

# **Copyright and Pastiche network opinion on the use of the pastiche exception in Copyright Law by found-footage filmmakers**

## **May 2024**

An opinion by the copyright and pastiche network examining how pastiche could be legally and morally applied to found-footage films, offering an analysis of two case studies and an assessment of the best practices associated with this exception in copyright law.<sup>1</sup>

The network comprised an interdisciplinary group led by found-footage film makers and included colleagues from law, academia and distribution and rights clearance. This opinion gathers experience of those found-footage filmmakers and talks through their processes in making their films using two case studies. It reflects on the discussion by the network as to why and how they thought that the pastiche exception does apply to these cultural practices. As such it is a reflection of artistic experience rather than a statement of what the law is. There may never be a definitive court case on pastiche in the UK. In that liminal space this opinion seeks to inform and give comfort to found-footage filmmakers that pastiche may apply to their practices, that they are not ‘stealing’ source material when the pastiche exception applies and they don’t have to ask for permission to use, nor pay for material when the new work falls under the heading of pastiche. In this way the artists’ creativity need not be constrained by licensing considerations. It also seeks to inform distributors, copyright collecting societies and other rights holders and intermediaries that the pastiche exception is an important balancing tool in the copyright framework that supports new creative expression.

### **I. Introduction to pastiche in found-footage film**

#### ***A. Description and potential of found-footage film***

Traditionally found footage has been understood as film footage that is ‘shot for one use but then “found” and repurposed, and thus redirected toward new uses’.<sup>2</sup> Historically, (analogue) found-footage films have been concerned with ‘showcasing the potential of films that have fallen from the mainstream’.<sup>3</sup> Due to new and innovative ways of accessing more canonical films, current (digital) found-footage practices no longer solely comprise the reuse of leftovers from a film. They draw from a wide range of existing films and other creative and archival sources and repurpose this material to create a new film or artistic work. Found-footage filmmaking can therefore be understood as the specific artistic process of creating new films from existing material.

While found-footage filmmaking may traditionally have been a niche practice with limited distribution channels, such as film festivals, galleries and museums, this has changed with

---

<sup>1</sup> Disclaimer: The present opinion is the result of discussions held by the diverse group of members of the network concerning a particular cinematographic technique. It does not constitute legal advice. Since the characteristics of each case scenario will inevitably differ, an individual assessment of each case will be required.

<sup>2</sup> Anderson, Steve (2011) *Technologies of History: Visual Media and the Eccentricity of the Past*. Hanover: Dartmouth College Press. p 68

<sup>3</sup> De Klerk, Nico (2009) ‘Designing a Home; Orphan Films in the Work of Gustav Deutsch’, in Wilbrig Brainin-Donnenberg and Michael Loebenstein (eds.) *Gustav Deutsch*. Vienna: Filmmuseum Synema Publikationen, pp. 113–122.

digitisation. As it has become easier to copy and disseminate creative works, found-footage filmmaking has the potential to become more mainstream. A found-footage film that falls under the pastiche exception can be shown in any distribution channel including commercial distribution channels.

The two case studies used in this opinion describe two different processes used by found-footage filmmakers in constructing their films.

***B. Explanation of pastiche in copyright law and network members views on parameters.***

The pastiche exception, introduced into UK copyright law in 2014, is one of the permitted acts under the UK copyright regime which permits users like filmmakers to use existing materials protected by copyright in a combination (assemblage or medley) or in imitative uses. It is called an exception to copyright law because when existing materials are used for the purposes of pastiche, filmmakers are not required to secure permission or pay for the use of these existing materials, or secure permission for the subsequent distribution of their films.

At the outset of the network discussions, it was notable that none of the artist members were comfortable in thinking about their work as pastiche. This was because the term ‘pastiche’ had, for them, connotations of imitation, of being a lesser copy of a greater work, and of an absence of originality none of which reflected their type of filmmaking. During discussion it became clearer that the benefit of thinking about a work as one of pastiche is that if applicable, it brings with it the benefits outlined above - of not needing to secure permission or pay for the use of the materials. While the network did not come to an agreed definition of pastiche, preferring instead to follow the view that it is ‘extremely elastic’, the members were of the view that the two films used as case studies in this opinion, both of which use existing materials in combination, would fall within the exception. Both of these films illustrate that pastiche works can be highly original.

Some themes did emerge when thinking about found-footage films that rely on an assemblage of existing materials. The idea of the underlying work being transformed was an important marker, as was the creativity [and labour] involved in that transformation. The ability to recall the original was important so that the audience could ‘get it - although not always necessary. For some this was articulated as the offering of a knowledgeable comment on an original genre so its life is extended into a contemporary field. Engaging with materials in an original and moral way was considered an important marker of pastiche. Overall the network considered that the opportunity afforded by pastiche offers found-footage filmmakers a much needed artistic flexibility in re-using existing materials.

For a found-footage filmmaker’s use of copyrighted works to fall under the pastiche exception, the use must also be fair dealing, which we further comment on below.

**II. Case studies of found footage films and pastiche**

We offer here two examples of found-footage films that the network considers fall within the pastiche exception. The first is *Woman’s World 2023* by Graham Rawle and the inspiration for establishing this network. The second is *Transparent 2023* by Siobhan Davies. Both were discussed extensively during network meetings and both can be found on the [project website](#). (*Woman’s World* is still being made).

The synopses below are written by the filmmakers and describe the films, their thinking behind the making of the films, and their films in relation to pastiche.

### **A. Case Study 1: Woman's World 2023 Graham Rawle (a work in progress)**

#### *1. Synopsis of the film*

My film *Woman's World* is an adaptation of my novel of the same name. It is constructed from thousands of audio-visual clips taken from a wide range of films, TV advertising and documentaries from the 1940s, '50s and '60s. These pieces are edited together, layered and re-mixed, to create an original new work.

Even in its fragmented state the appropriated footage carries valuable traces of its core principles, telling its own social, historical and cultural story. In my film it provides the audience with a contextual backdrop that brings sharper focus to the film's themes about gender stereotyping and the prescribed paradigm of femininity as portrayed onscreen in the 1950s and '60s.

It is essential that the viewer understands how Norma, my cross-dressing protagonist, is drawing from movie dialogue, advertising jingles, documentary commentary and images that she has seen in film and TV. From these fragments she is able to create a female voice through which she can tell her story. We need to see what Norma has seen to understand how it is informing her opinions and shaping her narrative language. Only by using the original material can this hold any veracity.

#### *2. The making of Woman's World*

The film clips I'm using are spliced together sequentially in the usual way, but also cut out and layered spatially, one on top of the other, so that a single frame might be composed from as many as twenty pieces from twenty different sources. At other times, the composition may be simpler: occasionally there might even be two or three seconds of unaltered material. This same multi-layering process governs dialogue, ambient sound and music. Editing is a long, painstaking process: on an average day I might produce just one second of finished film.

I purposely allow the appropriated pieces to reveal their original context. While *Woman's World* has the look of a film made in 1962, the clunky cut-up editing tells the audience that it is not: it is a new film collaged from old footage. The clips are ripped from DVDs or downloaded from Youtube. Occasionally I also use still photographs and magazine clippings. While I tend to consider most found material up for grabs, I won't use anything unless I feel I have sufficiently transformed it, 'made it my own'. Most importantly, I'm asking myself if what I'm doing feels wrong. Is there some moral or ethical reason why I shouldn't use the copyrighted material? This consideration far outweighs any legal concern. I moderate what I will and won't use by my own ethical standards, but someone else's standards may differ from mine. What is considered off-limits by one artist may be fair game to another.

#### *3. Copyright Issues*

I've been working primarily in collage for 40 years. I never knew much about copyright law and how it might relate to my use of found images, but I suspected that what I was doing might not be strictly legal. I have never sought permission from any copyright holder or paid any licence

fee. Like so many working in the arts, where ignorance or uncertainty about copyright law is commonplace, I have become adept at disguising my sources and have developed a pretty good instinct about what I'm likely to 'get away with' rather than being confident about what is permissible within copyright law.

The difference with my film, as I saw it then, is that the found material is less buried within the composition. Because of the nature of a feature film, my characters and the actors I have 'cast' to play them feature consistently throughout the film: their faces sit conspicuously on the surface. I was concerned that any copyright infringements would be more blatantly visible and therefore more likely to be challenged.

#### *4. Afterthoughts*

Now that I know a little bit more about the fair dealing exception for pastiche, I can see that (providing that the usage is deemed fair) my film falls squarely within its parameters, both as a work assembled from multiple sources and as a homage to mid-20<sup>th</sup> century British cinema. But even now, knowing that the law might support my fair dealing claim, my concern is that some venues, streaming platforms, and other distributors may still be too risk-averse to show my film because they see the unlicensed or uncleared footage as potentially problematic.

I'm getting used to referring to my film as a pastiche work, at least in the context of copyright law, but the word pastiche remains problematic for many artists who feel it has negative connotations, suggesting a lesser imitation of a greater work, somehow lacking in originality. If found footage filmmakers are averse to describing their work as pastiche, it seems they may be relinquishing their legal right within this fair dealing exception to defend it.

### **B. Case Study 2: Transparent 2023 Siobhan Davies.**

#### *1. Synopsis of the film*

Transparent is an attempt to reveal the complex variations of study and influences which helped me to become a dancer and choreographer. The film does not rely so much on footage of particular dances but instead takes a step back to the many impetuses which initially fed my dance practice. These include images from the art world, science, animals, the natural world and sports.

My desire is to show how dance exists within my whole lived life and I draw upon the meshwork of influences which have inspired and informed me. They join and scatter images and sounds in montages, split screens and overlays of found footage and archive photographs, sequenced in rhythms and arrayed in ways that are discontinuous enough to startle, yet close enough for a mind to leap freely from one to the next.

Using the term pastiche is an opportunity for the film to demonstrate the physical fluidity and depth of movement between all things. Choosing objects from different disciplines, eras and geographies which create a less predictable connective meshwork to make a new work.

#### *2. The making of Transparent.*

Transparent was begun by collecting hundreds of still images and printing them on acetate paper. Many images are of a single figure or object and each one has been part of my story of experiences across many encounters.. Collectively they formed a constellation of moments which had struck a chord deep within me and when assembled in a particular way formed a choreography different to one that I might have danced on a stage. It was important to me as

I assembled often unorthodox juxtapositions between images that a physical sensation would arrive within me and when it did I knew that I had made a good choice.

The sourcing, patterning and re-patterning of the images was a process practised over several years before film director David Hinton, myself and later film director Hugo Glendinning decided to film a version of this process and introduce some biographical materials.

The labour involved choosing, placing, sliding, superimposing and layering the images until a collage was found which gave me a physical sensation, a belief in what I was experiencing rather than one that was only aesthetically pleasing.

Once we had marked out the assemblages we sent them to the animation artist Noriko Okaku and she refined and added her creative thinking to each frame.

Later in the process, once we had made some collages using well known artists' work, their licence holders demanded that we show each work in its entirety, no re-framing and no use of overlaying one art work partially or fully over another. We had to alter these particular collages.

The sound was chiefly created by Chu-Li Shewring, Matteo Farejon and Stefan Smith with others and often but not always using found sounds.

### *3. Copyright issues.*

During the process we began to create a spreadsheet of all the materials and where we had found them. I had decided, against some advice, that I needed to pay for each item in order not to cause any potential problems with the organisation Siobhan Davies Dance which I was about to retire from. I had also reached out to lawyers who advised me to behave in this way. We hired someone to find each item and negotiate a price and a period of time the works were paid for. Once the negotiated time comes to an end I have no way to pay again and extend the copyright period.

Gathering the credits was a herculean task and at the end of the film the scroll of credits is lengthy. I am proud to recognise the work and to credit all the contributors (we were unable to find very few and we placed a sentence at the end of the credits describing our process).

It feels like good practice to credit contributors even if I have not paid for them. The huge list reveals the rich and complex environment dance and the body sits within.

### *4. Afterthoughts.*

Our first film, 'All this can happen' was made in 2012 before the term pastiche was used.

We paid for materials to all of the archives we drew upon. This practice may have influenced my choice of paying for the materials used in making Transparent.

I was nervous at the time of having the responsibility of the film in the future and on my own. I reached lawyers who obviously were going to err on the side of caution. Now that I have been in the company of the other network members I feel more confident in how I might approach another found footage film or when I decide not to renew the licences when they need renewing.

## **Common threads from Woman's World and Transparent**

While the details of the processes followed by Graham and Siobhan in making their films differed in relation to the breadth of the source of found-footage used, some common threads emerged in their approach. Both stressed the discipline and labour involved in making the films and how important it was to honour the original material. Both considered that attributing the authors of the underlying materials was of paramount importance even though copyright law does not require attribution when the pastiche exception applies (see below). This practice has resulted in a long list of credits at the end of *Transparent*. Both Graham and Siobhan talked about having to make their films whether they are seen by others or not. They expressed the necessity, located within themselves, to work with the multiplicity of found images, to find alternative perspectives for them to find a new power. One network member opined: 'The films discussed in our sessions indicate with originality the complexity of our world, of the people in it by fragmenting imagery, juxtaposing incongruous subjects, revealing different identities.'

### **III. Legal framework and pastiche exception**

#### ***A. The pastiche exception in jurisprudence***

The purpose of the pastiche exception is to balance the public interest in the dissemination of information and ideas incorporated in copyright-protected material, with the interests of the copyright owner in earning reward from the exploitation of the work, and encouraging the interests of the author in the creation of new works. It is in other words a tripartite relationship whereby creativity and the circulation of works and the included information and ideas is facilitated through granting the author exclusive rights (copyright). Those rights can be transmitted to a third party and used to underpin dissemination of the work. But copyright cannot grant a complete monopoly over use of the work, or the creation of new works would be impossible as new works inevitably draw on existing ones both through ideas (which are not protected) but also through the taking of parts of protected works. Where the pastiche exception applies, then substantial parts of existing works can be taken (so long as the dealing is fair).

The need to balance these interests and the role that exceptions including pastiche play in it is explained in a variety of ways. For instance, exceptions seek to protect 'common constitutional values such as freedom of expression and information and freedom of arts and sciences, while also serving the public interest in a comprehensive cultural life.' The intention of exceptions is to secure the 'interests of both creators and users of copyrighted material and thus secure a fair balance between the protection of, and access to, copyright works.' And as Hargreaves pointed out, 'copyright exceptions are designed to allow uses of content that offer benefits deemed either more important than those delivered by the core aims of copyright and/or benefits that do not significantly detract from those aims.'

When a work is one of pastiche, then existing works and parts of the work used in the pastiche can be used without the need to get permission from the copyright holder, nor clear rights, nor make a licence payment to the copyright holder. In addition, it will often override contractual agreements that may attach to the work shaping how it can be used.

However, it should be noted that if a work is one of pastiche, that does not give automatic permission to copy everything that goes into the work. The pastiche exception only applies if

the use of the existing works for pastiche is fair dealing. For uses not falling within pastiche (or other exceptions in copyright law) the user may be able to license the right to use the source material from the copyright holder.

### ***B. The pastiche exception in law***

For Graham and Siobhan to be able to rely on the pastiche exception, the use of works protected by copyright needs to satisfy two conditions:

1. The use must be for the purposes of pastiche
2. The use is a fair dealing of the work

There are two points worth making at the outset. The first is that if the use of part or whole of existing works in creating a found footage pastiche film is considered fair dealing, that should apply to all elements of the creative work used. For instance, films that are used as source material can contain a multitude of rights; the sound track is treated as part of the film for copyright purposes, and the fair dealing exceptions also apply to performances as well as all forms of copyright works in the source film. In Graham's use of films starring Greer Garson, fair dealing would cover not only the found footage, it would include the actors' performances, and the music used in the film. For Siobhan's film, *Transparent*, it would include the use of whole images used in the film.

The second point is that if the making of the found footage film is fair dealing for the purposes of pastiche, then it can be distributed in all channels in the UK including commercial channels. It can be shown not only at events where the audience does not pay but also at locations where they do. It would also include being broadcast on the television, on YouTube, vimeo and other channels accessible in the UK. A constant refrain by network members was that often found footage films were able to be shown at film festivals (where the audiences may or may not pay), but not on other overtly commercial channels such as in cinemas. Where the filmmakers worked with commercial partners on a found footage film, the commercial partner would often insist that the use of every work was cleared and paid for, and that insurance was obtained to cover any remaining risk. This happened to Siobhan when making *Transparent*. Every right was cleared and paid for except for a few where the copyright owner could not be found.

In the words of one network member: 'But I think the thing that worries me is that the distributors will control whether this film is permissible or not, and it's not copyright law, it's those that are in control of it being shown. So, I don't know what the answer is, but that's my fear.'

### ***Pastiche - meaning***

The use of source material must be for the purposes of pastiche for the exception to apply. The copyright act does not offer a definition of pastiche. However, a case in the UK High Court from 2022 (*Shazam v Only Fools*)<sup>4</sup> offers a set of criteria for qualifying as pastiche. which are similar to the two most common uses of the word.

Pastiche

---

<sup>4</sup> [2022] EWHC 1379 (IPEC)

1. is where the use imitates the style of another work;  
or
2. is an assemblage (medley) of a number of pre-existing works

The [UK Intellectual Property Office](#) suggests that pastiche is the using of fragments from a range of films to compose a larger pastiche artwork. This is akin to the process that Graham went through in making *Woman's World*. As discussed above and in the film on the [project website](#), he re-edited thousands of recycled audio-visual clips taken from 1950s and 1960s films, TV, adverts and documentaries to create a narratively coherent pastiche work. While Siobhan uses the whole as well as parts of existing works in making *Transparent*, the film is an assemblage of pre-existing works merged with her own material.

### ***Fair dealing and pastiche***

As noted above, there are two preconditions for the pastiche exception to apply: the use must be for the purposes of pastiche; and the use must be a fair dealing of the work. This section considers fair dealing.

Fairness is not defined in the copyright act. Rather a number of criteria have been developed by courts when confronted with a question as to whether a particular use is fair. These include:

- whether the use of the source work commercially competes with the copyright owner's exploitation of the copyright work, such as to be a substitute for the purchase or licensing of authorised copies.
- the amount and importance of the source material that has been taken relative to the purpose to be achieved. Fair dealing may not operate if an excessive amount is taken, or small amounts are taken on a regular basis.
- the motives of the user

### ***Do Woman's World and Transparent commercially compete with the source materials?***

Neither *Woman's World* nor *Transparent* could be said to commercially compete with the source work(s). As described above, both are doing quite different things to the source works, recombining the source works in original ways. *Woman's World* narrates an original story admiring black and white romantic Hollywood films of the 40s but is taking a particular perspective using that material. Graham's work is a springboard from those original films from which he creates something quite new. In *Transparent* Siobhan uses collages and the juxtaposition of existing works from many different disciplines, each one in conversation with the other. It is inconceivable to imagine that someone interested in Greer Garson's original films would view *Woman's World* as a substitute, or that someone wanting to view an image by, say, Anthony Gormley, would choose *Transparent* as the source.

The possibility of a pastiche artist making money from a work of pastiche is not expressly prohibited by the legislation, but is something that troubles both owners of the original copyright work and artists. The network members stressed that this often results in narrow distribution channels for a work of pastiche (a film festival or gallery) or unnecessary payment made for the licensing of images because a distributor would not circulate it if permission had not been received. Should a pastiche artist be able to make money from exploitation of the



pastiche work? Courts have said that where a source work is used for commercial advantage by the artist and that is to the detriment of the owner of the source work, then that is unlikely to be fair. But as noted above, even should Graham and Siobhan wish to make money from their films, neither *Woman's World* nor *Transparent* commercially compete with source works and would therefore not be to the detriment of the owner of the source work. As such there should be no issue with these films being distributed in any channel, whether for commercial gain or not.

Another question that might be asked is whether it is fair for the pastiche artist to deprive the copyright owner of a licence fee and avoid associated licensing restrictions? This would be particularly pertinent for Siobhan as most of the images in *Transparent* were licensed and she was subject to certain terms in her use of a number of the images. If Siobhan's use of the images was fair dealing, then no licence fees needed to be paid and no licensing conditions could be imposed. Requiring the images used in a pastiche to be licensed seems nonsensical when weighed against freedom of (artistic) expression. The ability to make a pastiche work would then depend on the copyright owner agreeing to it. Both *Woman's World* and *Transparent* are about creative expression. In *Transparent* the complex structure of the works in the film moves away from how the originals are normally portrayed to give new information in an entirely different context. The films may encourage the viewer to develop new relations with the original material - possibly enticing the viewer to re-look at the source material which may increase - rather than conflict with - the normal exploitation of the work. Neither film would prevent copyright owners licensing and exploiting the source works in the usual way for other purposes and in other markets. That the copyright owner does not get a licence fee does not automatically make the use unfair.

***Do *Woman's World* and *Transparent* take excessive amounts of source materials relative to the purpose trying to be achieved?***

Courts have tended to consider a use unfair if it takes a large amount of the original work in absolute or proportionate terms or takes large amounts of the important elements of the original work. A number of these cases were decided in connection with facts where the copyright owner wanted to keep written material out of the public gaze or where the use cut into the copyright owner's market by virtue of the amount reproduced. When considering the purpose trying to be achieved by both *Woman's World* and *Transparent* the amount taken seems of little relevance relative to what is being achieved by the use of the works. *Woman's World* takes slivers of material from a finite number of films and juxtaposes these to develop a story. Siobhan's work takes whole images and uses these in explaining her bodily archive. In this respect the network members believe the criteria are different for pastiche than for other exceptions. It is why the works are used as they are (for the purposes of pastiche) and what is done with that material in making the pastiche, rather than what is being used.

***Motives of the user/bad faith***

If a user acts dishonestly, this may militate against a finding of a use being fair. As can be seen from the description of the processes undertaken by both Graham and Siobhan and the section on moral and ethical considerations below, this would not be relevant to the making of their films. It might be questioned under this criterion as to whether the artist was acting in bad faith

if they intended to make money out of their film. The prime motivation for both Graham and Siobhan was not to make money. Rather, as discussed above, they made their films because they felt they had to. However, and if they did make money, that does not thereby mean that the use of the source material would be unfair. Rather we suggest that any question about the pastiche artist making money from a work should be considered in relation to the discussion on commercial competition with the copyright owner unless the artist has also acted dishonestly. Otherwise it would be impossible for pastiche artists who make a living from their work to continue and fair dealing would become another form of censorship.

One question that was brought up by network members was that if permission to use a source work was requested but refused, but that source work was then used, whether this would amount to bad faith. It is the view of the network that this would not necessarily be bad faith. Instead, and as noted above, it is why the source works are used and what is done with them that is important.

### ***Moral rights***

Moral rights are not part of the fairness requirement, but the author of the source work has the right to object to 'derogatory treatment'. This means more than hurt feelings and they must be able to show 'distortion or mutilation' of the work prejudicial to the honour or reputation of the author and that causes actual damage. In addition, under parody case law the author has the right 'not to be associated with a discriminatory message'. Moral rights are weak in the UK and while the network wanted to highlight that they exist, members did not want to dwell on them. It is worth noting the moral considerations discussed below that permeated both Graham's and Siobhan's thinking and processes when making their films.

## **IV. Moral and ethical Considerations**

It is not the intention here to raise moral and ethical barriers that do not exist to found footage filmmakers claiming fair dealing for the purposes of pastiche. The network did however feel it important to highlight the significance of moral and ethical considerations that shaped the thinking of the artists when making *Woman's World* and *Transparent*.

### ***Respecting original copyright [owners and] authors***

Permeating network deliberations and an important focus for Graham and Siobhan were considerations in relation to their choice of materials and the ways in which these materials were used in their film making. While these could be considered under the fair dealing criterion 'to what extent are you harming any non-economic interests?' the deliberations and the way that the filmmakers made their decisions suggested something much broader revealing an important sense of integrity in the making of the work.

It was summed up by Graham thus:

' ..., I have to decide whether my usage is ethical. Is it something that I feel comfortable with? That I'm not going to be hurting anybody, offending anybody. I'm much more interested in that than I am in the economic rights of the person, I'm much more interested in the ethical rights. I don't want to be offending anybody or tread on anybody's toes.'

There was general agreement that ‘no-one wants Greer Garson to be bad’.

Siobhan had similar concerns over the use of some of the material in a second film discussed by the network, ‘All This Can Happen 2012’. There was a concern about moving the images from their original source material to the film. The images used were all publicly accessible, some were from the Wellcome trust archive. In the process of deciding which to use, Siobhan described her respect for the curatorial function of the Wellcome trust which prevented use of the most harrowing images. Siobhan is confident that the ones used in the film were the right ones. She also describes her sense of thoughtfulness and joy around how images sourced from other archives brought past lives into current times.

The use of archival works might raise the question as to whether a source work is an unpublished work. For other fair dealing exceptions, a work must have been made available to the public for the exception to apply. This is not the case with pastiche, although the network was of the view that use of unpublished works in pastiche could raise ethical concerns such as an infringement of the right to privacy.

Another important consideration was the view that the authors [and owners] of the copyright in the works used in the films should all be credited. While copyright law does not require works to be attributed when the work is one of pastiche, what matters to many artists is an acknowledgement that their work has been used. Artists are proud of what they have created, and many in turn are pleased that their work has influenced new forms of creativity and would like their influence to be recognised, potentially enhancing their reputation. For Graham, the credits in *Woman’s World* honours ways in which directors and actors have contributed to art of cinema. For Siobhan it was important to highlight the many influences that have impacted on the making of dance as she would like others to recognise the complexity of the art form. The list of credits in *Transparent* demonstrates the array of inputs that have supported Siobhan as a dance maker; she is proud of the length of the list.

## **V. Risk assessment and mitigation**

While the network is of the opinion that *Women’s World* and *Transparent* fall under the pastiche exception and are fair dealing, we are aware that artistic practices and approaches vary between artists and projects. Found footage filmmakers are likely to remain nervous of claiming the pastiche exception, and distributors may continue to be reluctant (or to refuse) to distribute a work unless all underlying works are cleared.

Where an artist is of the opinion that the exception applies (or will apply) we would suggest undertaking careful documentation processes to show the process of choice of what existing works to use and why, highlight where works have been taken from and how much has been taken. Both Graham and Siobhan have followed these processes in the making of their films.

## **VI. Guidelines on pastiche use and advocacy to support artistic innovation.**

The approach the network has taken to the two films, *Woman’s World* and *Transparent*, has evolved over the funded period and is a result of detailed online and in person discussion

between found-footage film makers, law academics and practitioners, academic experts in pastiche, and colleagues from distribution and rights clearance organisations.

The network's aim is that this opinion will be useful to found footage film makers, distributors, rights owners and commercial partners and, along with other existing and emerging guidelines and opinions on pastiche, contribute to forming a body of knowledge on the pastiche exception.

The network is hopeful that as the potential of claiming pastiche becomes more embedded in the works of found footage film makers (and other artists) these guidelines will give commercial partners, distributors and other gatekeepers the confidence of when the exception is likely to apply, and that it represents a fair balance between the rights of existing owners and the creation of new works. As such these new works should be able to be shown across a broad spectrum of platforms without permission and payment.

Not every found footage film will be a pastiche, nor will the making of every found footage film amount to fair dealing. There will remain a place for licensing works, and for obtaining errors and omissions insurance.

## **VII. A word on AI**

The use of Artificial Intelligence (AI) emerged from time to time in the discussions of the network. The network decided to remain focused on analogue and digital methods, pointing to the view that pastiche is a positive alternative to the use of AI, there being little point to using AI in a work of pastiche. The choice of works is critical to found footage film makers. This choice would be absent in an AI generated 'pastiche' work. In addition, It would not be possible to credit original authors when using AI which, although not legally required by copyright law, is important to found footage film makers and to those whose works they use.

## **ANNEX**

### **Pastiche and its place in copyright exceptions**

UK copyright law contains many permitted acts. Many of these are designed to cover uses for specific purposes and are often narrowly constrained. The more flexible subset of permitted

acts exists under the category of fair dealing exceptions which is where pastiche is found. These fair dealing exceptions are:

- Research and private study
- Criticism, review and news reporting
- Quotation
- Caricature, parody or pastiche
- Illustration for instruction (uses in educational context)

In a case claiming fair dealing more than one exception will often be claimed – such as fair dealing for quotation and/or pastiche.

Alongside these exceptions, there are certain other permitted acts that could be useful for filmmakers:

- Incidental inclusion of copyright materials: copyright in a work is not infringed by its incidental inclusion in an artistic work, sound recording, or film.
- Representation of certain artistic works on public display: allows filming sculptures, models for buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public.

These exceptions can overlap, meaning that the filmmakers' uses could be covered by more than one exception. Among the permitted acts, the quotation exception is often regarded as a broad defence in its scope of the purpose of the use. The focus of these guidelines is pastiche. The reader can obtain more information on quotation from [this source](#).

## **Overview of copyright law pertaining to films**

### *Definition of film and term of protection*

'Film' is defined in copyright law as 'a recording on any medium from which a moving image can be produced by any means'. While this encompasses the visual elements of a film, sounds accompanying the moving images are protected separately under sound recordings.

The copyright in a film is owned by the producer and the principal director, who have the exclusive rights to control the copying, distribution, and communication of the film to the public. This includes rights over broadcasting and making the film available online. Somewhat oddly the length of copyright protection for a film, which is for life plus 70 years, is from the last to die of the principal director, author of the screenplay or dialogue, or composer. These rules ensure a long period of protection for the creators and rights holders; for a film to be in the public domain in 2024, all these individuals need to have died before 1954.

Both *Woman's World* and *Transparent* fall under the definition of 'film' as do the films that they draw upon.

