

**Submitted by: Laurence Thrush**

**Comment of: Film Independent, Chicago Filmmakers, Kindling Group, Kirby Dick, Jeffrey Kusama-Hinte, J S Mayank, David Novack, Laurence Thrush**

**IN RE: Docket No. RM 2011-07**

## **RESPONSE TO PROPOSED CLASS 7D**

We, the undersigned organizations and individuals, write in support of the Comment of International Documentary Association, Kartemquin Educational Films, Inc., National Alliance for Media, Arts, and Culture, and Independent Film Project, petitioning for an exemption to the DMCA's anti-circumvention measures for DVD, Blu-Ray, and digitally transmitted video for the purpose of documentary and fictional filmmaking ("Proposed Class 7D").<sup>1</sup>

The undersigned organizations work to support and defend filmmakers nationwide through educational outreach, financial support, and advocacy. Through seminars, written resources, workshops, festivals, grants, and other means, we support filmmakers at every stage of the filmmaking process.

The undersigned individuals are award-winning filmmakers with decades of experience who have spent their careers contributing to American culture and journalism through film and who deeply understand the increasing value of filmmaking to our civic discourse, educational system, and American society as a whole.

As filmmakers and filmmaker organizations, we know that the doctrine of fair use is integral to the filmmaking process. Without it we could not tell our stories, comment on society and culture, or illustrate our themes and arguments effectively. We write in support of Proposed Class 7D because we are concerned that the DMCA is prohibiting access to source material we depend on in order to make fair use.

The Librarian of Congress must renew the 2010 exemption for DVDs for documentary filmmaking in order to prevent substantial harm to our ability to make fair use. But a mere renewal would not be enough, because much has changed since the exemption was proposed in 2009. At that time, the default distribution format was DVD. Just three years later, DVD is on its way out. Today nearly all avenues for distribution require high definition video, and a huge portion of material is distributed on formats other than DVD. In many circumstances, we require

---

<sup>1</sup> The proposed class of works, Class 7D, is as follows:

Motion pictures that are lawfully made and acquired from DVDs protected by the Content Scrambling System and Blu-Ray discs protected by Advanced Access Content System, or, if the motion picture is not reasonably available on DVD or Blu-Ray or not reasonably available in sufficient audiovisual quality on DVD or Blu-Ray, then from digitally transmitted video protected by an authentication protocol or by encryption, when circumvention is accomplished solely in order to incorporate short portions of motion pictures into new works for the purpose of fair use, and when the person engaging in circumvention reasonably believes that circumvention is necessary to obtain the motion picture in the following instances: documentary filmmaking; OR fictional filmmaking.

access to higher definition content on Blu-Ray or to content such as news broadcasts or user-generated video that is locked behind technological protection measures. Meanwhile, fair use is at least as important today as it ever was; restrictive licensing terms remain common and many rightsholders cannot be located. In short, without an exemption for Proposed Class 7D, many filmmakers will be effectively prevented from creating and distributing films that rely on fair use.

As copyright holders ourselves, we depend on and respect copyright, and would not support an exemption we believed would weaken the ability of rightsholders to distribute and obtain compensation for their work. Documentary filmmakers have used the 2010 exemption responsibly, and we know that filmmakers will use the proposed exemption, if granted, with similar care. An exemption covering Proposed Class 7D is critical to maintaining the traditional balance between the interests of copyright holders and the lawful use that is at the heart of filmmaking. We strongly urge that the exemption be granted.

Film Independent

Chicago Filmmakers

Kindling Group

Kirby Dick

Jeffrey Kusama-Hinte

J S Mayank

David Novack

Laurence Thrush

## APPENDIX A

### ABOUT THE COMMENTERS

#### **Film Independent**

Film Independent is a non-profit organization dedicated to helping independent filmmakers get their films made, building the audience for independent film, and increasing diversity in the film industry. It provides its member base of roughly 5,000 with over 250 hours of film education programming and many other resources, including equipment rentals and preview screenings. Film Independent also produces two premier events: the Independent Spirit Awards in February and the Los Angeles Film Festival in June. Feature-length and short documentary films are a central focus of both events. In addition, Film Independent offers fellowship and grant opportunities that serve to honor the work of emerging filmmakers and increase diversity in the film industry. Every year, Film Independent raises over \$240,000 in grant funding to support these filmmakers, and in 2008 Film Independent and HBO announced the inaugural HBO Documentary Films Fellowship, which awards a \$10,000 production grant to an exceptional documentary filmmaker.

#### **Chicago Filmmakers**

Chicago Filmmakers is a non-profit, 501(c)(3) media arts agency that has been providing support to independent filmmakers since 1973. We offer classes for adults and youth, screenings of independent films without distribution, low cost equipment access, free networking events, and fiscal sponsorship services for independent film projects.

#### **Kindling Group (KG)**

Kindling Group is a non-profit documentary studio and seeks, develops and produces award winning, socially relevant independent films. Kindling maximizes its works through engagement initiatives that support filmmakers' visions, increase their impact and reach the widest possible audience.

KG is currently in production on @HOME, which takes viewers on a gripping journey with the voice of America's "new" homeless; Mark Horvath, a once homeless addict now devoted crusader for this cause. Once broken, now obsessed, Mark dares us to care as he exposes America's broken safety net and what that failure means for us all. THE CALLING, KG's most ambitious undertaking to date, aired on the national PBS and follows the journeys of young Catholics, Protestants, Muslims, and Jews, who are training to join a new generation of the clergy. DO NO HARM, released in 2010, tells the story of two reluctant whistleblowers in a small Georgia town who endure relentless attacks as they struggle to draw national attention to hospital corruption and the plight of the uninsured. KG's first award-winning production, A DOULA STORY, follows a remarkable woman, who empowers disadvantaged pregnant teenagers with the skills and confidence to become loving mothers.

As independent filmmakers in this era of changing media landscape, it is critical that we have access to all media for social commentary. At Kindling Group, for example, we are currently in production on @HOME, a documentary film that follows the work of a social media activist. Access to user-generated and other material that only exists in a digital on-line format is crucial to the telling of this story and to exploring the meaning of social media and online activism in our society. I believe this is a trend that is expanding in the field of independent filmmaking and the proposed exemption is an important tool to be used responsibly respecting the guide lines of fair use and copyright.

### **Kirby Dick**

Kirby Dick is an Academy-Award nominated documentary filmmaker. He is also the co-founder of Chain Camera Pictures, a production company that makes documentary films. In 2004, he directed *Twist of Faith*, which received an Oscar nomination for Best Documentary. He is also the writer and director of the 2006 documentary, *THIS FILM IS NOT YET RATED*. His most recent film, *THE INVISIBLE WAR* (2012), won the Audience Award at the Sundance Film Festival.

### **Jeffrey Kusama-Hinte**

Jeffrey Kusama-Hinte is an Academy Award nominated, Golden Globe and Emmy winning Producer working under the banner of Antidote Films, the company he founded in 2000; he also is Director of two documentaries, and is Board Chair for IFP (Independent Filmmaker Project) in New York.

Kusama-Hinte most recently produced Lisa Cholodenko's *THE KIDS ARE ALL RIGHT*, starring Annette Bening, Julianne Moore, and Mark Ruffalo. The film received four Academy Award nominations - including Best Picture - and four Golden Globe nominations, winning two Globes for Best Actress (Musical or Comedy) and Best Motion Picture (Musical or Comedy). Kusama-Hinte directed and produced the documentaries *CHARLOTTE: A WOODEN BOAT STORY*, about the famed Gannon & Benjamin Marine Railway in Martha's Vineyard, and *SOUL POWER*, which premiered at the 2008 Toronto International Film Festival, the 2009 Berlin International Film Festival, and was winner of the 2009 Los Angeles Film Festival Audience Award. Kusama-Hinte has also recently produced the documentary *THE DUNGEON MASTERS*, directed by Keven McAlester, which premiered at the 2008 Toronto International Film Festival; and Marina Zenovich's *ROMAN POLANSKI: WANTED AND DESIRED*, which received five Primetime Emmy Awards nominations, winning two Emmys for Outstanding Writing and Outstanding Directing for Nonfiction Programming. Kusama-Hinte's other productions include the critically acclaimed eco-horror thriller *THE LAST WINTER* directed by Larry Fessenden; the Jon Reiss-directed graffiti documentary *BOMB IT; THE HAWK IS DYING*, directed by Julian Goldberger; Gregg Araki's *MYSTERIOUS SKIN*; Catherine Hardwicke's *THIRTEEN*; Lisa Cholodenko's *LAUREL CANYON*; *WENDIGO*,

directed by Larry Fessenden; AMERICAN SAINT, directed by Joseph Castello; and LIMON, a documentary directed by Malachi Roth.

### **J S Mayank**

J S Mayank is a British filmmaker, who started out by writing scripts for documentaries made for the United Nations, World Health Organization and UNESCO in India. Mayank is an independent filmmaker whose short films have played in many festivals around the world - London International, Newport Beach, Tribeca etc. He's been a Tribeca All Access fellow, has an MFA from Loyola Marymount University and a Masters from Wake Forest University. Mayank currently teaches Screenwriting at Western College of Colorado, and continues to work as a writer and director. He is represented by Circle of Confusion.

### **David Novack**

David Novack has been a producer, post supervisor, and associate producer for a number of documentary films and television series, including the acclaimed Showtime/United Nations series, WHAT'S GOING ON and PBS/WGBH's FRONTLINE. Mr. Novack wrote, produced and directed the feature documentary "Burning the Future: Coal in America," which earned the prestigious IDA Pare Lorentz award for Social documentary filmmaking. Mr. Novack produced KIMJONGILIA, a documentary about North Korean refugees that won the Human Rights award from the Human Rights & Democracy Network. Presently, Mr. Novack is producing and directing FINDING BABEL, an examination of art under totalitarianism, through the story of the life and death of the Russian writer Isaac Babel, executed by Stalin in 1940. Mr. Novack has joined the University of Pennsylvania's adjunct faculty in Fine Arts and Cinema Studies, where he teaches filmmaking, image and sound editing, curates an annual film festival. He received a Bachelor's of Science in Engineering from the University of Pennsylvania, and a degree in music from Berklee College of Music.

### **Laurence Thrush**

In 2000 Laurence produced and directed his first documentary film, FIDEL'S FIGHT, based on cockfighting in Cuba. The film screened in competition at the Karlovy Vary Film Festival, the Doubletake Documentary Film Festival, the Fribourg International Film Festival and won BEST CINEMATOGRAPHY at the New York Independent Film Festival in 2001. Following a series of television commercials that he directed in 2003, Laurence was short-listed for the Best Young Director Award at the Clio Advertising Awards and the Cannes Lions International Festival. Laurence has since directed a wide range of television commercials for both the US and Canadian markets.

2008 saw the completion of TOBIRA NO MUKO, Laurence's first feature film as writer/director, which was produced in collaboration with executive producer Takao Saiki through SIZE, Inc. Cast with non-actors and filmed entirely on location in Tokyo, the film was

awarded BEST FEATURE at The Milan Film Festival, The Rhode Island Film Festival, L'Aquila Film Festival and The Japan Film Festival, won the JR JURY AWARD at the Lyon Asian Film Festival and screened in competition at The Rotterdam International Film Festival, Tallinn Black Nights Film Festival, The Festival du Nouveau Cinema in Montreal, and The Fukuoka Film Festival, where it has received enthusiastic reviews. LEFT HANDED is distributed by Vanguard Cinema ([www.vanguardcinema.com](http://www.vanguardcinema.com)).

PURSUIT OF LONELINESS, Laurence's second film as a writer/director was shot entirely in Los Angeles and was produced by Ken Hanada through Growth Films. The film made its World Premiere at the Sundance Film Festival in January 2012. Laurence is currently in preproduction on his third feature, VESSELS, set in India and based on the subject of surrogacy and medical tourism. The project is slated to begin shooting in 2012.

## **APPENDIX B**

### **ADDITIONAL STATEMENT OF CHICAGO FILMMAKERS**

Many of the films we show rely on fair use to tell stories that are not covered or are misrepresented in the mainstream media. One of our major programs, the Reeling Film Festival, still exists after 30 years in part because gay and lesbian audiences are continually looking for honest representations of themselves, and part of this process requires them to quote or refer to contemporary or historical images in mainstream media to understand the current climate of acceptance in our culture. It is crucial to have access to images in order to talk about them. Additionally, filmmakers we support, many of whom are documentary and experimental filmmakers, need access to images for artistic and journalistic purposes. In order to put their subject in appropriate social contexts, their access to footage is crucial, and financial and legal barriers are in many cases too high, unrealistic, and inappropriate for them, and prevent them from commenting effectively on the human experience. We see "fair use" as an important tool in making media in the 21st century.

## **APPENDIX C**

### **ADDITIONAL STATEMENT OF J.S. MAYANK**

As an independent filmmaker, I've had the opportunity to employ fair use in my short film SUPERNUMERARY. Making that film would have been impossible had I not been able to use clips from other pre-existing films under the purview of fair use. I see "fair use" as a very important tool in the field of independent filmmaking, and would like to state my support in favor of its importance.