

## 'Clip Kino Helsinki' Legal Navigations

Andrew Gryf Paterson, 11.12.2008

Online video media culture is an international phenomenon, where video-sharing sites have developed and been hosted in different locations around the world. Several of the largest and more popular sites are hosted in USA (such as YouTube, Vimeo, GoogleVideo, Blip.TV, MetaCafe, Ourmedia, Internet Archive), while other large sites are located in Europe (DailyMotion), Arab-world (Sharekna), Russia (RuTube), South-Asia (VideoWalla, ApnaTube), China (Tudou). Each location and hosting company/organisation has variable interpretations in terms of use, public copyright control of user-submitted video content, and what is understood as private and public use. Furthermore, each location where the user is situation has its own legal interpretations of these terms.

In Finland, nationally-specific copyright agreements apply, which are very similar to EU and Nordic copyright agreements, but different in specific details. The following text below relates specifically to Finnish law, and screening events based upon online video-clips. Cross-reference should be made for scenarios outside of Finland, in the Nordic and EU context (and also UK, which has again different legislation).

Unlike the United States copyright legislation - where interpretation of 'fair use' has assisted support for remix culture online, and also cultural or pedagogical assemblages of copyrighted material to video-sharing platforms - the 'fair-use' concept does not apply in Finland. According to Finnish EU copyright legislation, article 21, one may use published worked in connection to "opetus" (educational use) except in the case of theatrical plays and movies, where permission is required. Only educational institutions where film industry workers and researchers are educated does this not apply. What civil media education or literacy might mean, or where such pedagogy is done outside the film-school or university is unclear. Anyhow, the copyright owner, the "Right owner", is the only person or company who/which is entitled to allow a public showing or not.

There are several issues which make the issue more complex. One is the concept of public use, another is what is considered a movie, and lastly, that of the "browsing right" of the Internet.

If someone has posted a video-clip online - with common-sense understanding of the Internet that it is public - the obvious meaning of this act is that it is intended to be browsed in both private and public space. However, the definition of 'private' and 'public' are not defined clearly in Finnish EU Copyright Law, but there are long term practices of interpretation: Any action is 'private' only at home with yourself, close relatives and best friends. Even a very closed event may be 'public', if the persons present can be considered as 'anybody'. An important distinction is public and private use, not public or private space.

The other aspect to consider: what is legally defined a movie? The problem with copyright legislation is that there is not a good description of an "elokuvateos" (movie work). In fact there is no good definition for any kind of 'work' in Finnish law text. Feature films and "serious" documentation clips are obvious contenders as they definitely involved work production to make them, but what about Internet video-clips, or even a sample of one? Is this vague definition related to moving image length or creative process? Unfortunately strict legal interpretations can be argued that if pictures give you the impression of movement, then it is an "elokuvateos". In that case, the length of the clip means nothing, nor the environment where it originates from (internet or some other format). Hence, the whole 'work' and a part of the 'work' are treated in the same way legally.

In exception, if the viewing can be considered a citation as part of a lecture (or similar format), clarifying or illustrating something you are saying by showing the clip, then this is legally accepted. Emphasis is made on the direct connection between the 'text' or presentation, and the video-clip. If the clip is shown only as entertainment, for fun, for amusement-sake only, or as might be expected, for commercial use, then this citation allowance no longer applies. In other-words, use of the citation is allowed when the enjoyment and laughs emitting from the

viewing of the video-clip, is directly connected to the 'text' (i.e. the presentation or lecture).

Furthermore, distinction can be made if a movie is downloaded, and copied, as a version other than that which is viewed from the internet browser. Playing a CD, DVD or file prepared by downloading from the internet, as a public-use screening, without the copyright owner's permission, is considered illegal. This of course does not apply to Public Domain video materials, or to those where the material has been designated copyleft, or with appropriate creative commons license(s).

There is a trump card to all of the above: If the public watches the movie or clip directly from the internet, in the browser, for example, via the flash-player. Article 11a, "Tilapäinen kappaleen valmistaminen" (Temporary copying) refers to the irrelevance of copyright, if one has to make temporary copies just to see, view, hear or read something. The video-clip viewed in the browser, is technically data stored in the computer's temporary cache through default use. And browsing the freely-accessible contents of the internet is called the "browser's right". This combination of technical and general circumstances is supportive of the 'Clip Kino' practice.

Any terms or conditions faced on the internet are between the real user (the 'uploader' and in some cases the 'user' of the website) and the content owner. If there is a condition in which screening a video clip out-with private use, then it is a conflict between the screener and the copyright owner, but it's not necessary a copyright infringement in Finland (as one may always refer to the "browser's right" principle at least).

Please note that some materials shown via the internet browser, in highly-visible public space, for free, will attract more or less attention. This attention should be considered and risk-assessed in advance.

As words of advice, a reasonably-safe 'Clip Kino' screening event should include a mixture of materials, viewed through the video-player of the internet browser, while connected to the Internet. User-contributed clips and citations of copyrighted video material should be curated under a theme for discussion, as a civil media education and literacy event. If you have an academic, film-student or researcher contributing to the process of hosting, curating or discussing in the event, then even better!

<http://clipkino.info/>

Acknowledgments: This text was written with the support and guidance of Heikki Poroila, Information Specialist (Music), HelMet / Vantaa Library.

.

Further references:

### **Fair-Use in USA Context**

Centre For Social Media

[http://www.centerforsocialmedia.org/resources/fair\\_use/](http://www.centerforsocialmedia.org/resources/fair_use/)

Fair Use for Media Literacy Education [Nov 11 2008: 6.36]

<http://www.youtube.com/watch?v=IIU0JNCc3tM>

A Fair(l)y use Tale [May 18 2007; 10.13 mins]

[http://www.youtube.com/watch?v=CJn\\_jC4FNDo](http://www.youtube.com/watch?v=CJn_jC4FNDo)

Remix Culture [Jan 2008; 03.51 mins]

[http://centerforsocialmedia.org/files/videos/remix\\_culture/remix\\_culture.mov](http://centerforsocialmedia.org/files/videos/remix_culture/remix_culture.mov)

.

### **Offline Online Video-Sharing Platforms**

Upload Cinema, Amsterdam

<http://www.uploadcinema.nl/>

Bring Your Own Film Festival

<http://www.byofilmfestival.com/>

<http://www.uploadcinema.nl/about.php>

Piraatti Liitoo (Finland)

<http://piraattiliitto.org/>

Pirate Cinema (Berlin DE)

<http://piratecinema.org/news>

'Pirate Cinema – yhdessä ja yksissä tuumin'

Valtamedia, 08.04.2008:

[http://valtamedia.net/index.php?option=com\\_content&task=view&id=108&Itemid=1](http://valtamedia.net/index.php?option=com_content&task=view&id=108&Itemid=1)

Pirate Cinema Helsinki

<http://www.hs.fi/english/article/Pirate+Cinema+shows+downloaded+movies+in+Helsinki+squat/1135229585452>

(Helsingin Sanomat, 17.08.2007)