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October 15, 2015

Maria Pallante, Register of Copyrights  
c/o Jacqueline C. Charlesworth, Associate Register of Copyrights  
United States Copyright Office  
101 Independence Ave. S.E.  
Washington, D.C. 20559

Re: Docket No. 2014-7  
Exemptions to Prohibition Against Circumvention of Technological  
Measures Protecting Copyrighted Works  
Proposed Class 6 - *Audiovisual works – derivative uses – filmmaking uses*

Dear Ms. Pallante,

We write to call your attention to recent news stories attached to this letter reporting the importance of fair use in the upcoming Universal Pictures narrative film *Steve Jobs*. We believe these reports underscore the hollowness of arguments made in this proceeding that question the need for fair use in narrative filmmaking.<sup>1</sup> As these stories demonstrate, even large studios must rely on fair use in narrative films and such use enjoys the strong support of executives at the highest levels.

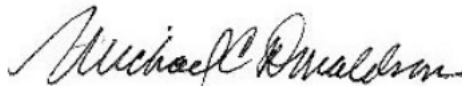
Of course, the iconic Apple commercial at issue here is widely available on the internet, but for more obscure material, often the only source of usable footage is protected by technological protection measures. In such situations, copyright law and the Digital Millennium Copyright Act operate as a form of private censorship allowing a rightsholder to suppress speech it opposes—as almost happened here.

We deeply appreciate your consideration of this matter. We hope this new information will be helpful to you as you make your final recommendations in this rulemaking.

Very truly yours,



Jack I. Lerner  
UCI Intellectual Property,  
Arts, and Technology Clinic



Michael C. Donaldson  
Donaldson + Callif, LLP

CC: David Mao, Robert Newlen, Nicole Marcou (Library of Congress); Stacy Cheney (National Telecommunications and Information Administration); Stephen Metalitz, Art Neill, David Jonathan Taylor, Bruce Turnbull, Matthew Williams (counsel for commenters on proposed Class 6)

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<sup>1</sup> See Comment of the AACSLA, Section 5.I.B. (March 27, 2015), [http://copyright.gov/1201/2015/comments-032715/class%206/AACS\\_LA\\_class06\\_1201\\_2014.pdf](http://copyright.gov/1201/2015/comments-032715/class%206/AACS_LA_class06_1201_2014.pdf); Comment of the DVD CCA, Section 5.I.B. (March 27, 2015), [http://copyright.gov/1201/2015/comments-032715/class%206/DVDCCA\\_class06\\_1201\\_2014.pdf](http://copyright.gov/1201/2015/comments-032715/class%206/DVDCCA_class06_1201_2014.pdf), and Comment of the Joint Creators, Item 5 (March 27, 2015), [http://copyright.gov/1201/2015/comments-032715/class%206/Joint\\_Creators\\_and\\_Copyright\\_Owners\\_class06\\_1201\\_2014.pdf](http://copyright.gov/1201/2015/comments-032715/class%206/Joint_Creators_and_Copyright_Owners_class06_1201_2014.pdf).

# THE WRAP

Covering Hollywood

## How 'Steve Jobs' Steamrolled Objections of Apple Founder's Family

AWARDS | By **Steve Pond** on October 12, 2015 @ 3:02 pm

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**Jobs' family refused director Danny Boyle's request to use the iconic '1984' Apple ad but the director found a way to use it anyway**

"**Steve Jobs**" has received raves from critics, awards voters and early audiences in Los Angeles and New York, but the late tech icon's family has been putting roadblocks in the way of **Danny Boyle's** movie from the start.

In fact, Boyle revealed to TheWrap that the filmmakers and Universal Studios' lawyers had to invoke the fair use exception to U.S. copyright law in order to use Apple's famous "1984" Super Bowl commercial. The rights to the commercial were initially denied them by the family, which hated **Walter Isaacson's** biography of Jobs on which **Aaron Sorkin** partly based his screenplay.

The commercial, which was directed by **Ridley Scott**, was only aired twice — once late at night on Dec. 31, 1983 to qualify for advertising awards, and then more notably during the 1984 Super Bowl.

**Also Read: Critics Love 'Steve Jobs': 10 Reviews Promising Michael Fassbender Drama Is Worth Price of Admission**

Often considered the greatest television commercial ever made, the ad was inspired by the George Orwell novel "1984" and features a young woman throwing a hammer through a huge screen on which a Big Brother-type figure addresses a crowd of faceless, obedient workers.

The commercial plays a key role in "**Steve Jobs**." It is screened before Jobs introduces the first Macintosh computer to a rapt audience at a product launch in 1984, and it is also a source of heated arguments between Jobs, played by **Michael Fassbender**, and Apple CEO John Sculley (**Jeff Daniels**) in the film.

In an interview with TheWrap, **Ridley Scott** said that the "**Steve Jobs**" filmmakers originally approached him asking for permission to use the groundbreaking commercial. "I said, 'I will do everything I can to get it,'" he said.

The director said he went to Chiat-Day, the advertising agency for which he had created the commercial. "Chiat contacted me and said Steve's family had said no, because they weren't happy about the direction the film had taken."

Boyle picked up the story from there in a separate interview, confirming to TheWrap that the filmmakers never received permission to use the footage. "We got it under fair use," he said, citing the exception to copyright law that allows artists to use part of a copyrighted work without payment or permission.

**Also Read: Trevor Noah Addresses Apple Backlash With 'Steve Jobs' Screenwriter Aaron Sorkin**

The fair use doctrine takes into account "the purpose and character of the use," the nature of the copyrighted work, the amount of the work used in relation to the entire work, and the effect of the use on the potential market or value of the original work.

Universal's legal department, Boyle said, carefully considered whether the use of the "1984" ad could qualify under fair use. "Universal have been exemplary in their confidence, and willing to take some risks

to support the filmmaking,” the director said, and then chuckled. “I’m sure it helps that they’ve had such a stellar year, so they’re not as nervous about stuff.”



Boyle singled out Universal Pictures chairman **Donna Langley** and president **Jimmy Horowitz**, who formerly worked in the studio’s legal affairs department, for supporting his right to use the advertisement. In his film, much of “1984” is glimpsed from behind as it plays on a huge screen at the Apple product launch.

“You could have had other circumstances where people would have said it was too risky,” Boyle said. “But in the American system, freedom of speech is very big part of culture. And we know lawyers are very powerful, but they can stand with you as well and protect you sometimes. There is a need for responsible people to be able to say what they really want to say, and not to be prevented from doing that.”

**See video: [New 'Steve Jobs' Trailer Emphasizes Drama of Creating 'Most Tectonic Shift to Status Quo... Ever' \(Video\)](#)**

Boyle said he did have to change some other copyrighted material, particularly news footage from ABC, which denied permission to use it. And he expected to receive criticism from those close to Jobs — which he has, from current Apple CEO Tim Cook and others who felt that the person depicted on screen

is not the Jobs they knew.

Others familiar with Jobs, including Apple co-founder Steve Wozniak and longtime Apple and NeXT PR agent **Andrea Cunningham**, have said that despite the fact that Sorkin purposely fictionalized parts of the story, the daring and unconventional film accurately captures the real guy. Both Wozniak and Cunningham are depicted in the movie, played by **Seth Rogen** and **Sarah Snook**, respectively.

“It’s so difficult dealing with real people’s lives, and it’s why you have to have an important story if you’re going to do it,” said Boyle, who spoke to TheWrap the day after an official Academy screening that drew a capacity crowd of enthusiastic voters to the 1,000-seat Samuel Goldwyn Theater in Beverly Hills.

**Also Read: 33 Best Picture Challengers in First Oscar Outlook: 'The Martian,' 'Steve Jobs,' 'Bridge of Spies'**

“And when you’re dealing with people who just recently passed away, you are always going to be dealing with grief or with personal sensitivity,” Boyle said. “The thing that is different about this is that Jobs was a huge public figure.

“And I’m afraid, however unpopular this may be with his friends and family, he is a major figure in our lives, and it’s incumbent upon us all to look at his work and his legacy.”

## MOVIES

# How 'Steve Jobs' used Apple's Super Bowl ad without permission



Michael Fassbender plays the title role in "Steve Jobs." — Francois Duhamel, TNS

By [THE WRAP](#)

October 13, 2015 - 6:08 PM

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Read original story [Inside How 'Steve Jobs' Used Apple's Super Bowl Ad Without Permission At TheWrap](#)

Comments