

Shoot, share and create: Looking beyond copyright makes sense in film

By Lawrence Liang

Why documentary and alternative filmmakers in India should start licensing their works under an open content license

When I was in law school, I had great aspirations of wanting to be a filmmaker, and an FTII-type (Film and TV Institute of India, a prominent school for film-making) friend told me the best place to start was to watch a lot of foreign films and documentaries. So I did that rather dutifully and spent many hours when I should have been reading corporate law, watching documentaries.

My fondest memory of my placement in Mumbai with a law firm was when we took off to the Tata Institute of Social Sciences (TISS) and watched Anjali Monteiro and K P Jayashankar's film on the Yerawada prison in Pune.

I gave up on the idea of becoming a filmmaker after we finally did do a documentary on law school. But by then the bug had bitten and I had fallen in love with cinema and the documentary form as well. I think watching documentaries has also made me a better lawyer than I would have been if I read Ramiya on the Indian Companies Act. So if I have written this rather longish argument about why documentary filmmakers should start thinking about open content licenses, it is with a sense of repaying a debt.

But firstly a few clarifications: what does an open content / creative commons license actually mean?

Open content licenses have basically been inspired by the Free Software movement, where they try to reverse the principles of copyright to build a more vibrant public domain of materials which can be used by people.

Copyright grants the author of a work an exclusive right to copy, distribute, create adaptations etc of his or her work. Any person using any material without the permission of the author, or without

paying royalty, is presumed to be infringing the exclusive copyright of the author of the work.

While copyright was initially supposed to be a means of balancing between providing incentives for authors and ensuring that works circulate in the public domain, over the past few decades this balance has been completely tilted in favour of the owners of copyright.

Increasingly, one sees the use of copyright to supplement restrictions on freedom of speech and expression. A quick example: Alice Randall, an African American author, wrote a rewriting of *Gone with the Wind* from the perspective of Scarlett O'Hara's mulatto half-sister. The publishers claimed that this was an infringement of copyright and obtained an injunction against the publication of the book. Thankfully, in this case, the court of appeal overturned the injunction.

Similarly, copyright licensing makes the acquisition or use of a pre-existing work very very expensive, and let's hope that we don't go down the US route where you have to take a hundred copyright permissions before you use any music, clip etc while making your own film. Think about your own experiences. If you had to pay every time you wanted to use a clip or a song, how much would that add to your overheads?

A cautionary take: In 1990, Jon Else, a American documentary filmmaker, was working on a documentary about Wagner's Ring Cycle. The focus was stage-hands at the San Francisco Opera. Stage-hands are a particularly funny and colourful element of an opera. During a show, they hang out below the stage in the grips' lounge and in the lighting loft. They make a perfect contrast to the art on the stage.

During one of the performances, Else was shooting some stage-hands playing checkers. In one corner of the room was a television set. Playing on the television set, while the stage-hands played checkers and the opera company played Wagner, was *The Simpsons*.

Else thought this shot would be great to use and he went ahead and shot it; he then decided to obtain permission from the owners of

the copyright in The Simpsons to use the four-second clip. While Matt Groening, the creator, did not have a problem, he did not own the copyright. Gracie Films, the owner, demanded that he pay them \$10,000 for the use of the four seconds.

Else obviously could not afford to pay them. He could have gone ahead and used the clip, and it would have fallen under his fair use right to do so. But this was too risky given that the average costs of defending a law suit in the US is \$250,000.

The situation in the US is pretty bleak now, and any documentary filmmaker submitting a film to a broadcast organisation has to get copyright clearances for all materials used, otherwise they refuse to broadcast the film. This sounds almost like the Indian scenario of obtaining the censor certificate for films before broadcast.

From software to the other world Anyway, as a response to the stifling copyright regime, the Free Software movement began. What it did was to create something called the GNU General Public License. This license, instead of denying people access or restricting their rights over a work, made software available for all with the freedom to copy, modify, redistribute etc.

It is, of course, important to remember that the word 'Free' here refers to freedom, and not to price. The only condition was that if someone created something new out of a Free Software, then that work would also have to be licensed on the same terms and conditions, namely that it could not be taken outside the public domain.

The movement has now spread to other domains of cultural production and the creative commons is the best example of how this idea is being used with respect to movies, music, documentaries, literature etc. So why should documentary filmmakers start taking the Free Software movement seriously and think about similar licensing models for their works, as well as the very idea of collaborative production for the future?

Here are some sound reasons:

Distribution, a major headache now: One of the biggest problems faced by documentary filmmakers in India has been the question of

circulation and distribution. This is an issue which has been discussed in a number of meetings as well as on electronic mailing-lists in cyberspace.

If the work were available freely (again note this does not mean that you cannot charge for the documentary, but means that a person who has bought a copy may make a copy and distribute it to others), there would be far greater circulation of documentaries amongst other filmmakers, students, activists, scholars and general public.

It is a fact that, currently, if you want to access documentaries, you either have to approach the filmmaker or approach an NGO (non-governmental organisation) which keeps documentaries. Greater availability will ensure greater distribution and subsequently promote documentary-film watching.

If you have no problem, say so: I am sure that most documentary filmmakers do not have a hassle if people circulate their work, but it is important to remember that unless you state explicitly that people have a right to do so, to use your work etc, it is presumed that they do not have a right to do so.

In that sense, copyright by default applies to your work. Which is why it is important to start thinking in terms of a pro-active licensing policy that allows people to use your work.

This doesn't mean waiving all your rights: There may be one or two immediate concerns that arise. If I make my work available, isn't there a danger that someone will use my materials and pass it off as their own work?

By licensing under an open content license, you do not waive all your rights as the author of the work. It is really up to you to determine the nature of the usage involved.

For instance, you could have a license that allows the work only to be copied for non-profit purposes, so I can't make a hundred copies of your work and then start selling the work for profit. Similarly, by licensing under an open content license, you do not lose your other rights, such as the right to be identified as the

author of the work, and so on. You may allow or not allow someone to modify the work or use significant portions.

Filmmakers don't live off royalty: More important is the fact that most documentary filmmakers do not live off royalty in any case. Their films are either commissioned or they earn some money from various prizes, invitations and the like.

So, the fear of the loss of revenue cannot be a very serious one. But apart from the fear of loss of revenue on the filmmaker's part is the more important issue. When a filmmaker is commissioned to make a film, it is important to ask the question as to where that money comes from, and if the money comes from public funding, there should be no reason why the film that is made from public money should then become the private property of an individual filmmaker.

Let's assume that the money that is provided for the film is not that great and cannot be measured in terms of the efforts that the filmmaker has put in. It is important to acknowledge that the filmmaker still benefits in terms of experience, credits, recognition, future assignments etc.

Then there's the collaborative nature of filmmaking: Copyright's myth of the individual creator genius is perhaps more violently expressed in filmmaking. Filmmaking, as we all know, is perhaps one of the most collaborative of the arts, and the amount of diverse labour that goes into it is incredible.

Yet, for the purposes of copyright, the author of the film is considered to be a single individual, namely the producer of the film. To its credit, the system of credits in filmmaking, especially in feature film, still recognises this process of joint authorship.

Another issue, of course, is to recognise the hundreds and thousands of influences and inspirations that have gone into our own films. We need to work beyond the assumed myths of copyright law, and develop alternative practices that recognise the multiplicity that goes into the making of a film.

When we extend this principle to the making of films, we can start thinking in terms of the great benefit that making film-footage

available has on filmmaking itself. I think at this point we really need to laud the efforts of a few documentary filmmakers post-Gujarat, in the form of the shared footage project. Given that we (documentary filmmakers in India) are a small community, it is important to start thinking in terms of the benefits of collaboration, prime among which will obviously be vast amounts of footage available to be used.

Copyright increasingly threatening creativity: If copyright is increasingly threatening creativity, then one of the means of protecting this creativity is ensuring that we take pro-active steps that build towards an ethic of the public domain in our own practices as well.

One thing is sure: the digital revolution has arrived. You have more and more people from a non-filmmaking background who want to experiment with films, use it in the course of their work etc. In that sense the media and the medium is no longer external to any of our practices.

At some level, we all have to, whether we are academics or lawyers or activists, start thinking of ourselves as media professionals as well. And the great thing that digital media has done is that it has enabled almost any person to become a low-cost production studio.

You have a decent computer, and you can mix and match and edit your own stuff. Tinkering cultures are a critical part of the way we are learning the grammar of new media, for instance at the Alternative Law Forum, we have been working to bring out a CD on queering Bollywood which brings together clips of subversive queer readings of Bollywood. Three years ago we would not have imagined ourselves doing it.

Two students at the law school

Warisha and Vinay -- have made their own films, one on Kashmir and one on Pakistan. I think we are living in very interesting times as far as democratic media is concerned, and we can't allow the freedom provided by technology to get curbed through a content barrier that arose in the 18th century as Copyright.

It's a question of politics, above all: Finally most documentary filmmakers would identify themselves as being against the neo-liberal global order. It's therefore important to start realising that intellectual property is one of the key pillars upon which this neo-liberal order is built, and important to incorporate the subjects of our film into our own practices as well.

It does sound a little ironic to make a film on protests against the hegemonic order of the WTO, and then claim strong protection for your own film!

Lawrence Liang is a Bangalore-based lawyer who works at the Alternative Law Forum. He wrote the above essay in an open letter addressed to Indian documentary filmmakers recently, over the docuwallahs2 mailing-list on Yahoogroups.com

<http://groups.yahoo.com/group/docuwallahs2>