

VRSC/ARAC GOES TO HOLLYWOOD

VRSC/ARAC NOTES ON FOOTAGE FEST '19

SEPT 7-8, 2019 Hollywood, CA

DAY 1 - SEPTEMBER 7th

MORNING SESSIONS

ALL ABOUT CONTENT: Entertainment Libraries and Institutions

Description: There's rumors in these Hollywood Hills that some folks can access content from the entertainment industry's libraries and institutions. What is the reality behind accessing material from the AFI, The Motion Picture Academy, the Television Academy or the Paley Center? Do you have to be members of these organizations to access material? Do any of these actually provide licensing? What are these libraries collecting and archiving, what are the costs and the turnaround times for such requests?

Moderator

Adele Sparks - Sparks Media Services

Speakers

Mike Pogorzelski - Director, Film Archive, Academy of Motion Picture Arts & Sciences

Dr. Jan-Christopher Horak - Director, UCLA Film & Television Archive

Mike Pepin - Library & Asset Licensing Manager, American Film Institute

*Warren Sherk - Head of Special Collections, Academy of Motion Picture Arts & Sciences,
Margaret Herrick Library*

VRSC NOTES:

- the speakers showcased their collections, each of which represent significant chunks of American film history from its early days to now
- the collections include films, videos, audio, filmmakers' papers, oral histories, interviews, audio and video recordings, scripts published and unpublished, storyboards, photos, props etc.
- though each archive has its own forte the archivists all know each other and seem happy to refer or recommend the other

--the people who work there are a wealth of knowledge when it comes to American film and in particular Hollywood productions, and if they don't have what you're looking for chances are they'll know where to find it or the documentation that could lead you to it

--the archivists say one thing that differentiates them from footage houses is the quality of the material they possess, often originals, negatives or cleaned up copies, so even if you find a clip online and are being offered a so-so copy by a footage house you might want to check into getting a better one from the archive that holds the master

--N.B. IT'S UP TO THE LICENSEE TO GET PERMISSION TO USE

--the materials are not free (archives need \$\$\$ to survive) and prices differ; you might pay for transfers etc.

TECH TALK: All about Codes and Compression

Description: *All about Codes and Compression...*

Unfortunately none of our members were able to attend this session due to timing conflicts but below is a list of speakers.

Moderator

Jo Griffin - R3 Store

Speakers

Ian Marshall - Co-Owner, Retro Video

Lance Watsky - Archive Director, Grinberg Film Library

Scott Dittrich - Owner, Action Sports Footage

Carol Martin - VP, Media & Digital Asset Manager, Footage Bank

Lance Stubblefield - Assistant Editor, "Criminal Minds", "Lost"

THE FAIR USE DEFENSE: The Ultimate Roundtable...presented by AMCUP

Description: *Last year, AMCUP Advisory Board member and Hulu Attorney Heather Bennett moderated our most popular panel, a potpourri of hot bed legal subjects ranging from right to privacy to guild issues, purposely leaving out fair use, which always takes over the discussion. This year, Heather returns with AMCUP's top attorneys brings its top attorneys together to settle -- once and for all -- any and all differences we have on Fair Use.*

Yeah, we know....Good luck.

Moderator

Heather Bennett, Esq. - Business & Legal Affairs, Hulu

Speakers

Diana Palacios, Esq. - Counsel, Davis Wright Tremaine

Hector Del Cid, Esq. - Attorney, "Jimmy Kimmel Live!"

Dale Nelson, Esq. - Partner, Donaldson + Callif

Maryanne Decandia - Manager, Rights and Clearances, "Access Hollywood"

VRSC NOTES:

Heather Bennet introduced the murky world of fair use/fair dealing with examples; discussion with the speakers followed each example.

Ex. 1 : Quoting Words of Famous Author Without Attribution – an infringement of copyright? : a scene from a movie in which a character quotes a line from a William Faulkner novel without the character/speaker attributing it Faulkner. The family tried to plead copyright infringement. Was it it? Yes or No.
NO.

Ex. 2 : The Star Trek Fan Film "Axanar", a big hit on the internet, began with the trailer "Prelude to Axanor" (https://www.youtube.com/watch?v=zh4JbLhH_8w) made with over \$100k, money raised from a Kickstarter campaign. The Axanor project then went on to raise over \$1M to produce a feature film. That's when the Star Trek property owners Paramount and CBS, objected and challenged Axanor's producers claim that their creation fell under the fair use guidelines and that the Klingon language could not be copyrighted. The courts deemed the production WAS NOT covered by "fair use" rules and was indeed an infringement on the franchise's copyright. Production came to a halt.

From Wired <https://www.wired.co.uk/article/star-trek-axanar-fan-film-not-fair-use-copyright>: The hearing rested on whether Axanar was "substantially similar" to official Trek works, and if a casual viewer would know it was not a professionally made and authorised film. The verdict was that it was not discernibly different, and that its plot - which picks up on a minute point of Trek canon, and is set four years before The Original Series - removes its fair use defence.- From Wired <https://www.wired.co.uk/article/star-trek-axanar-fan-film-not-fair-use-copyright>

Production was held up and a new fan-film guideline was put forth by Paramount as a result of the case.

Those rules state that productions must be less than 15 minutes long, they can't use the name Star Trek in their title, and they must use commercially available costumes and props. Fundraising for such films is capped at \$50,000. - From Wired <https://www.wired.co.uk/article/star-trek-axanar-fan-film-not-fair-use-copyright>

EX 3: What What (In the Butt)

The original Samwell/Brownmark
version <https://www.youtube.com/watch?v=fbGkxcY7YFU>
VS.

The South Park Version https://www.youtube.com/watch?v=plw2mlDwm_4

In Brownmark vs Viacom (South Park) it was found that South Park DID NOT infringe on Brownmark's rights and that **fair use applied** since the South Park version licensed the original song from Brownmark and the images accompanying it were shown to be parody.

EX. 4- Family Guy - I Need A Jew (a version of Wish Upon A Star)

https://www.youtube.com/watch?v=i8nQeZMt_3I

Bourne Co. Music Publishers, the owner of the song originally written for the Disney production *Pinocchio* sued 20th Century Fox Broadcasting Co et al, producers of Family Guy, claiming the new version of the song was used for anti-Semitic purposes. A federal judge rules against Bourne with the decision that the parody did not infringe on the copyright.

Ex.5 Catfish Music - a "reality thriller" -

<https://www.youtube.com/watch?v=BuE98oeL-e0>

Filmed in documentary style the creators were sued over the use of 18 seconds of Amy Kuney's song "All Downhill From Here". The record label tried to force Catfish to pay for the rights to the song arguing that the "reality thriller" was not a documentary. The court, however, ruled **FAIR USE** saying use was incidental and transformative and not a plot device.

Ex. 6 - The Hurt Locker Case and Rights to Life Story

Master Sgt. Jeffrey Sarver, a U.S. Army bomb disposal expert, sued the makers of the Oscar winning movie *The Hurt Locker* claiming the movie's main character was based on him and that the movie infringed on his publicity rights and defamed him. The suit was rejected (2011) and the dismissal was appealed. Finally, 5 years later, the federal appeals court upheld the lower courts decision with a strong endorsement of the filmmakers' free speech rights. The judge wrote:

"In sum, The Hurt Locker is speech that is fully protected by the First Amendment, which safeguards the storytellers and artists who take the raw materials of life – including the stories of real individuals, ordinary or extraordinary – and transform them into art, be it articles, books, movies, or plays."

EX. 7 - FEUD and life story rights + publicity rights:

You can make a film about a famous person without them giving you permission. However they could sue for Right of Publicity (in some states) or defamation if they have a case.

Olivia de Havilland and *Feud* lawsuit:

De Havilland sued FX, the makers of *Feud: Bette and Joan*, an 8 part mini-series about the Bette David and Joan Fontaine (DE Havilland's sister) claiming the series had violated her "right to publicity", depicted her in a false light and damaged her professional reputation. She also argued for compensation for the use of her name and likeness in the show. De Havilland lost her case.

"In March 2018, a state appeals court in California threw out the suit, first filed in June 2017, stating that ruling in favor of de Havilland would negatively impact the rights of screenwriters and producers to develop creative works that dramatize historical events or public figures..."

As Feud's depiction of de Havilland was found to be "transformative" under the law, it is entitled to protection under the First Amendment."

-- from <https://www.forbes.com/sites/legalentertainment/2019/01/07/supreme-court-rejects-olivia-de-havillands-feud-lawsuit/#3633f87f6beb>

The principal changes when it comes to marketing material. If they'd use the real image of Oliiva deHAVilland to advertise the series the creators would have been in big trouble. However using a likeness of her person and not the real person is acceptable. The same would apply to the Sgt. Sarver case.

EX. 8 – Jumanji vs the Government of Mexico

In the 1995 film Jumanji when one of the characters enters a gun store, the music playing on the radio in the Mexican national anthem. It is an infringement of Mexican law to play the national anthem for commercial or mockery situations, deliberately or not. The music was changed – BUT only for the Mexican release of the movie.

In all other U.S. territories the anthem is public domain. Go figure.

AFTERNOON SESSIONS

IT'S ALL ABOUT THE CONTENT: ACQUIRING/LICENSING HISTORICAL CONTENT

Description: *Within this recent resurgence in documentary production, the hard reality of war is one of the most popular subjects among filmmakers. These pivotal moments in history that might have been explored as recently as a decade ago are now being re-investigated thanks to analog material that has resurfaced, been digitized -- and made available to today's filmmakers. Where would you find legendary images like Joe Rosenthal's Iwo Jima flag-raising, or Robert Capa's D-Day storming of Omaha Beach? What does the (US) National Archives and the Imperial War Museum have in their archives? Archive Producer Adele Sparks (Five Came Back) moderates an*

amazing panel of diggers who have scoured to find those chestnuts that can be rediscovered, repurposed, and finally.....appreciated.

Moderator

Rich Remsberg - Atlas Films

Speakers

Bobby Dicks - Senior Director of Sales & Licensing, CNN Newsource

Mark Trost - Owner, Film Archives

Peter Kuran - Producer, "Trinity & Beyond: The Atomic Bomb Movie"

Jane Fish - Senior Curator, Film, Imperial War Museum

Nick Spark - Periscope Film

VRSC NOTES:

Each speaker presented a clip that used historical footage and talked about how they found it, sometimes fixed it, and used it . It was an eye-opening session revealing the lengths some folks will go to secure the best archival footage available.

Pete Kuran - producer:

Pete Kuran doesn't like to license anything that's not clean. For his film Trinity & Beyond: The Atomic Bomb Movie, Kuran scoured the national archives. He found what he was looking for and was determined to use it as his final scene, but the quality of the footage in the NA was shit. He figured out who had shot it and tracked down the guy who still had the original negatives. Kuran convinced him sell them. With \$10K in a moneybelt he flew to ?? to buy the negs. He then did the restoration himself. It paid off. The final scene of the doc is crisp. HE didn't want his doc to end on a grainy dirty scene following the great images that led to the closer. Kuran says never give up. There's always better footage out there and even if you find great footage in National Archives always ASK if there's a way to get cleaner footage or who shot the original...they may still be out there and have the negs. Also, he recommends a program called PixelClean to help with clean up. The closing scene of his doc that was printed from the negs and cleaned up, looked like it had been shot yesterday...not 75 years ago. Impressive.

Mark Trost - Owner, Film Archives:

He started a collection of cartoon clips he calls "Bad Old Stuff". When he worked for Late Night with Letterman he dug up the old clips and started writing to them and using them in the show.

Ex. 5th Column Mouse (1943) a Warner Bros animated caroon directed by Friz

Freeng. The cartoon features a band of mice in war against a car. It heavily references WWII. Trost has learned that even really bad cartoons can be a powerful addition to a

film on war...or any film. He is the owner of F.I.L.M. Archives
<http://www.filmarchivesonline.com>

Nick Sparks – Periscope Films:

Director and writer Nick Sparks started Periscope Films in 2000 while making a doc on submarines

He loves researching, and has written several books and directed films about war. makes film about war. He looks for archival material that is different from the government made films or the Newsreel films. Library of Congress has yielded some good stuff and better, clues to good stuff. Like ;Kuran he doesn't settle for just finding the right clip he rests only after he's found where to get the best right clip, quality wise. Although the LoC is a great resource for research and finding the material that is available, he doesn't stop there but uses the information as the first clue to finding the original material or a better copy archived elsewhere.

Jane Fish – Imperial War Museum

The IWM collection dates from 1918 and is international in scope. It also holds all NATO film/video from the 1940s through the 80s and it has been licensing since the 1930s. THE IWM's motto is – Educate and Illustrate.

Bobby Dicks – CNN Collections

CNN only started in 1980 but already their collection holds over 4 million assets and represents 650 local associates. The collection focuses on the crime, politics, disasters and war.

Bottom line: Lots of editors out there are using more archival footage more creatively.

Check out Peter Jackson's war movie – *They shall not Grow Old* (2018) to see a good example if this...and Todd Douglas Miller's *Apollo 11*. Without the Archival Producer both those films would not be.

IT'S ALL ABOUT THE CONTENT: Around the World in 60 Minutes

Description: *Pretty self-explanatory. Leading international archivists from Canada, the United Kingdom, Ireland, Australia – and yes, even the United States, explained how to navigate through the often difficult task of acquiring and licensing content different countries. Issues such as international video formats (NTSC, PAL and SECAM), taxes, exchange rates, guild issues and even Brexit were addressed.*

Moderator

Elizabeth Klinck – E. Klinck Research

Speakers

Lea Nakonechny - Sales Coordinator, National Film Board of Canada

Laura Scougall - Director, Clip Sales, ITV

David Seevers - Footage.net

Razib Chatterjee - Mgr, Content Synd. & Licensing, RTE-Ireland

Naomi Hall - Archive Producer, Nine Entertainment, Australia

IT'S ALL ABOUT THE CONTENT: Local News Footage presented by NEWS EXPOSURE

Description: *Why is it such a hassle to get news footage? What are the issues in licensing from local news stations as compared to network news archives? How do station groups vary from coops? Does it matter what station/network the requested footage would eventually air on? If you want to license more than a VO or a package, how do you get access to the raw footage? How do you license news anchor's likeness?*

Moderator

Steve Kozak - Director, Research & Clearances, "Jimmy Kimmel Live!"

Speakers

Rodney Foster- Assignment Editor, KCBS / KCAL News

David Lasker - CEO, News Exposure

Brian Sargent - Managing Dir., Archive Sales/Licensing, Fox News Archives

Mitch Waldow - Archive Manager, KTTV (Fox LA)

MUSIC RUINS EVERYTHING: The Do's and Don'ts of Music Clearance

Description: You're almost done with your production, and you can clearly see a light at the end of the tunnel. Writing, casting, shooting, editing....You're almost ready to deliver -- and suddenly you realize there are a few seconds of background music, or a reference to a music lyric.....Now, with no money left in your budget you need to start licensing music -- publishing, sync rights...Uggh. You thought you were wrapped? Far from it: No matter how great you thought your finished project was, you better be extra careful to not let as much as a one-line quote from a song lyric sneak into your production....because as we all know: *Music Ruins Everything*.

Moderator

Kate Griffiths - Archive Producer, Clearance Matters

Speakers

Kal Dhillon - Music Licensing, BBC

Jacqueline Fernandez-Ireland - Rights/Music Business & Legal Administration, NBC Universal Media

Cathy Carapella - VP, Research, Rights & Clearances, Global Image Works

Megan Bradford - Media Licensing, MGM Studios

VRSC NOTES:

Kate:

“My best advice – HIRE A MUSIC SUPERVISOR!!!”

--Be ahead of the curve, talk to the d=editors, be aware that MUSIC CANNOT WAIT UNTIL LAST

--Music is complicated, various types of music: music in archives, sync archives, non music (background music), specially composed music

Megan:

When licensing clips/ archival footage BE AWARE that music and talent are NOT included in the clip licensedo an interview with

--“Hire the EXPERTS”

--put music in the development and preproduction phase and budget

--Music can't ruin everything IF you have a plan up front.

Kal:

--at BBC they always clear the music BEFORE doing an interview with a person talking about the music; they are required to be sure the music is 100% CLEARED before filming

--best practice: start with all the music content, a wish list, to figure out what can and can't be cleared

Megan:

--make it quick search and easy for the archive producer; outline context of use

Kal:

--if you're using lyrics on screen you have to PAY THE PUBLISHER

Kate:

--separate the music out form the archive budget

--remember the MOST FAVOURED NATION concept: everything is licensed the same , hopefully at the lower rate

Ex. Elvis Presley - Hound Dog

Steps to Clear:

- License clip
- clear Elvis license
- clear back up singers/ musicians
- clear writers/ composers
- clear with RCA/SONY
- recording rights vs footage rights
- get blocking rights – the exclusive right to block (overrights) even if artist has moved on to a new production company
- clear all with unions (in 2016 there was a change in music licensing for AFofM and SAG members: there is now:
 - an additional licensing fee that goes to the union as of 2016
 - now need blocking rights for video clip footage where pre-2016 you used to get rights to clips and rights to performance bundled. NOT ANY MORE. (need more detail here)

--spoken word required an audio clip license

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What to do about identifying background/incidental music that's hard to identify:

- DO YOUR DUE DILIGENCE . You'll need the paper or e- trail of proof in order to qualify for your E&O

What to do about sound-alikes:

- It all comes down to risk assessment; see the example of the Oasis case: *"The band Oasis was hugely influenced by The Beatles and repeatedly said so. Some of the recordings of their songs bore marked similarities to other songs. When Oasis released 'Shakermaker' in 1994, they were found to have infringed a New Seekers song and settled the claim for a reported \$500,000. Once the matter was settled, the band even used some lyrics from the original song in a live performance of 'Shakermaker'."* (from <https://www.lexology.com/library/detail.aspx?g=6ac14023-9386-415e-ae04-e8e58b2d8fb7>)
- Plagiarism – check out this Rolling Stones article from 2016 on some landmark cases <https://www.rollingstone.com/politics/politics-lists/songs-on-trial-12-landmark-music-copyright-cases-166396/the-beach-boys-vs-chuck-berry-1963-65098/>

Visual Vocal vs Non Visual Vocal

- Visual vocal is a term used in cue sheet prep meaning an on-camera vocal performance
- Non Visual Vocal: a term used in a cue sheet to describe a non visual or off camera VOCAL source, such as a song (lyrics/ word) playing on the radio in the background; even if it is called a non-visual or background vocal its status can be upped to "feature" because there are lyrics set to music...

A good reference for cue sheet

terminology: <https://www.musicsupervisor.com/information/glossary/>

Who do you talk to...the publisher, the producer?

- Follow the revenue stream:
 - Songwriters
 - Sync rights – putting in timed relationships
 - Print rights
 - Mechanical and digital download
 - Performance rights – TV, radio, online
 - Performer

CLUE: Record Companies rep Performers; Music Publishers rep Songwriters.

Ephemeral use:

Q: What happens if a car drives by and you can hear the music?

A: It might qualify to be cleared under fair dealing, best endeavours...

The panel took lots of questions and the talk could have gone on for much much longer. So many questions, so little time...

AMCUP's DIGITAL SERIES - Part 3: The Bagel Boss

Description: *A few years ago, AMCUP's premiered its Digital Series with a case study of one of the most-watched viral videos of all time, "David After the Dentist". The next year, we followed up with Tay Zonday's equally-popular "Chocolate Rain". This year, we delve into debated digital issues with a case study on this year's most infamous video, "The Bagel Boss"*

Speakers

Teddy Cannon - Supervising Producer, "Ridiculousness"

Mike Leonardo - Executive Producer, Telepictures

Amir Samarghandi - U.S. News Coordinator, Newsflare

Tay Zonday - YouTube Personality

VRSC NOTES:

Watch the clip... and you'll see why this session turned into a heated discussion on media ethics. The Bagel Boss (who has since been forced to change his name to The Angry Bagel Man) was filmed by an employee of a bagel shop haranguing the people working there. The clip caught on tape by a customer starts after the bagel boss apparently launched a tirade of racist and sexist remarks at staff. He was then tackled

by a linebacker of a dude and taken down... The video was posted online by the woman's friend and it garnered millions of views. People thought it was funny.

Ethical Questions:

- Did the uploader have rights to put it on youtube? Yes
- Was focusing the camera on a short out of control angry man and turning him into a joke and youtube sensation ethical?
- Q: Who owns the rights to footage? The uploader, camera person or angry man?:
A The camera person. Even though millions of people saw the version her friend uploaded.
- Who has benefitted from the footage?

DAY 2: FOOTAGE FEST 2019

Sunday, September 8

SCREENING OF "Apollo 11"...Presented by NEON FILMS

Description: Directed by Todd Douglas Miller, this cinematic space event documentary features rare and never-before-seen large-format film footage of one of humanity's greatest accomplishments.

Speakers:

Todd Douglas Miller - director

Stephen Slater: Archive Producer

VRSC NOTES:

An AWESOME example of what archive producers can dig up – audio, stills, film, video - and what a great director can do with the finds. If you haven't seen the film IT'S A MUST!!!!

Stephen Slater the Archive Producer managed to dig up thousands of hours of audio (every single person at Mission Control in Houston and the Kennedy Space Centre in Florida was miked during the entire mission to the Moon. None of the audio had been synced with the hundreds of hours of camera footage NASA and news cameras took. Slater undertook the gigantic task of matching and syncing everything up. And he did! Took three years, little sleep and lots of passion for the subject. And incredible feat.

THE END
FOOTAGE FEST '19