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Fair is Fair

The Documentary Organization of Canada (DOC) releases
Guidelines to Fair Dealing Practices for Documentary Filmmakers

The Documentary Organization of Canada/l'Association des documentaristes du Canada (DOC) has released guidelines aimed at assisting documentary filmmakers in using copyrighted material in their productions by using the existing fair dealing provisions of the Copyright Act.

For years, documentary filmmakers have cleared the rights to all third party content used in their films, and as clearance costs have risen, and the scope of licences shortened, documentary filmmakers are finding that they are spending a disproportionate amount of their budgets for these rights. The irony is that many of these clearances are unnecessary: under copyright's fair dealing defence, filmmakers enjoy the right to fairly use third party content without permission of a rights holder.

Of course, not all dealings will qualify as fair dealing. That is where the Guidelines come in: in simple language, and with reference to the filmmaker's art, the Guidelines help documentary filmmakers understand what kinds of dealings qualify for the fair dealing defence and do not require clearance. The Guidelines are products of documentary filmmakers' unique position as both users of copyright content and creators themselves: the Guidelines represent dealings that documentary filmmakers themselves are comfortable being applied to their own content by other filmmakers.

The Guidelines do not purport to change the law, or reform the law, but simply to apply the law as it already is. Dealings with third party content that do not fall within the Guidelines - whether because the dealing is unfair or for a purpose not covered by fair dealing - require clearance.

Finally, the Guidelines do not represent a "solution" to the widely acknowledged problems with fair dealing's limitations. DOC remains committed to the position it articulated during 2009's Copyright Consultation: "Fair is fair" - fair dealing needs to be reformed so that all dealings that are fair benefit from the defence. DOC eagerly awaits the anticipated copyright legislation to see if the Ministers of Industry and Canadian Heritage agree that artists should not be penalized for fairly commenting and engaging in social discourse. However, given the uncertainties of legislation, DOC regards publication of the Guidelines as a productive step towards providing filmmakers with greater guidance on the application of fair dealing.

The 24 page document is available in French and English at www.docorg.ca. The Guidelines include an appendix for the producers and directors as a practical guide to ask the right questions when using copyrighted material and see whether or not Fair Dealing might be applicable.

Starting late in the fall and continuing through the winter, DOC will be holding a National Road Show on Fair Dealing in order to engage the production community in a dialogue on these guidelines with the hope of extending industry-wide consensus on the best practices for documentary and Fair Dealing.

The Documentary Organization of Canada / l'Association des documentaristes du Canada is the collective voice of independent documentary filmmakers across Canada. DOC is a national non-profit association representing over 800 directors, producers and craftspeople in the Canadian documentary community. DOC advocates on behalf of its members to foster an environment conducive to documentary production and strives to strengthen the sector within the broader film production industry.

For more info:

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