

## **Rights, Wrongs and the Fuzzy Bits In-between**

John Wyver for EMII-DCF, Tate Modern, as delivered June 21, 2003

I'm very cautious about contributing these remarks today. I don't want to come across, as one of my colleagues suggested I might, as "miffed" of Islington. But Louise asked me to speak about being a "consumer", a user of rights, a customer of museum services, which is what as a media producer I often am. Like all consumers I inevitably want more, for less money, more quickly, more efficiently--and with a smile, please, and even Nectar points. I fear that what I'm going to offer will sound as if I fail to recognise the constraints under which you work, the often exceptional services you do provide, and the minimal resources you have at your disposal. I also know that many of you have thought far more about these issues than I have, and you may well feel that you've heard it all before. I truly don't want to sound ungrateful or ungenerous.

I should also say that I'm not specifically going to address the question of digital assets and rights management. DRM is, at one level, easy, and everyone else anyway is going to talk about that today. I want to talk about the "fuzzy" bits, the culture, the attitudes and assumptions of managing rights and permissions.

And what I want to suggest is that some of your colleagues-- not you of course -- are confused and ill-informed in their thinking about rights and permissions, and that some of them hold, from where I sit, inappropriate ideas about this. And I want to approach this by giving some examples drawn from recent experiences in the production of a VHS and DVD with the National Maritime Museum alongside their current Elizabeth exhibition. I'm going to play a little of this in the background, and of course I'd be happy to take orders for a VHS or DVD copy afterwards.

The background is that my company Illuminations has produced many programmes about the arts, history and ideas for broadcast television over the past twenty years. We continue to make work for the BBC and for Channel 4, including their annual coverage of The Turner Prize, but the broadcast environment has changed almost beyond recognition in the past three years and much of what we might once have made no longer gets commissioned.

Recognising (a) that production costs for high-quality work have dropped in recent years and (b) that the number of potential distribution channels—digital, online, education, DVD and more—has grown, we have begun to conceive our practice as that of a publisher, resourcing and financing films and producing work, often in partnership with museums and exhibitions, and then looking for sales to television, through retail channels and elsewhere. This is just beginning to work and we're delighted with our relationships to date with, among others, the NMM on Elizabeth and with the Royal Academy on AZTECS last year.

Our budgets are modest, in the 5 to 10 thousand pound range, and so, at least to date, are our returns. But they are encouraging enough for us to think that, with the right partnerships, there may be a way of developing a small business (and we're not doing this entirely for altruism) and at the same time creating distinctive, intelligent, useful and sometimes delightful media.

Elizabeth fits into this model, with interviews with the curators and others at the NMM and illustrations from a wide range of exhibits included in the exhibition. In each case where we have included a loan object in the film, we have sought permission for this and, in many cases, have been asked to pay a fee. And it's this experience I want to use to ground my comments.

Lenders to Elizabeth include many national institutions, including the British Museum, the British Library, the NPG, the V&A, the Royal Armouries and the National Archive, as well as the Royal Collection, the Bodleian, the Walker Art

Gallery and many others. In no case, of course, was I requesting the use of digital rights, and also in no case was I asking even for reproduction permission on a transparency. What we hoped to do was film loan objects, without **any** additional lighting and under full and rigorous supervision from the NMM. But I do think my underlying points have some relevance to DRM and to the use of transparencies.

In many cases you and your colleagues have been immensely helpful, positive and engaged, and we're just completing the film now for a cash budget of about £5,000 (this doesn't include my time and overheads or equipment costs, but it does include a cameraperson and editor). Permissions costs have accounted for about half of that cash budget.

So, I charged some of your colleagues first of all with confusion. Well certainly if considered collectively, this is the case. Some institutions have been happy to have their artworks and other objects featured, for an acknowledgement in the credits and for a copy of the film. Some institutions, by contrast, have refused point blank to permit their objects to be filmed in this context. I have been charged £25 for permission to film and include an object and also £300, as well as a host of other charges in between. Some institutions have put rigorous conditions on how the film can be used or sold, and have also imposed additional fees if we make a sale to, say, the History Channel (which so far we have not).

Three institutions insisted that we could not film the actual object but had to use, and pay for, their transparency. One relented when I wrote a detailed letter explaining the important difference between encountering the actual object and trying to translate that to film with integrity and rigour, and using a transparency. (These differences include the difference between reflected and transmitted light, the abstraction of the image from scale, and the loss of a range of specifically material qualities.)

I also charged some of your colleagues with being ill-informed. Well, the example about refusing to acknowledge the difference between a transparency and the actual object speaks to this. So too does the reaction from one rights department which was deeply suspicious when I said that we might make a sale to The History Channel. But, she said, then anyone could use those images in any film about anything. Well, no, I explained, we put in place frameworks restricting any use to the particular programme we are making. We still didn't get permission to film the object we were requesting.

Some of your colleagues (and I do sympathise here) are also ill-informed about copyright. As you know, it's used too often as a catch-all term to describe the rights associated with or claimed for any artwork. When in fact copyright is very specific and limited (not limited enough perhaps, but still limited). By and large, copyright ends 70 years after the December 31 of the year of the death of the author. So all of the objects in the Elizabeth exhibition are out of copyright. Of course there are loan agreements and courtesies which provide the framework for the permissions we were seeking, but it wasn't helpful to keep running up against what institutions persisted in describing as copyright fees and permissions.

I also feel that there's a lack of information and understanding about the changing patterns of media production. Television, for some of your colleagues, remains a single, homogenous "thing" assumed to be made on high budgets usually by the BBC and certainly always fronted by either Simon Schama or David Starkey. For all the ubiquity of Messers Schama and Starkey, this is not the case today, when media production and distribution operates in many different ways, is made by many kinds and sizes of producers, at all kinds of budget levels, for all kinds of distribution channels. Permissions and fees need to understand and reflect these differences, otherwise many worthwhile and useful programmes can simply not be produced.

Finally, I suggested that some of your colleagues had what, for me, are inappropriate attitudes to permissions and rights. Let me mention three such attitudes, which are often inter-related. One is that the institution is as protective and restrictive as it can be about usages, because it wants to control how its objects are used and/or because—and this relates to the second inappropriate attitude—because it sees permissions and rights as *primarily* a revenue generator. And a third attitude is one of, let's say, arrogance about who (that is, you and your colleagues alone) determines how permissions are granted and costed, and what is the overall culture of rights and permissions.

Now, call me old-fashioned, but at least in the case of the national collections, I do believe that your objects and even your ideas belong, in part, to me. I believe that I and my children should, within reason, have free access to view them and to talk about them. And I also believe that in appropriate contexts and with appropriate safeguards I (and everyone else, if they wish) should be able to access and explore and present images of your objects in creative and educational media that I might want to produce. And I should be able to work with images of objects that my taxes help preserve without being refused permission or paying extortionate costs or being restricted in the uses to which I might put them. I believe too that you should be outward-looking, seeking to disseminate use of your objects and expertise as widely as possible, and looking to create and sustain audiences. Media can be one part of that. As I say, "in appropriate contexts and with appropriate safeguards", and there of course is the rub. But all I want is the chance to explore and discuss those contexts in partnerships and relationships.

What I'm less keen on is being told, as I was in a recent meeting unrelated to Elizabeth, that work I had been developing over two years and more with a particular institution, which we had funded and to which we had contributed considerable time, was now regarded as an "illegitimate" use of that institution's intellectual property. I do think that betrays the confusion and the for me

inappropriate attitudes that some of your colleagues regrettably have in relation to rights and permissions.

But I don't want to end on a "down" note. Perhaps I should say that, on Elizabeth, we're particularly grateful for the arrangements offered by the National Archive, the British Library and the NPG and also the Royal Armouries, which in some ways is a model, for me, for how new ways of thinking might be explored in this area. We asked for permission to film a particular suit of armour from their collections. We were granted the permission without payment of a fee (important for us on our budgets, even though the fee might have been just £75), but on the following conditions: that we made a copy of the finished film available for educational use on site at the Armouries and that we provided the Armouries with a copy of our rushes of that object which the Armouries could then have non-exclusive use of to include in their own media productions.

This is a tiny, almost trivial example, but that kind of approach seems to me in many ways to recognise the changing environment of media production, and in its attitudes and the culture which it reflects to be clear, informed and entirely appropriate. Thank you.