

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.