair use are legitimate and facilitating the creation of a viable market for E&O insurances covering rights cleared through fair use, and *believing* that the adoption of a similar statement by the European documentary filmmakers community could achieve similar results in Europe;
14. *Believing* that, in any event, there is a need in today's market to address to what extent the **US Best Practices** could find an application in Europe in order to facilitate global exploitation of audiovisual works;
15. *Noting* that a collateral issue that also harms the freedom of expression and information in Europe concerns **physical access** to works held by public or private archives and similar entities, whether copyrighted or not, and *recognizing* that actions should be taken to improve the ability of each individual to access such works on reasonable terms and conditions;

16. *Noting* that, while evaluating the actions to be taken to address the above mentioned issues, careful considerations should be given to both the economical and **moral rights** of all the parties involved;
17. *Noting* the growth of recent movements such as the "**Creative Commons**", and *believing* that their ability to address some of the issues currently faced by documentary productions should be investigated;
18. *Noting* the need to conduct an extensive **survey** among the documentary filmmakers community, to both verify the impact that the above mentioned issues have on documentary productions, and identify possible further issues relating to copyright clearance.

Now, therefore, we agree to make our best efforts to fulfill the following goals:

- To conduct a European **Study** on the increasing costs and legal uncertainty associated with rights clearance and the application of Fair Use in Documentaries;
- To promote a European and global **debate** on Fair Use in Documentaries, seeking collaboration of all the independent producers' associations, major film festivals and institutions; public and private archives multimedia and film institutions, and all the collecting society involved in dealing with copyrights issues.
- To obtain **financial support** from national institutions or private sponsors in our own countries to help this initiative.

In order to achieve such goals, we agree:

- To conduct a **preliminary legal study** on the US Best Practices and their applicability within the EU;
- To organize in early **spring**, in coordination with events such as the European Media Event (Brussels in March 2008) and/or Discovery Campus, a general debate on fair use, and to launch the European study on copyright and Right of Quotation/fair use;
- To present at "**Sunny Side of the Doc**" the preliminary results of the study;
- To organize at "**Hot Docs**" a meeting with the Canadian Independent Organization and the Film Board of Canada, which has been very supportive when this idea was launched;
- To appoint **Marijke Rawie** as general spokesperson and coordinator of this project with IDA and DocIT, and provide her with compensation as soon as possible, as agreed.

**We call upon all documentary filmmakers, organizations, governments and international institutions to endorse, support and finance our initiative!**

**Participants:**

**ALESSANDRO SIGNETTO** – President of Doc/It (Associazione Documentaristi Italiani)

**MARCO VISALBERGHI** – Vice President of Doc/It and Producer

**GIOIA AVVANTAGGIATO** – Doc It; Producer

**PAOLO PALLAVIDINO** – Doc It, Producer

**MICHAEL DONALDSON** – U.S. lawyer active in all aspects of fair use. IDA former President

**KIRBY DICK** – Documentary Filmmaker (with extensive experience in Fair Use practice)

**DIANE ESTELLE VICARI** – President of IDA (International Documentary Association – a 25-year-old nonprofit membership organization dedicated to supporting the efforts of nonfiction film worldwide; fully active in advocacy work on copyright issues, Orphan works legislation and Fair Use issues) and Filmmaker

**MARIJKE RAWIE** – Independent Documentary Co-production Consultant (in the past: Commissioning Editor for Avro, the Netherlands) (with long experience in Fair Use practice)

**CHRISTINE LE GOFF** – Producer (Studio International)

**YVES JANNEAU** – Director of Sunny Side of the Doc

**LINE HALVORSEN** – Director; Nordic Filmmakers

**GEORG PANZER** – Lawyer; Director of Norwegian Director's Guild; Norwegian Film Workers Union

**MARCELLO MUSTILLI** – Lawyer (Intellectual Property Sector)

**NICOLA BOTTERO** – Lawyer (Open Source)