

Graphic: Documentary filmmakers need to quote existing visuals and sound to tell their stories...Here's what happens when they do.

Main Title: Stories Untold

Graphic: High Costs

John Sorenson: As filmmakers we're cultural historians, largely, and I think that the stories that we want to tell are shaped by what kinds of images we have access to and how much those images are going to cost.

Grace Guggenheim: Some places are very straightforward, um, and some places are not. Particularly, I would say the private still houses are very fuzzy. And I don't know what it is, but they notoriously do not have any printed pricing that they will administer you. It's all pretty much verbal and they want to immediately know what you're doing the film for. So, classically, to me they're trying to kinda figure out, well how much can they charge.

Clip from *A Perfect Candidate* by David Van Taylor where a woman sings "God Bless America" at a political rally. David Van Taylor had to license "God Bless America" for \$3,000 from the Irving Berlin Estate to use this footage for his documentary about a political campaign.

Gerardine Wurzburg: So, for instance, in a film that I did for HBO called "Graduating Peter" that was a sequel to "Educating Peter," there was a piece of music, "[When] a Man Loves a Woman."

Clip from *Graduating Peter* by Gerardine Wurzburg of the film's subject, Peter, and his date dancing in the kitchen with "When a Man Loves a Woman" playing on a small stereo on the countertop.

Gerardine Wurzburg (continued): Now I could have easily dropped something else in, but that was so essential to this character learning how to dance in preparation for going to the prom, and the fact that it was "When a Man Loves a Woman," it gives you a certain emotional rush. And so I went and went ahead to get rights to that, and I think Michael Jackson owns rights to that.

Graphic: High Frustration, High Risk

Grace Guggenheim: Hiring a composer to write the music, then you sort of know what the costs are up front. But if you have pin drop then you have to find out who the artist is and the publisher, and those are different sources and sometimes they're very hard to locate. And then you have to write them and you have to have room to negotiate.

Grace Guggenheim is in an editing suite, pointing out a clip of "pin drop" music on a timeline. "So this cue I took because of time. I took the risk of knowing that potentially this was in the public domain."

Grace Guggenheim: But the music union said that it was owned by a major union label.

Clip from *A Time For Justice* by Grace Guggenheim of a black & white poster of Martin Luther King, Jr. lies on the pavement. The music in question—a gospel hymn—plays in the background.

Grace Guggenheim: I wrote to them and they said it would be X amount of money. Well, meanwhile the film is being finished, and I said I wanted to consider using [it], what would it cost? Meanwhile, I’m using the cue. And I got a copyright researcher to go down and research it at the Library of Congress and sure enough it was in the public domain.

Graphic: Filmmakers Alter Content to Avoid Risk

Gerardine Wurzburg: When I was doing a film for George Lucas, I did have—it was a documentary on best practice and education in America called “Learn and Live.” And we’d been filming all over the country, and in Des Moines, Iowa we were doing a thing on adult learning. And we filmed this wonderful series of activities that were going on in the community. And in that night of filming, I can’t tell you how many locations, we filmed the class doing “Texas Two Step.” And the “Texas Two Step” scene ended up being the scene that caused us the most difficulty with rights.

Clip from *Learn and Live* by Gerardine Wurzburg where an adult class line dances to “Texas Two Step.” The instructor says, “We opened at six, we close at ten or eleven.”

Gerardine Wurzburg: The basically, what we did was we went into Skywalker Sound and we Foleyed—we got a bunch of people out on stage and we did “Texas Two Step” (not me, I don’t do “Texas Two Step” very well.) But we got people who could do “Texas Two Step,” and then we mixed that into the show and we put some needle drop “Texas Two Step” music in.

Clip from *Sing Faster* by Gerardine Wurzburg with two stagehands watch a basketball game on a TV backstage.

Graphic: This isn’t what the stagehands are really watching in Jon Else’s doc about backstage opera life. Major League Baseball wouldn’t lease Else images from the World Series, so he had to patch in a basketball game he could afford.

Gerardine Wurzburg: Two modus operandi that we’ve kind of tried to instill in everyone. Which is one, always turn the radio off when you’re filming any kind of vérité scene. Always turn the television off when you’re shooting any kind of vérité scene. So try to reduce the possible questions that may come up when you’re in production, because then it comes back and haunts you.

Graphic: Silencing and Self-Censorship

Clip from *Eyes on the Prize* by Blackside Productions where protestors sing at a civil rights rally.

Graphic: Eyes on the Prize is no longer in distribution because renewing the rights to the footage would cost over \$500,000. Endangered List: Parody, Satire, Political Docs, Cultural Criticism, Historical Docs, Musical Docs.

Quote: “What goes on with independent filmmakers, much more that failure to execute or shelf projects, is self-censorship. You consider, and then you don’t pursue. You don’t try what’s not possible.” –Jeff Tuchman, Filmmaker

Quote: “There’s stagnation in culture unless there’s more free flow of ideas.” –Jack Walsh, Filmmaker

Quote: “I don’t do music projects in general because of the rights problems.” –Alice Elliot, Filmmaker

Quote: “There are fewer and fewer filmmakers with historical subjects. Who’s gonna give you half a million dollars to make your first film? I tell people not to do it, because you can’t justify it financially.” –Robert Stone, Filmmaker

Graphic: Fair Use: Legal and Unlicensed

Clip from *Outfoxed* by Robert Greenwald with Fox News logo appearing, set to the tune “Dirty Laundry.” For his critical film on Fox News, Robert Greenwald claimed fair use for all his quotes from Fox.

Clip from *Affluenza* by John de Graaf where advertisements flash across a TV screen. John DeGraaf claimed fair use to sample commercials to critique the role of advertising in culture.

Clip from *Six O’clock News* by Ross McElwee of toys in a child’s nursery that cuts to a live shot of a reporter at an auto accident. A man states, in voiceover, “Since the baby’s been born we’re home a lot more now, and we’ve ended up watching more TV than we used to. Especially the local news.” Ross McElwee claimed fair use to quote local news as a comment on our culture.

Graphic: Fair Use Endangered

John Sorenson: It’s not something that there is any clear definition of to the extent that you can feel comfortable with, “I’m doing a legal thing,” or “I’m doing an illegal thing.”

Gerardine Wurzburg: The whole issue of fair use is one that concerns me in the sense that it is so imprecise. So what’s happened, I feel, is that because it’s imprecise, I always operate as though it doesn’t exist. Which is not a very good thing to have to say, because I don’t think that was the intent.

Graphic: What can be done? Filmmakers can act. For next steps, read the report, “Untold Stories.” center forsocimedia.org

End Credits