

WINSTON CHURCHILL FELLOWSHIP RESEARCH REPORT

ACKNOWLEDGEMENTS

Kei te whakamoemiti ahau ki a koutou, ki tā koutou tautoko ki a au ki te arotahi ki te kauapapa nei. Thank you for the opportunity to spend time examining a significant matter faced by the documentary making industry. I argue this report be used as a basis for future panels and industry engagement.

PROPOSAL

Documenting the Documentary: To consider and offer alternative production frameworks for New Zealand filmmakers, to shift the power imbalance that can surface between filmmakers and subjects over the Intellectual Property, Story Sovereignty and Financials of a film production.

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Further research with subjects unable to meet kanoahi ki te kanoahi was undertaken via through Zoom, Whatsapp and email.

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INTRODUCTION

"When we use film to build empathy for marginalized groups, we normalize whiteness by confirming the notion that whiteness is the lens through which others are viewed, understood and judged. Instead of naming white supremacy, or the standardization of whiteness, the empathy model often unintentionally reinforces it, and avoids the harder task of challenging the cultural myopia that undergirds biases towards marginalized groups.

"What we often miss in character-driven films designed to build empathy towards individuals is an understanding of the structures and narratives that shape our attitudes and behaviours towards entire communities."

BEYOND EMPATHY, by Sonya Childress, Director of Partnerships and Engagement
Firelight Media (2017)

This passage is important to me because it offers a critical lens on how well-meaning storytelling – especially in film – can unintentionally reinforce the very power dynamics it seeks to challenge.

Colonisation – the process of establishing colonialism

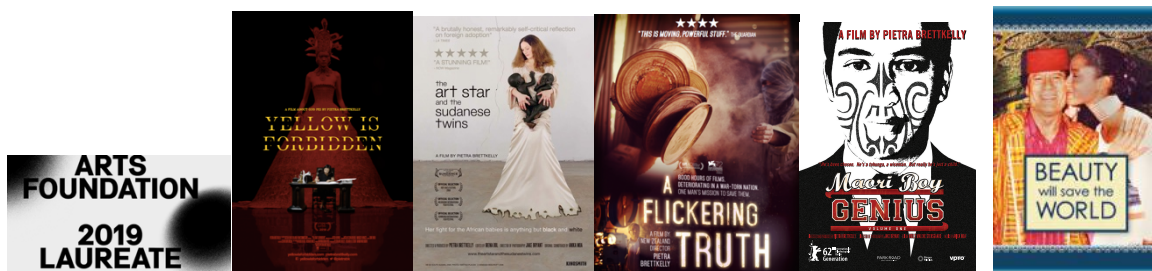
I argue documentary has an egregious history. It's considered the first film images were documentary not drama. Pre-1900s, short clips of actual events were shown, but the travelogue film really came into its own in the 1920s when white men began to venture to remote corners of the globe to capture? And document 'others' and it was accepted they were men with good intentions, studying another people albeit within a framework of colonial assumptions. The 1914 documentary *IN THE LAND OF THE HEADHUNTERS* encompassed primitivism and exoticism, presented in a staged story as truthful re-enactments of the life of First Nations people.

American Robert Flaherty famously made the 1922 ethnographic film *NANOOK OF THE NORTH* which is considered to be the first feature length documentary (now challenged as Flaherty scripted scenes and staged situations). Flaherty made films in Samoa, the Aran Islands of Ireland, and on Indigenous Americans in the Continental United States of America.

This established the power relationship between the observer and the observed. The word 'documentary' was coined by Scottish filmmaker John Grierson in his review of Robert Flaherty's 1926 film MOANA.

The development of advanced equipment which made cameras and sound devices more portable, the cinéma vérité style, also known as direct cinema or fly-on-the-wall, evolved. This facilitated a more intimate relationship between filmmaker and subject / s to develop.

It can be argued modern documentary evolved in the 1980s when the form advanced and subsequently shifted from being to "document reality, primarily for instruction, education or maintaining a historical record" as described by the Oxford English Dictionary to be entertainment adjacent and sometimes pure entertainment. It began to encompass many filmmaking genres including cinéma vérité, dramatisations, reenactments, animation, archive, sound design and celebrity voice overs.



THE CONTEXT OF MY INVESTIGATION

The documentaries I have made across the last 23 years are feature length (approximately 90 minutes), and are filmed over a number of years providing intimate representation and reflections of people's lives. I argue they function as moments in time of a person's life represented dramatically through the documentary form.

This investigation focuses on independent documentary filmmaking, whether it be feature-length, television length (45 minutes approximately) or short documentary (up to 40 minutes). My position assumes the filmmaker has final cut control and the capacity to dictate the filmmaking process. This is sometimes not possible when a filmmaker is commissioned to make a film, or is a director-for-hire.

I am a three-times Oscar-selected filmmaker, with a long year career in independent documentary filmmaking. I am the inaugural Arts Laureate of New Zealand receiving the Dame Gaylene Preston Award for Documentary Filmmaking. I want to be clear that my observations here are to stimulate on-going discussion rather than being definitive.

My research subjects, the people I have met with and spoken to during this research have spoken often as individuals, as one person within their community, ethnicity, gender, sexuality, etc. And as my research has progressed, other interviewees have surfaced alongside those in the initial proposal.

I have also kept in some longer 'case studies' elements of my interviews, so that in following the panel discussions these can be educational for those attending and participating.

BACKGROUND

From my position as an experienced documentary filmmaker I argue that while cinema is often praised as a form of artistic expression, it has also served as a potent instrument for shaping narratives - distorting historical events to perpetuate systems of oppression, exploitation, and colonial ideology. Some examples could be: TRIUMPH OF THE WILL (1935 director Leni Riefenstahl) which framed itself as a factual record, but meticulously staged and edited events to glorify Hitler and present the Nazi regime as orderly, powerful, and unifying; IN THE LAND OF THE SOVIETS (1920s–30s director Dziga Vertov) a series of Soviet-era documentaries which presented a utopian image of Soviet life, omitting famine, repression, and political purges; and AFRICA ADDIO (1966 directors Gualtiero Jacopetti and Franco Prosperi) which purported to document the decolonization of Africa but sensationalized violence and chaos, implicitly blaming African independence movements for disorder.

In documentary filmmaking in particular, ongoing controversies and ethical debates centre on the representation and re-presentation of truth and the portrayal of subjects.

As I see it those issues include but are not limited to:

1. Exploitation and sensationalism, sometimes governed by the need to meet a buyer / broadcaster's perceived editorial focus
2. The filmmaker's agenda / bias
3. The involvement of the filmmaker in affecting the course of events
4. Editing becomes manipulation of the truth
5. Is the authenticity of the documentary being compromised through certain filmic choices e.g. re-enactments, sound design, celebrity voice-over
6. The ethics of participation
7. Audience expectation

In recent decades the audience has exponentially grown for documentary. And with the rise of free online platforms (e.g. YouTube, Instagram, social media platforms) and mobile phone cameras that are comparable to some documentary cameras, true democratization of documentary storytelling is edging closer. And the audience has become more astute.

As a pākehā filmmaker, from a developed country with access to funding avenues, and historical access to film festival and market contacts which traditionally have

been in the developed world – are now being rightly asked “Where is the authenticity in your documentary filmmaking?”.

MY RESEARCH KAUPAPA

If you drop a glass of milk or wine, you clean it up. This metaphor of cleaning up is what I want to hinge my report on.

Māori have encapsulated my thinking more beautifully in the whakataukī, He muka nō te taura whiri, a fibre within the woven rope. This proverb highlights the importance of each individual contributing to the overall strength and well-being of a community. Just as each fibre is essential for the strength of the rope, each member of a community is vital for its success.

I also heed the words of international filmmaker Taika Waititi, Te-Whānau-ā-Apanui, who criticised the burden placed on indigenous filmmakers to address the after-effects of colonialism, "Making us come and talk about the problem and tell you how to fix it. You f...ing broke it - you fix it."

I believe we need to clean this up for the children of the future, for the storytellers and the up-and-coming filmmakers of the future. And so this is my wero which I extend to other pākehā filmmakers, that this grant has empowered me to think on to work towards a healthier film and storytelling community in Aotearoa New Zealand.

MY INVESTIGATION

I am currently in production on my sixth and seventh feature-length documentaries. My feature documentaries range from a film about an Italian woman trying to adopt Sudanese twins, *THE ART STAR AND THE SUDANESE TWINS*; to Colonel Gaddafi in Libya holding an international beauty competition to signify his country is now safe and “open for business”, *BEAUTY WILL SAVE THE WORLD*; through to a film, *A FLICKERING TRUTH*, about three men who risk their lives to save the Afghanistan’s film archive I produced and directed another film which premiered at Berlin Film Festival in 2012 called *MĀORI BOY GENIUS*. I made a film in China on a world-renowned fashion designer entitled *YELLOW IS FORBIDDEN*, and I’m currently in the final stages of a film in Nigeria, *CROCODILE*, a coming-of-age film about nine young Nigerians.

As you may sense I haven’t considered any country, any person or gender, any nationality, any religious position, any border to be inaccessible to me. But in 2013 as I was making *A FLICKERING TRUTH*, I was selected for the prestigious Sundance Edit and Story Labs in Utah, United States. It was during the labs I spoke with the then Director of the Documentary Film Program of the Sundance Institute, Tabitha Jackson, about my increasing discomfort over making films in other countries. Was I colonising others’ stories, was I objectifying, “othering” and fetishizing lives so different from mine?

We discussed at length.

At that beautiful setting of the Sundance Institute, in the dry Park City mountains of Utah, established and gifted by Robert Redford to independent storytellers, the Sundance Labs advisor encouraged me to consider how to address my concerns with a provocation. Perhaps I needed to consider how to empower Afghan documentary filmmakers so they can tell their own stories rather than me, a white person from a privileged country making a documentary?

I discussed this with Ibrahim Arify, the Afghan Film General Director and one of the subjects of *A FLICKERING TRUTH*. I suggested payment for the access to the hundred years of film archive I was being given, the 14,000 hours of Afghanistan’s film archive. I would, after all, pay Getty Images or a similar film archive agency to access archive from other parts of the world in my other films.

Arify thought it more prudent if we agreed on a fee and each time I returned to Afghanistan to continue filming, I brought with me another piece of film equipment from an equipment list - or a shopping list. And so over the times I went back-and-forth from New Zealand to Afghanistan, that's what happened. The film premiered In Competition at both Venice and Toronto Film Festivals, two of the world's top international film festivals. It was the New Zealand selection for the Best International Film at the Oscars. This gesture towards supporting the filmmaking of local Afghan creatives afforded me extraordinary access to some of the most remarkable, resilient and welcoming people I have encountered, the Afghan people.

But is the relative ease with which I worked a 'shopping list' just an easy out for me to address my ethical and moral responsibilities?

The Fear of Being Cancelled

The very public examination of filmmaker Matthew Heineman is important to note. This happened after one of his subjects was the alleged victim of a Taliban revenge killing as a consequence of his participation in his Oscar nominated 2022 documentary RETROGRADE. RETROGRADE charts the last months of the 20-year war in Afghanistan through the relationship between American Green Berets and the Afghan officers they trained.

In North America I was fortunate to meet with an international filmmaker who because of the sensitivity of their current film, has asked to remain anonymous. They have been filming in the Middle East for some years.

For them they said sovereignty because of culture, as opposed to gender or ability for example, is a crucial topic of late. They said if a filmmaker is making a film about an historically disadvantaged person, the filmmaking process and their participation and depiction must be one of empowerment. The filmmaker admitted they think more deeply about this than previously.

Their film involves the current occupation and instability of the subject's living situation. "She must feel empowered. Her safety is paramount. She must have agency over her story. What has changed most markedly is this is a new kind of relationship where we're storytelling together."

"I even don't like the word 'subject' any more. I call her 'the participant'. She is participating in the telling of her story."

The filmmaker has said they also ensure there are other forms of support, including providing counselling. And all filmed moments are with the participant's 100% consent.

Protecting their subject has affected their own filmmaking process, as has ensuring their subject has knowledge of everything filmed. As a filmmaker they have been restricted in their movements and therefore how the film is shot has changed from previous films. All this has affected the story as they would normally capture it.

And they remain cautious of the future press coverage once the film is released and knows that will be a big discussion with any future publicist, that not all media might be right to cover the film. They are also alert to protecting their participant, themselves as the filmmaker, and their film for all possibilities the public may ask of them, if it becomes a campaign film for example. A campaign documentary is one used to promote a specific cause, movement, social issue, or political agenda. Sometimes filmmakers' work is usurped by a cause and can inadvertently lead to the filmmaker being questioned about their 'independence' if the public or press see them as pushing a certain agenda.

However they remain resolute that filmmakers must not shy away from the tough stories. But that empowerment – however that may look – is key to an equitable partnership with the participant / subject.

Payment – or Not?

I have concerns around the commodification of involvement in films, and have never paid anyone directly to participate. I have an over-arching fear of chequebook journalism, that subjects may deliver what they think you're paying for, that they may be less careful of themselves and those in their lives if they're being paid.

However financial considerations can bring equity into the relationship between filmmaker and subject.

A UK-based independent documentary producer who wanted to remain anonymous, noted – and as an aside, a 'subject or participant' in the United Kingdom is sometimes called a 'contributor':

"I think contributors should be paid, so long as they are not benefitting financially from a crime. That's a clever way of showing fairness while ensuring you can still make the film."

However she does caution about celebrity-based documentaries while acknowledging using a celebrity-voice over or presence in the film, often to anchor the story, can raise the film's profile in publicity.

"As the world focuses more and more on celebrities, I'm finding this weakens the films. Their [celebrities'] decisions are often based on ego rather than strength of output. Also fundamentally there's value in our craft and they don't necessarily know what makes the best film. Some of the requests I get from non-filmmakers [celebrities] are wild!"

But she cautions, the creative process must be protected and editorial control must stay with the director and producer.

"...we can't treat them differently. They are all contributors. A surgeon keeps the patient informed but doesn't ask for their opinion mid surgery... not that we do anything as important as surgery!"

New York based filmmaker Alex Pritz is the director and producer of THE TERRITORY which documents the fight of the Amazon's Indigenous Uru-eu-wau-wau

people against the encroaching deforestation. During production, Covid prevented he and his filmmaking partner from travelling to the Amazon. And so began a filming collaboration between the filmmakers and the Uru-eu-wau-wau. They entered into a co-production contract negotiated between both parties. A decision was made not to pay each of the subjects separately but the group as a whole. Pritz the Uru-eu-wau-wau were supported to devise how they were to spend the money to support the community as a whole. He said it was clear support was needed to discuss and create structures to invest the money locally. One of the initiatives was to build a media centre so the local people could develop the skills to tell their own stories.

Profit splits were agreed. Impact production which involves the work to reach audiences after a film's release, and sometimes to effect social change, was framed around the on-going work of the Uru-eu-wau-wau. The impact campaign had a universal appeal. "By protecting Indigenous territory, we protect our planet *against* the worst of deforestation and climate change." After a year of employing an impact producer, the production then hired an indigenous Brazilian as impact producer, with local knowledge and a clearer vision of how the film could become a campaign to support and aid the Uru-eu-wau-wau.

"[Other] media had come before me. They looked and behaved like me, with similar ancestry as me. But the true collaboration that evolved showed how important agency and ownership over narrative was going to be if we were actually going to do this together."

The film premiered to acclaim at the prestigious Sundance Film Festival and was bought for a reported US\$3 million by National Geographic. I have no doubt the co-production, the collaboration between the filmmakers and the Uru-eu-wau-wau bought confidence to National Geographic which then supported the film's Oscar campaign run. The film was nominated for an Oscar, and won the Exceptional Merit award at the Emmys.

The anonymous Canadian filmmaker I wrote of earlier discussed how they financially assists their participant. The filmmaker has stipulated that 25% of any financial awards the film or they as the director receive goes to the participant. "Profit is not necessarily a consideration in documentary, and I've fully informed her of the

unlikelihood of such profits. But we have a contract, and after investors are paid back, she receives 25% of profits as well."

Celebrityville: When the power imbalance goes the other way

A power struggle that is becoming more acute, and shifts the balance away from the filmmakers and towards the subjects, is the current industry hunger for celebrity-endorsed documentaries.

The independent London producer again:

"Films are becoming poorer because we are being forced to [surrender] offer editorial control to powerful people / celebrities.

"I worry about the lack of breadth of subjects being commissioned. In the fight to get more subscribers, we are reaching for the lowest common denominator.

"I think it's worth being aware that this is the context in which films are being commissioned now. If we make it even harder for films to make any money, less worthwhile films will be made. And that's a loss both for the filmmaker and the contributors, who generally want their story told. And can benefit from the exposure.

"So it's a very hard balance to strike..."

I interviewed a United States filmmaker who'd recently completed a significant international biopic (biographical picture) and because of the independent nature of this type of documentary filmmaking, she also asked to remain anonymous.

For her, working through lawyers and managers at the start ensured she and the subject could build a relationship beyond the question of who had editorial control. However, this can mean significant legal costs during negotiations for an independent filmmaker, before the film's production budget is covering costs.

"When I was approached about this [film] there was no discussion about who would have final say. I was told after about a year I was the person they wanted to hire for the job, that X wanted to work with me. I guess they'd been talking to other filmmakers. I was very hesitant because of her celebrity. But I was also feeling that it would be a new professional challenge [for me]. She was ultimately in control of when I had access to her.

"I was told by my lawyer that I would have editorial control - with her. But that (X) would call the tie-breaker.

"My relationship with X was based on the principal that good fences make good neighbours, period – she never spoke to me of anything legal or formal. She was very accustomed, I got the sense, to letting her managers take care of that so she didn't talk business or the difficult stuff which in this case would have been editorial control.

"About final control, even though X did have it she never formally exercised it because she was very happy with the rough cut and shockingly - and I genuinely mean shockingly - had nothing to say about changing the rough cut I showed her.

"Actually my husband who does not work in film pointed out to me, if she is going to let you in, she needs to feel she has some degree of control. She never did exercise it. But I couldn't have known that."

It can be argued that celebrity documentary funding needs to take into account expectations of high film production values, subject performance fees, music rights, film clips and affiliated sporting organisation rights depending on the celebrity's story. Therefore budgets can easily tip into the many millions. How does the weight of that hang on the director and not diminish their power?

"My attitude to investors is we're all taking a risk. I was also taking a risk as I saw it with X because people [might] think, Oh she's sold out (meaning the filmmaker had sold out).

"I definitely thought about what if it ended up being some frilly promotional documentary. But I did talk about a lot of that beforehand – I had about six or seven interviews with X and her team beforehand."

In fact the formalised nature of the film's structure, contracted and controlled for the celebrity by lawyers and managers, ended up being a plus for the filmmaker.

"I had a producer with a manager so I could really just focus on [directing] the film. I don't always have that liberty so I really appreciated it."

There are concerns over the celebrity film diminishing consideration of the director's role throughout all documentary filmmaking. It sets a precedent in the loss of final cut. In other documentary filmmaking genres directors are paid less, often needing to produce their own work and raise the funding. Working on a celebrity biography documentary (biodoc) can be a huge relief. But at what cost?

The US filmmaker again: "I think we are making way too many celebrity biodocs and that's why many are so shitty is because they're not being made with purpose other than the celebrity being the centrepiece of the story and giving people a behind-the-scenes at someone's life. I genuinely think this film was made with great intention and [the financier] did a global search for the director. It took them a couple of years. They knew things weren't going well for X, and [perhaps she thought considering her circumstances] that making a film could help her. She probably thought her career was ending. It's really a film that had a right to be made, to the extent that films have to earn their merit. The execution of the film, I had a lot of openness and good rapport with her so that helped tremendously but the story told itself.

"I was told [of] another celebrity - she basically mutinied on the entire filmmaking process. The film eventually came out but she basically told everyone to f**k off after she was paid in the millions to participate in this film."

As a director-for-hire, loss of control can be crippling and undermining.

"I have quit one job in my life. I was asked to be a director-for-hire; it was one of only two times I was directing that I wasn't a producer with my company. It was a disaster. I just could not stand how the Executive Producers were basically making me send them every single interview setup - we couldn't start interviewing beforehand without their approval of my setup, and I was [overseas] and we were dealing with flipflop schedules. I quit that. I think that's a pretty big deal when any director does that.

"Now if I'm funding the film, I don't have any accountability to anyone else except maybe my investor, if I have one, and my subject. If I don't have an investor, I have no problem saying I'm not going to keep going here, this is not worth my time and my money. And I will of course talk to the subject about it. In general should

directors have that right? Yeah we generally do have that right. Is it good for our long-term professional relationships – probably not. But a director could get to a certain stature where they could have that kind of “My way or the hi-way” and I’m going to go to the press and talk about so and so’s mishandling. I’ve never done that and would have to think good and hard before I did.”

It is the filmmaker who has had to build the most intimate of relationships with the subject. Regardless of whether the director is being paid well or not, they have invested in this relationship and have an obligation to it beyond what Producers or Executive Producers or financiers might commit to. This can lead to an imbalance in commitment to a project, beyond what might be safe for a director to continue within.

“So many of my stories have been quite personal about peoples’ lives. And so in X’s case with this film, because [a particular scene] was so radical, radical in what we saw, and it was shot without much opportunity to shoot it differently. Because we had a prime lens on (fixed length of focus), we had to shoot what was right in front of us. Frankly I would have understood if she did not want me to put it in the film. So when I showed her the rough cut that was the moment of truth because the film would have been very different without it, because it really became the incident towards which and away from which the narrative would build itself.”

The filmmaker admitted that without this scene the film would have been significantly weaker. And ultimately X had control over that decision.

Potentially then making the film could have been “a career-killer” she said. It came down to the trust she’d built with X, the focus she’d been able to direct with because of the support of lawyers and managers, and her willingness to understand X’s reason for having this film made and directing towards that vulnerability.

If the filmmaker or people involved in the filmmaking should be authentic, what is authenticity?

While I am adamant it is not for me to dictate who are the authentic storytellers in diverse / historically under-represented communities, I met with Chinese / Canadian filmmaker Yung Chang in Toronto who expressed his own views.

Yung is a two times-Sundance selected filmmaker working in documentary and narrative storytelling. And while he is first generation Canadian, speaks Mandarin and has been immersed in his culture, he struggles with his own authenticity in filmmaking and this has impacted his mental health. That struggle has led to some very strict decision-making in his current filmmaking.

"I know there are many filmmakers who don't approach with sensitivity, and approach with 'us' versus 'them' mentality and that can be challenging and ethically incorrect and morally ambiguous over what the intentions are," he says.

"Personally I've been through a lot in that thinking. Because of my cultural background, Chinese stories - I feel automatically drawn to tell those stories. But also I feel as a filmmaker I wouldn't want to be restricted to being the person that can only tell those types of stories. I would love to be able to tell white people stories. And I have.

"I don't like that idea of being pigeon-holed. Obviously I think it's different when it involves a white person making a film about another culture that isn't white or has a colonial past.

"There were a lot of ethical and moral questions throughout my learning curve into filmmaking even as a young high school student. I recall trying to make a film on unhoused people in Toronto and I felt really awkward and that was when I began dealing with that ethical question of the role of filmmaker. When I went to make UP THE YANGTZE (Sundance Film Festival 2008) that was a whole other thing because I was filming poor peasants working on the river. That time it was hard for me. I went into it slightly naïvely, about working with participants who don't have their own means and perhaps understanding of the scope of what we were doing. I didn't pay anybody. But I took it upon myself to bring certain things the family required to live, like flour and food to compensate in a way for their time. There was also this sidebar consequence of the release of the film, I suppose it's a sort of a soft impact campaign, where we raised money for the family and a significant amount of money was raised.

"But then when I made CHINA HEAVYWEIGHT (Sundance Film Festival 2012) firstly it felt better, the process of making it, because I went into it [collaboratively] where everyone was aware of what we were doing and there was a mutual agreement there would be mutual benefit. And the [participants] did benefit from the film by gaining attention and international recognition. Certainly nationally they were celebrated, especially the coach."

But still the involvement of the directors, the filmmakers working in real people's lives, can be taxing.

"At that time I was so intensely involved with everyone in the movie that it was overwhelming. I couldn't personally handle it. I decided to stop making that kind of documentary film, the kind of verité documentary film and I think the last thing I made in that vein was Gatekeeper about the suicide saver. I haven't really done that since because it's been so challenging ethically for me to make a film like that."

Yung is now working on a narrative film.

But he still observes how documentary filmmakers are addressing the ethics and morals of their roles.

"There's a scene in UNION (directors: Stephen Maing & Brett Story, Sundance Film Festival 2024) where one of the workers is struggling to hold down their tent outside (the Amazon factory) that was being blown away and you see the camera person filming. And then all of a sudden you know, [the camera person] breaking the fourth wall and heading over to help the subject and that was something that [Brett Story] felt - there's a clear line when you need to help and you don't need to help. I appreciated that."

Yung continued: "I really don't think every story should be told by the culture that is in the film, that the background of the filmmaker has to land in the same world as the subject of the film. I do think it certainly changes the perspective when you can have a filmmaker who is from the same cultural background as the participant of the story. I think it does inform a perspective that someone who is not of that background wouldn't be able to see certain aspects of, perspective. I guess this is unconscious bias. I think of that film in Sundance recently (JIHAD REHAB renamed THE UNREDACTED, Sundance Film Festival 2022) that caused such controversy. That film in particular was problematic because it didn't address these problems and because it also broke ethical lines of filmmaking or at least maybe the filmmaker didn't have unethical grounding or framework in which to approach that

story. And I think that matters in this day, a plan, consciousness as to the effect of making.”

I discussed my own filmmaking history with Yung.

“When considering you being a white filmmaker from a developed country making films in ‘developing countries’, I think a big part of the problem with certain filmmakers who approach stories that are not from their world is the way they approach those stories.”

Yung says sensitivity and self awareness of a white director’s positionality is paramount. And to consider how film affects participants - the community and those from different, more challenging stratosphere of income bracket, etc.

“I do believe – and I’ve always felt that about your filmmaking – it feels fully conscious of the story you’re making and the sensitivity around that and often addresses those sensitives. I’m in particular thinking about the Vanessa Beecroft story (THE ART STAR AND THE SUDANESE TWINS).”

Rico Johnson Sinclair, Race Equality Lead at the British Film Institute whom I heard speak at Cannes Film Festival 2023, discusses equitable ways to address the balance of power when the filmmakers are white and the subjects are people of colour. As those historically more likely to receive funding Sinclair states that it’d mean some stories of diversity never being told, if white producers were restricted from telling these stories.

“In our industry [the producers] that are the most empowered are majority white, majority male. If we suddenly decided that authentic authorship was only the people that were represented telling those stories it would mean we’d see a lot less of those stories. So I think there are interesting ways for filmmakers that aren’t historically marginalised to support historically marginalised people but not take ownership of that story. If it comes from a voyeuristic place, through their own lens, then I don’t think anyone should be making that film.”

Representation and Credits

Shirley Abraham is an Indian filmmaker based in India whose first documentary feature was awarded L'Œil d'or Special Mention: Le Prix du documentaire at Cannes Film Festival. Shirley's work has been awarded the World Press Photo, the Human Rights Watch Award, the Rory Peck Trust Award and the President's Medal in India. Shirley is currently a research fellow at the Shorenstein Center at Harvard Kennedy School, her examination being freedom of thought as the beating heart of the independent voice: "Can one create memories of the future even as the dissenting voice finds itself choked around the world today?".

Specifically I asked Abraham, if as people of colour, the traditionally under-represented, are beginning to be empowered to tell their own stories in their own ways, should people like myself - white - step back and let that evolution of storytelling take its course?

"I think a lot of (how to restore balance and power) begins with considering questions of representation. That tells us that there is an acknowledgement of asymmetry and a willingness to share power.

"I feel it is important to continue to do this work around ethics as a continual process from all sides of our privilege. Our conscious and unconscious biases perpetuate colonialism, power and race within individuals, and feed systems of injustice."

Abraham asserts that it is work for all filmmakers to approach, from all sides.

"As documentary filmmakers we have a great moral ownership of the world. We believe in changing the world, changing how we see the world. Where is the moral clarity that attends to it?

"One way to lean into moral clarity is to imagine ourselves as a conveyor belt for redistribution of that wretched thing called power."

A credit on the documentary film can give a subject ownership of the film and bring authenticity to their participation.

"I have long wondered if Opening and Closing Credits is a way to acknowledge the role of the subjects and community. But filmmakers must be careful not to dilute the power of film credits as a whole. Consider what the role is the subjects are doing – has their inclusion in the film triggered finance and therefore they should have an Executive Producer credit? Or perhaps has anyone, any organisation helped them on their path that can be credited, and thereby acknowledged? Does this begin to address the power imbalance?"

Understanding the Power Imbalance Impact on Distribution, Sales and Film Festival releases

While making my Afghanistan film *A FLICKERING TRUTH*, I was informed by a distributor that the market cannot take another similar film for five to 10 years. That is the rule of thumb. The filmmaker needs to therefore ask the question, “Is this the right situation for that story to be covered for potentially the next 10 years? Or am I taking away the opportunity of a filmmaker from that community to tell this story in the years to come?”.

This question has become more acute in recent years, and release partners – sales agents, distributors and film festival programmers – are at the forefront of facing audience and media reaction to the validity of particular filmmakers to tell particular stories.

And no sales agent or distributor wants a film they have chosen to represent, that they consider to be a film with potential market success, to die at the box office because of controversy.

I met with Europe-based international sales agents Arianna Castoldi and Kielian Kiefel who head the documentary division of Paris-based Mediawan which operates across 13 countries in Europe, America, Asia and Africa. Mediawan is currently representing a documentary feature film that was nominated for an Oscar in 2025.

“In our opinion and from our experience, legitimacy is an essential piece of the puzzle in documentary filmmaking. Questions of authorship and representation often surface prominently, as seen in cases like Jacques Audiard’s *EMILIA PEREZ*. While Audiard intended to spotlight transgender and queer issues and address the complexities of cartels in Mexico, he faced backlash from critics and audiences alike. They questioned whether, as a white heterosexual man, he could adequately and authentically reflect these experiences. This criticism raised concerns about whether his storytelling integrated local voices or filtered them through an external lens, casting doubt on the film’s legitimacy. (Notably, Audiard publicly apologized to the Mexican people.)

“For filmmakers, the role should shift from being the sole authors of a narrative to acting as facilitators who prioritize the lived experiences of the communities they

portray (in particular in documentaries). This approach ensures that marginalized voices are not only heard but are central to the storytelling, without being overshadowed or reinterpreted by external perspectives.

“As professionals, we are becoming more vigilant in identifying and addressing issues of misrepresentation when they arise. One of the most tangible changes we’ve made is maintaining clarity about the kinds of projects we will not support, particularly those that fail to meet standards of legitimacy and inclusivity.

“When considering films we want to represent in the international marketplace, we always consider “questions of legitimacy from the outset”.”

As outlined later in this document I discuss how questions around authenticity and ownership in my current film CROCODILE led to my company entering into a co-producership with the subjects of the film. Arianna and Kilian’s response encouraged me that they didn’t see as a negative the complexities many parties involved in the ownership of a film, or co-directors might pose to a film’s marketability or saleability. On releasing a previous film I made, I was told sales agents and distributors like dealing with only one person, seeing that as more straight forward and easy. But I applaud Mediawan that they realise overriding any ‘ease’ is essential in protecting a film’s authenticity.

Following on from Shirley Abraham’s thoughts that all documentary filmmakers must work towards addressing power imbalances, at Cannes Film Festival 2023, I attended the panel discussion facilitated by Rico Johnson Sinclair, Race Equality Lead at the British Film Institute along with Egyptian director and producer Nada Riyadh, British-Chinese writer and director Paul Sng, Brazilian producer Yolanda Maria Barroso and Swedish producer Malin Hüber. The discussion was ‘Unpacking sovereignty and curating justice in film’.

It seemed clear through the discussion that the historically under-represented are doing work to shift the power. Again the challenge needs to be for those traditionally-supported storytellers like myself to step up.

The panel had many practical suggestions.

Rico Johnson Sinclair highlighted: “[There are] so many initiatives that champion BIPOC but ultimately [gatekeepers are] accessing white-led organisations that ‘hold’ people of colour, rather than BIPOC-led organisations.”

By ‘hold’ I understood Sinclair to mean ‘employ’, so companies that employ or contract BIPOC but are not BIPOC-led. It was posed, how do we best enable inclusive practice in the industry?

“It is imperative to appreciate the lived experience of historically marginalised people who have been under-resourced. We constantly have to be productive in this industry so often it is easier to dissent to whiteness, to opt for the easiest option whether it be production team or consultants and traditional ways to distribution. This needs to be constantly challenged.”

Producer Malin Hüber identified that even she, an adopted child from Sri Lanka into a Swedish family, needs visual reminders of how she is achieving redress. “As a producer I keep lists where I check where’s my numbers, how many female inclusive, what’s on my crew, who’s in front, who’s behind the camera. It’s really to check myself but also to show the person I’m working for or the commissioning body. But what comes with that is a responsibility to create an environment that can take care of this because you can work in stories that are harmful, depicting something close to reality and so have to make sure to care.”

The producer Riyadh : “[There needs to be a] mental health advisor on set, providing access. We are often dealing with trauma in documentary film. [Including this] in the budget is good practice.”

Rico Johnson Sinclair stated one way to ensure authentic authorship was for the filmmaker to consider the Why. If the Why is inherently selfish, that it is about payment / money, then the filmmaker shouldn’t be telling this story.

Creative Producer Nada Riyadh says coming from a country, Egypt, which does not have formal funding support, she has to enter into co-production agreements with producers from developed countries with government funding. And those are usually European countries. “If I’m going to make any film I will probably rely on people from outside (Egypt) and cannot see my world with the same perspective. (I must) find the collaborators that understand it’s not just about a certain topic but

how a film is told. I need to support the [directors] in the way they want to tell it, even though this makes them less eligible for many resources, to find allies that want to join in to disrupt a little bit how the world is.”

When considering the ideal situation in the future, producer Nada responded: “I have had so many meetings with broadcasters that start with “Our audience do not even know where Egypt is on a map. So it’s your job to add context.” A eutopia for me would be where we can tell stories in authentic ways, in culturally specific ways that will not ever be completely understood or followed within our audience minds and for this to be the normal. And for different stories to be told in their forms and not forced to be within a formular for a European, privileged audience.”

Legal Considerations

In our practice as documentary filmmakers, the accepted system for those who appear in our films to sign a Release Form. The Release Forms I arrived at some years ago, are a straight forward document, able to be understood by most, regardless of whether they can afford legal representation or not. I believe the people I focus my lens on shouldn't be expected to hire a lawyer to explain the release form. I have also had them translated in other languages where applicable, and when working in situations of low literacy, I have them read out on camera and I film the person agreeing verbally to the release form.

Unfortunately the New York-based media lawyers I approached did not feel they had anything to add on record. And while I then approached other US lawyers I didn't receive a reply, perhaps because of the sensitive and changing nature of this topic. But one of New Zealand's pre-eminent Intellectual Property lawyers Earl Grey met with me to discuss the New Zealand situation. I will ask Grey if he's able to attend any future panels or workshops as his opinions regarding Release Forms and Intellectual Property bring our discussion through to whether Release Forms – or the failure to sign one – would hold up in court if it's obvious a person agreed to be filmed.

Duty of Care

Duty of Care has become a term used widely. With an increased understanding of the power of our films I believe our obligations as filmmakers is to protect our subjects. This is also part of the Story Sovereignty situation.

New Yorker Brenda Coughlin's producer credits include Academy Award-winning CITIZENFOUR (2014) about NSA whistle-blower Edward Snowden, and Cannes premiere RISK (2016) about Julian Assange. She was formerly the Director of Impact, Engagement and Advocacy with the Sundance Institute, and continues to produce and executive produce unique documentary films. We discussed the ever-evolving Duty of Care and that it must be assessed before and during production, and after the release of a film. We discussed that the decision a subject makes to be involved in a film is not necessarily the answer they should be held to through the making and release of the film. The life and circumstances of a subject may change during the production of our films. To what extent should we also consider their answer may change, how does that effect our production, the film's financing and commitment to production partners? Should the implications of Duty of Care be a recognised line in our budgets, for example therapy for subjects and crew when tackling difficult issues?

London-based independent producer Diene Petterle lays out her company's process. "We have incredibly strong Duty of Care rules and before every production we create a DoC protocol that is specific to the needs of the contributors involved.

"We provide therapy - not to deal with their issues but to deal with the potential impact of the film on them; we show them their section of the film before it goes out; we give advice and support around social media. Before they come on board we do a psychological assessment and always prioritise their well-being over the interests of the film. All this is written in a log and we have routines where we discuss how all this is developing, ensuring the team knows their welfare is the priority. There's lots of other details in our protocol but these are some of the headlines."

It is encouraging to note also that Petterle says television networks are encouraging this too, which means they will understand a line in the budget covering these important aspects of production.

In considering specific aspects of Duty of Care, I refer to a situation in the past where my actions in being accountable for safety, became perhaps paternalistic.

When filming A FLICKERING TRUTH in Afghanistan, Ibrahim Arify, the President of the Afghan Film Archive, was planning a trip around Afghanistan with the mobile cinema. In the pre-planning I asked him a number of times whether he was sure it was safe for us to come with his team. It would be myself and my Director of Photography. Am I putting any of you at risk? I asked as we would be travelling through Taliban-controlled areas. After a number of times of me asking him this in meetings and privately he said to me quite sternly that I must stop asking him that, that they have made a decision and they know the implications of that decision. He reminded me that they were more aware than I was of the situation and possible outcomes. It reminded me of the tightrope I need to walk between Duty of Care and being patronising.

Pitfalls

In Amsterdam I met with Toronto-based Elizabeth Radshaw, Hot Docs' Director of Industry Programs including the Hotdocs Blue Ice Fund. I discussed with Elizabeth the positioning of me as a co-producer and co-director in my film CROCODILE. And while Elizabeth appreciated my role in the financing to date and driving the documentary story-telling, she was clear her role was to enable African storytellers to tell their own stories. Yes, co-productions seemed necessary in certain circumstances but her drive is for complete autonomy for African documentary filmmakers.

It appears to me that humility will need to come into play for filmmakers, with egos needing to take second place to the making of the film as we strive towards equity and authenticity of story.

Ultimately its essential that trust must be enshrined in the making of the film.

Trust is paramount if filmmakers are not from the community of their subjects. As part of my process, when I have reached a rough cut stage I return to the subjects to show them the film, allowing an opportunity for discussion over scenes or filmic choices I have made. It is clear from the onset that they do not have editorial control but that if there is anything they object to we can discuss and I would explain why I have made that storytelling decision.

It's often a costly exercise if the films are internationally made. And it does leave the filmmaker open to challenges, often quite late into production.

Many people spoken with during this research have highlighted the need for individuals in the filmmaking team to understand each other's true intentions. It might seem that agreeing on what sort of film is being made is the main focus. But people in this research have highlighted the rigour needed to research the production partners, financiers and production team a filmmaker might work with.

Disagreement between writers, directors and producers can weaken a film. I heard of the increasing incidence of Quit Claims, a legal document when ensues a full transfer of rights when someone leaves production, sometimes due to disagreements over the direction the film is taking. This is a costly exercise that isn't

predicted when production begins. Avoidance is imperative for the finances of the film and this can be strengthened through understanding the intentions of all parties.

The Positive Financial Successes of Acknowledging Subject's Agendas / Subject's Power

In Venice, Italy and in France I met with Danielle Turkov Wilson, Founder and CEO of Think-Film Impact Production, an international Impact Producer which works to create high-level socio-political action. Danielle had worked on Oscar winner NAVALNY. Impact Producers generally oversee the design and implementation of the outreach and engagement strategy of social change films.

Danielle emphasised that for some films the power and agency a subject is afforded can determine whether a film's release is successful or not. It is sometimes more important for the subject to attend world premieres and do press than the filmmaker.

And if the film has a political goal, perhaps to change law or policy, then the subject's work becomes the focus more than the film.

In this way it might be that filmmakers can negotiate access and rights to a story understanding the subjects also have their own agenda. If there is transparency over that, then everyone potentially can win. In the case of NAVALNY, the filmmakers were driven to tell this unique and intimate story while Alexei Navalny and his team were driven to work for democracy in Russia, and the ability for Navalny to lead in freedom in his country.

I was also fortunate to attend an event Danielle and her team hosted with human rights lawyer Amal Clooney, philanthropist and designer Diane Von Furstenberg and the filmmakers of THE WALK, to observe impact producers in action bringing together international minds to create change. In acknowledging the agendas of the various parties, a documentary film can be more successful as companion work for the subjects however filmmakers need to be clear they are not making a puff piece. But understanding the motivations of subjects and other interested parties can lead to an increase in audience and potentially film sales.

Changing my Process / Changing our Process

In exploring this thesis, I decided to make a distinction between the subjects of my films, and to identify those I felt were already in a position of empowerment in their lives. Perhaps they were already well known, financially and culturally strong and therefore didn't need financial recompense from my film? Or perhaps they would profit in some way from an increased profile through the release of the film. This is indeed problematic as it's my decision alone.

However, I now consider there must be some recompense for all subjects. During this research, I considered my process and decided to 'gift' back to subjects the uncut footage of each film, as their own family archive.

For Guo Pei, the subject of my film *YELLOW IS FORBIDDEN*, a very successful international fashion designer, I didn't feel a need to include her in the film's financial position. But I have returned to her uncut footage, most importantly the footage of her parents as her father has since passed away. It was an emotional returning, and I felt that showed some benefit of my film beyond the predicted elevated profile outcomes when first we started filming in 2016.

I have since returned the drives, uncut footage and materials of my Berlin Film Festival-released 2012 film *MĀORI BOY GENIUS* to its subjects, and the same for my television documentary two-parter *THE RESCUE OF IANI*.

In London I met with one of the foremost international editorial advisors and editor Maya Daisy Hawke. Hawke is a consultant with the Inaugural Sundance Institute Indigenous Non-Fiction Intensive. She is the creator of the interactive social media video novels *BOX OF BIRDS* and *CURRENCY OF DESPAIR*. Hawke is the editor of over a dozen feature documentaries, including *CAVE OF FORGOTTEN DREAMS* (2010) and *FREEDOM FIELDS* (2018) and also of the BBC series *HOUSE OF ASSAD: A DANGEROUS DYNASTY*. She was an advisor at the Sundance Edit and Story Lab 2018, an advisor at the Sundance New Frontiers Story Lab 2019 and a Sundance Nonfiction Directors Residency Fellow in 2018.

In examining representation within her work space, Hawke has been making significant decisions.

"The edit suite is traditionally a white space. I've been atoning for choices I've made in the past where I got behind brat kids, white filmmakers with money, and have now decided no more rich white kids in my edit suite. The films I've worked on in the last year have been seven films by female filmmakers. I've also been advising on a Kenyan film, a Chinese film, all these different voices.

"I'm not going to work with the white male director anymore. They don't need me."

Hawke was fortunate to be invited into an indigenous space, and this has changed her work considerably as an international advisor. She feels a strong shift taking place over traditional storytelling structures as more diverse voices are being given opportunities. There is an examination of the traditional three act or five act structure, part of an acknowledgement of other peoples' structures of storytelling.

"I've been really influenced by Adam Piron, (Kiowa and Six Nations Mohawk, Director of the Sundance Institute's Indigenous Program). When he was a curator at LACMA he encouraged me to do my own experimental work. Then as an advisor at the lab, I realised storytelling doesn't need to have any rules about what things should be. I felt seen by Adam for being experimental. And that has really helped me to encourage diverse filmmakers to work without prescriptive practices, to make work that makes more sense to them and their culture. I feel very comfortable meeting those films where they're at not where I might be at as a white editor. I don't try to fit anything in a box. Or make it more palatable for me. It might not be about the (traditional) three act structure. I ask (the under-represented filmmakers) to tell me the paradigm and I align with that."

However there are still strong market considerations that govern some diverse voices filmmaking.

"I get asked "Are Americans going to like this?" which means therefore, will it sell? I understand what these filmmakers want from me, and I'll try to filter that through an appreciation of what I see in the film that is original and different and help them hit those beats that we think are sweetspots for the audience. That I'm now prepared to do. But I don't believe filmmaking should be a fungible process.

"I know I'm there to facilitate filmmaking as it exists, as it comes without forcing. And if it fits into one of the (traditional) channels of distribution, that's up to them or whether they want that even.

"I'm really trying not to make any assumptions of anyone, for their film to go viral, to become a Youtube smash hit. If there's anything I'm going for, I want films to be

catchy. That you can't look away from. I'm not thinking of the gatekeepers, the streamers, the festival – I think that's a mistake. I get asked, Can you help us get a film into Sundance (film festival)? What does that even mean.

"With the Japanese film BLACK BOX DIARIES, it was a really personal film and I really encouraged her to lean into the DIY of it all, the 'outsider' feeling. It was a woman in the world with an iPhone. Before I came onboard [the director and lead editor] had done a lot of stuff to make it a professional looking film, and that wasn't serving them. It might have served them going to make it on Netflix. I came into the cutting room and in retrospect the Japanese director said she felt she'd have to "deal with me" in the edit, make room for a white voice telling her what to do. But I don't work like that, certainly not anymore. I made sure she was getting her space and everyone else toed the line so she could do her job and achieve her film."

Hawke feels now she can be more authentically herself in her work.

"I gave a talk at the film school the other day. I talked about as an editor I'm a whole person. That's unusual for an editor - you're supposed to be invisible. But I'm on Instagram, I post clips - get used to it. I now feel if you hire me this is the package. I'm making a bigger sized hole that other people can hopefully fit into.

"I change up the starkness of edit rooms, that's now my MO. Maybe there'll be flowers in my cutting room, a feminist journal, a picture of high heel spikes on the door to cover up the glass pane. As a woman you're conditioned to make everybody feel okay even when you don't like them. I've gotten to a point in my career, I've had such a chequered career, it doesn't matter any more, my reputation. I've proven myself and now, if you're going to hire more editing people on your film I'm going to challenge you about who those people are, what they represent.

"The cutting room is different from the director's world. It's more of an artificial space where you can populate it with the right people to support doing the right thing. I work with assistant editors and archive researchers. I'm an editor who is happy having more people in the cutting room with me. And I believe I'm not always the best judge of the material. Culturally I don't trust myself to be the best judge of everything. So having perhaps a BIPOC, trans person, somebody else particularly younger looking at the material and seeing what they point out, that's going to make the film stronger. I think that's really important to not make it about you and your whiteness. Sharing, it's a more natural way of working."

And her thoughts on whether I can continue to make the films I've traditionally made?

"Spending a couple of years in Afghanistan making a film seemed like a great thing to be doing maybe 10 years ago (referring to my film A FLICKERING TRUTH). But now, being a white woman, time has moved forward.

"Lets sit on our hands and let others have a turn on certain things. It'll be different again a few years from now. Things I'm saying even now will seem out of date – hopefully", she says eyeing a future of naturally better representation.

RECAP

1. In acknowledging Intellectual Property, the subject of the film needs to be compensated in some way, and credited accordingly depending on what intellectual property they may be bringing to the film.
2. If the subjects of the film do not have the wherewithal for legal support, then the film's production budget needs to financially cover.
3. The filmmaker needs to ask themselves the question whether the community they are focussing their lens on, has the capability to make that film themselves. If they don't then the filmmaker needs to consider how to empower that community to do so in the future, whether through filmmaking equipment, education, industry contacts, or financially.

MY CURRENT PROCESS IN THE FILM CROCODILE

During production of CROCODILE I decided to make the subjects of the film co-directors and co-owners of the film. Because of Covid restrictions they had filmed a lot of the scenes. But it also seemed to me significant that the intimacy of their story needed to be protected with their own cultural knowledge. It has been a complex situation of legal documents that supported both our expectations but also held the film at its centre.

This is one example of how co-production has enriched the filmmaking experience while ensuring the safety of the film.

My support towards this inclusive co-production meant I paid for a Nigeria-based lawyer whom the subjects of the film chose to work with them to navigate towards our collective agreement. I wanted us to succeed in this process – and for the Nigerians to have their own legal representation.

Also we have had frank conversations about the tone and delivery of this film, and agree this film will celebrate its subjects, and that these Africans will exist in joy not in trauma. We won't be basing this film's narrative in black trauma, in narratives that have evolved out of the poverty of West Africa recently.

I have been encouraged these film-making processes are ensuring authentic storytelling, honouring story sovereignty and intellectual property rights of all concerned.

I talked with Mediawan Sales Agents about my current process, and CROCODILE. "The fact that you are co-directing and that the Critics are actively involved in filming assures a level of collaboration that we see as balanced. While they express their vision both in front of and behind the camera, you contribute your expertise in filmmaking and storytelling. This dynamic demonstrates a clear effort to respect and represent the voices of the communities involved.

"As co-director, you are embracing their history, perspective, and cinematographic approach, even when it challenges or diverges from Western viewpoints. This level of collaboration is essential for fostering authenticity and reshaping narratives to faithfully reflect diverse and marginalized experiences."

I am encouraged by ex-BBC now London independent producer Diene Petterle who said "I love your co-production approach. That's a clever way of showing fairness while ensuring you can still make the film."

Co-production between subjects, writers, directors, producers, and the community being represented can be as varied as the stories. I do believe there is a shift in understanding the empowerment such a structure can give.

But ultimately changes in production processes has ensured in CROCODILE there is trust and through that trust the strongest film possible has evolved because there is no 'us' and 'them' – we are all the filmmakers, and will benefit financially from the film's success.

KEY LEARNINGS

Over the last two and a half years I've travelled extensively, researching a greater understanding of the difference between Intellectual Property and Story Sovereignty.

1. Story Sovereignty is the inherent ownership of a story by the family, iwi, community, ethnicity, a person of different ability, gender, etc. Whether that person or group decides to enable a filmmaker to tell that story lies within what I consider to be a grey area. If that happens to me again, that I am empowered to tell a story beyond my own community, I need to think 'Does this person who is different from me culturally, perhaps from a different part of the world, different language, beliefs, a different economic situation, if they are to grant me the story
 - Is it from a place of knowledge of the possible impact of a documentary film I might make, that will have international release?
 - Is it from their own place of empowerment?
 - Could they or people from their community equally tell their story?
 - And if not, how can I address that?
2. Intellectual Property lies with the creator of the film, in the cases of my films the director / writer who has come up with the creative vision for the film.

But I don't believe it can be claimed that as a white female filmmaker from a developed country the resolutions I write today are absolutes.

Each individual, each culture, race or gender will have their own considerations over whether to have someone like me tell their story.

I need to inform my future subjects of all the possibilities around having a film made about them so that they are aware including the years-long process of my filmmaking.

3. The process of documentary filmmaking is transactional. What is the transaction? There is the transference of a person's life or element of that life

into documentary. But to empower the subject what other transactions could be possible?

Suggested filmmaker advice and points of discussion for future panels, in considering how to address the power imbalance

1. Is it integral that the filmmaker retain Final Cut, and therefore ultimate creative control? The filmmaker must remain empowered to explore their creative vision without restriction. Obviously when the power imbalance is in favour of the subject in the case of them being a famous person, that is another situation to navigate. But hopefully through a filmmaker's process the subjects will trust their story will be represented well.
2. Identify at the beginning of production who holds Story Sovereignty and what is your Intellectual Property. Make this a discussion with your subjects.
3. Acknowledge with your subjects that it is a creative representation and as such is the filmmaker's interpretation of events.
4. Work towards there being a reciprocity in the filmmaker / subject relationship. The filmmaker gets the film but what does the subject get? Consider:
 - Giving back materials and film rights to subjects after the projected period of exploitation, possibly seven years. Discuss with sales agency / distributor a key period of exploitation.
 - Be aware when negotiating contracts with distributors, sales agents and broadcasters of your documentary, over the period of sale. If it is negotiable, insert a clause that after a certain period the uncut footage be returned to the subject for the individual's own archive.
 - What should their credit be? If they're a filmmaker or storyteller don't let your ego override what is ethically correct, to acknowledge them as such.
 - Involve them in day-to-day decision making if appropriate. Do not tokenise their involvement.
5. Financials – how can we legitimately financially compensate subjects?
 - Pay for Life Rights
 - Backend split that could be negotiated so subjects have points in the profits
 - Split of any monetary awards or prizes the film or filmmakers receive
 - Split of residuals for the director and / or writer of the film with the subjects

6. Duty of Care

- Should the implications of Duty of Care be a line in our budgets?
- Share the following resources from Brenda Coughlin and discuss
 - o From Doc Society <https://safeandsecure.film/static/core/files/S+S-Handbook-Oct19.pdf>
 - o From Arts in America <https://www.americansforthearts.org/by-program/reports-and-data/legislation-policy/naappd/cultural-community-benefits-principles-toolkit>
 - o Brenda also noted an agency in Detroit, as an example of working to change agency, <https://www.detroitnarrativeagency.org/series>, which highlights one of its focuses, "We prioritize films made by people who belong to the communities their films are about. We apply anti-oppression principles to our approach."

7. Make Release Forms as simple as possible so the subjects are not expected to engage legal counsel to understand them.

8. Discuss showing the subjects the rough cut of the film, despite the fact it may leave you open to challenges. This will be an element that will increase trust from the subject and they will allow you into situations they may have been hesitant about previously.

9. Release and Impact Plan

- Ask the subjects what they imagine for the film's release and impact. The subjects are more likely to be more aware of the needs and issues of their community and how your film may address these issues. There may be a kaupapa which you hadn't considered, that could benefit from the discussion prompted by your film's screening.

10. For pākehā production companies to keep a tally of their employee and contractors ethnicity, to be visually reminded. Set targets and revisit the list and targets.

11. Encourage collaboration with companies / funders / film partners that are BIPOC-led, not who simply employ BIPOC.

12. Try to understand the lived experiences of BIPOC in working in an industry established by white people.

13. Mental health advisors included as a line in the budget.

DISSEMINATION

Now this report is nearing completion, I have been in contact with the following who were supportive of hosting panel discussions when I applied for this fellowship:

1. Executive Director of Women in Film and Television, Patricia Watson is very excited to programme a panel discussion. She has responded encouragingly to the draft report I sent her: "This is excellent and I think we should work up a real event around it, maybe even with a carefully invited audience and maybe it could be recorded. Let's discuss ideas when I get back. I definitely want to be involved."
2. Tui Ruwhiu, Screen Directors and Editors Guild of NZ
3. Executive Director of Ngā Aho Whakaari, Kay Elmers, Ngāti Tamaterā, Ngāti Raukawa
4. Additionally I conducted an interview mentioning this work on my sister Sharon Brett Kelly's podcast *The Detail*.
<https://www.rnz.co.nz/news/thedetail/552784/owning-the-story-from-start-to-finish>

CONCLUSIONS

I have continued in production and post-production on my film CROCODILE, mentioned in this report. The research this fellowship has granted me meant I was able to directly put in practice my learnings into this current film. I look forward to sharing this report with others in my industry – and hopefully encouraging other filmmakers to change for the better.

I want to thank and acknowledge all those who spoke with me, either on the record or off the record. But also I'd like to thank many from Aotearoa New Zealand who helped me define the situation here, including storyteller Tainui Stephens (Te Rarawa), producer Kay Elmers (Ngāti Tamaterā, Ngāti Raukawa ki te Tonga), producer Richard Fletcher, media lawyer William Akel <https://www.sangrochambers.co.nz/members/william-akel> and IP expert lawyer Earl Gray <https://www.sangrochambers.co.nz/members/earl-gray>, and editor and proof reader Richard Pamatatau.

ADDITIONAL REFERENCES

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<https://medium.com/@firelightmedia/beyond-empathy-ad6b5ad8a1d8>
3. From Detroit Narrative Agency <https://www.detroitnarrativeagency.org/series>
4. From Doc Society <https://safeandsecure.film/static/core/files/S+S-Handbook-Oct19.pdf>
5. Duty of Care suggested template attached. This is purely an example and a resource, and must be amended for each production.
6. Indigenous Screen Office Canada Advocacy Resources

https://iso-bea.ca/advocacy-resources/on-screen-protocols-pathways/?fbclid=IwZXh0bgNhZW0CMTAAAR09LrUWgp9V6ga4ILGIV2SSsCj04snkwX-Up8ff0SQwzF95kE7NI9BRyQo_aem_BpMLITGTxCtkSIh6DCIsEw
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<https://safeandsecure.film>
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<https://www.unionthefilm.com>
9. Unpacking Sovereignty and Curating Justice in Film discussion, Cannes Film Festival 2023

<https://www.facebook.com/DocAssociationEurope/videos/4943358305788781/>
10. UnRedacted film

<https://www.imdb.com/video/vi1592182041/>

11. Washington Post article on Retrograde film

<https://www.washingtonpost.com/entertainment/2024/05/22/retrograde-documentary-film-taliban-heineman/>

12. Where Does Your Hidden Smile Lie? 2001 Dir: Pedro Costa

<https://mubi.com/en/films/where-does-your-hidden-smile-lie/trailer>

A candid portrait of the working relationship between German filmmaking duo Jean-Marie Straub and Danièle Huillet, WHERE DOES YOUR HIDDEN SMILE LIE? is both a revelatory film about the process of film editing and an unexpected romantic comedy anchored on arguments about the ethical and aesthetic implications of a cut in filmmaking, captures long-winded, impassioned, and ruminating philosophical soliloquies about the filmmaking process by Straub and a patient and practical, frame-by-frame working hand on the editing table by Huillet.

DUTY OF CARE template / suggestions

Programme:

Exec:

Director:

Producer:

Programme description:

A brief synopsis

Welfare - Crew

Describe the stories that the crew may be exposed to during the interviews and capturing of footage.

How to mitigate the effect of these stories on crew – breaks, check in with each other, producers, mental health practitioners, pre-production meetings etc.

Welfare – Presenter if this is the case

Describe the stories, the people and the situations the presenter may be exposed to.

How to mitigate the effect of these stories on the presenter.

Data Protection

How is the potentially sensitive data to be handled? What is the production plan for drives, paperwork, personal information of the contributors Should certain details be password protected or restricted to only some members? How will this be facilitated?

Welfare - Contributors

Who are the subjects that will be filmed and interviewed? What is the nature of the trauma, crime, discrimination, personal stories?

How will crew deal with the subjects? How should they approach the subjects especially if they need to be in close proximity to them, fixing radio mics, hair and makeup, positioning for interviews.

Will production make individual assessments of each contributor?

Will a counsellor be on set or available at a later date?

Crew will always take due care with regard to the physical and emotional welfare and the dignity of contributors. The vulnerability of each contributor will always be taken into account and crew will act appropriately according to each case.

Further questions per consent –

What is informed consent in each instance?

How will pre-production meetings and research feed into this?

If any contributors are in institutions how is that being handled and the access to support or mental health treatment in such institutions?

Consent

How will informed consent be obtained?

What are the release forms needed and at what stage will the contributor or location owner be asked to sign? Will some refuse to sign and if so what is the backup plan?

Will on camera consent also be required?

How is adequate capacity to give consent defined with regards each contributor?

How will it be determined that they are impaired by drugs or alcohol?

What will be the nature of discussions with contributors around potential ramifications for taking part in the programme e.g. negative reactions online or on social media, heightened attention on their personal / family story around transmission. What steps will be outlined to mitigate these or support them including:

- advice around social media use around transmission
- checking in with them before and after broadcast

If a well-known presenter is attached, when will potential contributors be informed as the presenter or personality attached could raise the profile of the programme and therefore expose contributors to a larger audience.

Filming Under 18s

It is suggested that Parental / Guardian permissions will be sought for any individual under 18. Informed consent of the individual / parent / guardian will follow a conversation in which the context of the programme and any potential ramifications of taking part is openly discussed.

Filming in locations where there may be a heightened expectation of privacy

Are there locations where there may be a higher expectation of privacy, e.g. in hospitals or police stations? How should filming be conducted and crew act in such

situations? Rules per each location should be understood prior to filming, and relevant permissions sought.

Background Checks

Best endeavours will be undertaken to check contributors are not misrepresenting themselves.

During Filming

Due care and consideration will be taken at all times with regard to the physical and emotional wellbeing of crew, presenter and contributors. Crew will act with sensitivity when filming – assessing if a contributor needs to take a break. If the crew believe their presence is exacerbating a contributor's distress, they will re-assess and act accordingly.

If a contributor requests to stop filming, how will this be handled?

If filming is taking place around violent individuals and weapons, what support will be offered crew?

What vigilant expectations are there of crew?

How must they respond if they feel unsafe?

If working with a presenter or celebrity, on some shoots it may be deemed appropriate for the personal security staff to accompany the presenter. How will they and this system be integrated into filming protocols?

If there is a possibility criminal activity may take place in the vicinity while on shoots / research what is the expectation of crew? Crew will never suggest, condone, incite, assist or otherwise encourage criminal activity in any form. Crew will remove themselves from any situation that feels unsafe.

If actuality is being captured in public areas, during these 'live' situations the crew will establish themselves on location so that anyone who does not wish to be filmed can clearly see the crew and make themselves known / remove themselves.

If anyone who is not a key contributor refuses permission to be filmed or requested not to be shown in the programme this should be logged and reviewed on case by case basis.

Post Filming

The team will remain in contact with all contributors who appear in the programme. They will remain in touch to address any concerns the contributor may have, as well as keep them informed as to broadcast dates. Prior to transmission the team should

check in with particularly vulnerable contributors. If there are any concerns with regards to the transmission and their vulnerability, these will be flagged to the executives and assessed accordingly. It may be deemed appropriate to check in with them again following transmission depending on the nature of the programme.

Contributors should be given advice on social media / online management prior to transmission.

For particularly vulnerable contributors, should it feel appropriate a session of psychological support should be offered prior to transmission. Based on the outcome of that session, it may be deemed appropriate to offer a follow up session following transmission. Based on these, it may be deemed appropriate to offer a limited number of sessions of support.