

Copyright Codes of Best Practices for Media Access, Reuse and Preservation

The Initial Stages

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Land Acknowledgement

The University of Lethbridge's Blackfoot name is Iniskim, meaning Sacred Buffalo Stone. The University of Lethbridge acknowledges and deeply appreciates the Siksikaitsitapii peoples' connection to their traditional territory. We, as people living and benefiting from Blackfoot Confederacy traditional territory, honour the traditions of people who have cared for this land since time immemorial. We recognize the diverse population of Aboriginal peoples who attend the University of Lethbridge and the contributions these Aboriginal peoples have made in shaping and strengthening the University community in the past, present, and in the future.

Mount Royal University is located in the traditional territories of the Niitsitapi (Blackfoot) and the people of the Treaty 7 region in southern Alberta, which includes the Siksika, the Piikani, the Kainai, the Tsuut'ina and the Iyârhe Nakoda. We are situated on land where the Bow River meets the Elbow River. The traditional Blackfoot name of this place is "Mohkinstsis," which we now call the city of Calgary. The city of Calgary is also home to the Métis Nation. The traditional territories our three campuses reside.

The University of Manitoba campuses are located on original lands of Anishinaabeg, Cree, Ojibwe-Cree, Dakota, and Dene peoples, and on the National Homeland of the Red River Métis. We respect the Treaties that were made on these territories, we acknowledge the harms and mistakes of the past, and we dedicate ourselves to move forward in partnership with Indigenous communities in a spirit of reconciliation and collaboration.

Simon Fraser University respectfully acknowledges the x^wməθk^wəy̓əm (Musqueam), Sḵw̓x̓wú7mesh Úxwumixw (Squamish), səlilwətał (Tsleil-Waututh), ǫ́íćəy̓ (Katzie), k^wik^wəłəm (Kwkwetlem), Qayqayt, Kwantlen, Semiahmoo and Tsawwassen peoples on whose unceded territories

Outline

1. Case Discussion 1
2. Background & Context
3. Issues & Barriers
4. Case Discussion 2
5. Why Codes of Best Practices?
6. Canadian Codes (So Far)
7. Q & A

Case Discussion 1

The setting: late March, classes resume following a 6-week faculty strike/lock-out, everyone scrambling to finish the much-shortened term

The class: a 4th year film course requiring students to view and make class presentations on selected films *all verified to be available online* at the start of term

The film:



Image 1

Streaming source: Criterion- On-Demand

Case Discussion 1

The crisis: the prof learns the [link to the film no longer works](#); the film isn't accessible on any other streaming platform; film is needed next week for class presentations

The solution: what options would you suggest to the faculty member as your institution's copyright specialist?



Background & Context

- **Summer 2021:** Rumi Graham & Aaron Taylor presented at Film & Media Studies Association of Canada (FMSAC) Conference (Graham & Taylor, 2021).
- **Fall 2021:** The Media Access & Copyright (MAC) Working Group is established.
- **Summer 2022:** MAC prepares a report (Taylor et al., 2022), which identified 3 key areas of focus:
 - a. Advocacy
 - b. Access/Exhibition
 - c. Appropriation/Repurposing
- **Spring 2023:** Meera Nair and MAC publish a copyright advocacy brief addressing issues and share widely (Nair, 2023).

The screenshot shows the website for FMSAC / ACÉCM. The header includes the organization's name in both English and French, along with the full name: "FILM AND MEDIA STUDIES ASSOCIATION OF CANADA" and "ASSOCIATION CANADIENNE D'ÉTUDES CINÉMATOGRAPHIQUES ET MÉDIATIQUES". A navigation menu contains links for "ABOUT US", "NEWS", "ANNUAL CONFERENCE", "GRADUATE STUDENTS", "RESOURCES", and a "Search" button. Below the menu, there are links for "FMSAC-ACÉCM CONSTITUTION", "FILM STUDIES IN CANADA", "FMSAC-ACÉCM AUTHORS", and "MEDIA ACCESS AND COPYRIGHT WORKING GROUP REPORT". The main content area features a "JOURNAL" section with a thumbnail image of a report cover titled "CANADIAN JOURNAL OF FILM STUDIES" and "REVUE CANADIENNE D'ÉTUDES CINÉMATOGRAPHIQUES". To the right of the thumbnail is the title "MEDIA ACCESS AND COPYRIGHT WORKING GROUP REPORT" and a paragraph of text: "Responding to an FSAC call for interested participants, a Media Access and Copyright (MAC) working group was formed in the fall of 2021 to probe copyright challenges encountered by faculty who wish to use media in teaching and scholarship. The mandate of the MAC group was to continue the conversation on issues arising from a 2021 FSAC conference roundtable and to set out possible actions." Below this text is a link that says "Access the full MAC report". On the far right, there is a "MEMBERSHIP ADHÉSION" section with two links: "To join or ren please click h Membership" and "Pour se joind pour renouve cliquez ici po services aux r".

Background & Context

- Major project goal: Develop **two codes of best practices for media using and preserving media** (one for academic librarians and one for media & communication scholars)
- To support the project goal, a **SSHRC Insight Grant application** was submitted in Summer 2023.

Issues & Barriers

- Growing precarity of **reliable access** to essential works.
- Practices of personal subscription streaming companies **disregard access** while both personal and institutional subscription streaming companies disregard long-term access and preservation.
- Instructors and students want **streaming access** for everything.
- Instructors are increasingly **confused** about, and **fearful** to apply, the same fair dealing exceptions to media that they apply when copying textual works.

Case Discussion 2

The setting: Retired Simon Fraser University prof making a film. Docu-drama. Self-funded plus BC Arts Council funding. Intended for film festival and educational screenings.

The need: wants to incorporate existing video works into the film.

- 1969 US President news conference audio(19secs) from UPI.
- 1969 Tom Hayden press conference (47 secs).
- Footage of live fire anti-aircraft test (8 secs). Will be altered. Original footage posted to YouTube.

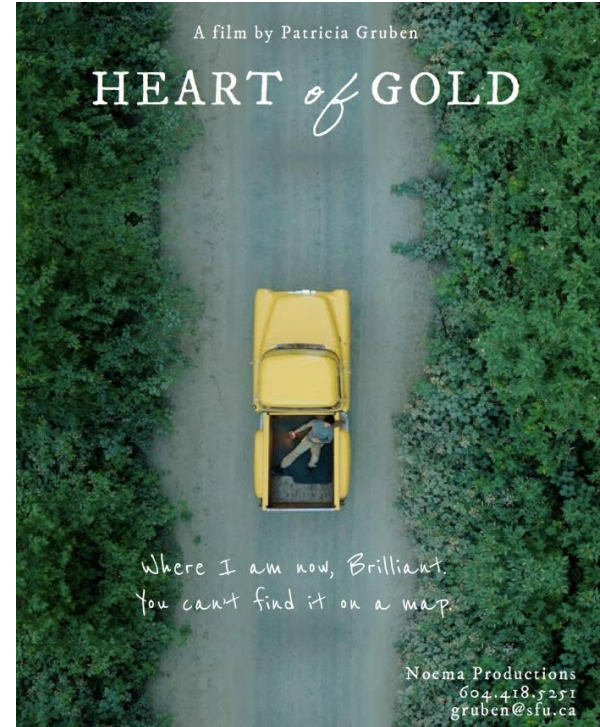


Image 2

Case Discussion 2

The issues: Minimal budget. Impossible to find rights holders for Tom Hayden clip. Can fair dealing apply to any of the uses? What is the risk of not obtaining permission for all the clips?



Image 3

The solution: what options would you suggest to the faculty member as your institution's copyright specialist?



5-3 / A 1-94 HIMARS live fire at Yakima Training Center Nov

Image 4

Best Practices Codes

- Avoids some **drawbacks** of top-down guidelines.
- Codes reflect common, highly relevant **use scenarios**.
- Undue risk aversion is **minimized** while the prospect of code adoption is **maximized**, as members participating in the development process have opportunities to become invested in the code.
- Importance of working with the **practitioner community**.

Best Practices Codes

- Even the SCC noted the potential for the “**custom or practice in a particular trade or industry**” (CCH Canadian Ltd v. Law Society of Upper Canada, 2004) to be a relevant fair dealing consideration.
- Best practices can even influence the practices of **other related industries**.
 - Ex. The fair use best practices code developed by U.S. documentary filmmakers, which shifted the copyright liability insurance practices of major U.S. errors and omissions insurance companies.
 - Such projects **ease copyright anxiety associated with copyright chill** without unduly restricting creative, scholarly, and preservation activities in everyday practices.

Canadian Codes

- Fair Dealing for Open Educational Resources (Johnson et al., 2024)
- Crown Copyright (TBA)
- Software (TBA)



**CARL
ABRC**

CANADIAN ASSOCIATION OF RESEARCH LIBRARIES
ASSOCIATION DES BIBLIOTHÈQUES DE RECHERCHE DU CANADA

And...

Codes of Best Practices in Fair Dealing for Film and Other Media?

MAC is seeking future participants in surveys and focus groups to help in the development of these codes.



<https://bit.ly/4aW6NCk>

Q&A

Works Cited

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Image Sources

Image 1: Bringing Up Baby poster [https://en.wikipedia.org/wiki/File:Bringing_Up_Baby_\(1938_poster\).jpg](https://en.wikipedia.org/wiki/File:Bringing_Up_Baby_(1938_poster).jpg)

Image 2: Heart of Gold poster

https://www.imdb.com/title/tt18956170/mediaviewer/rm468392193/?ref=ext_shr_lnk

Image 3: Tom Hayden at press conference image https://www.youtube.com/watch?v=JZASHbQQ_6U

Image 4: 1-94 HIMARS live fire at Yakima Training Center https://youtu.be/NPbkHPetNzQ?si=WH_ZlQyB92g3_1Oz

**Thank
You!**

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