

SUNDANCE FILM FESTIVAL; Avast, ye pirates!; The rating board is accused of copying a critical work.

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Start Page: E.1

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IS the leader in the global fight against movie piracy a pirate too? That's exactly what director Kirby Dick is charging. He says the Motion Picture Assn. of America made a bootleg copy of "This Film Is Not Yet Rated," his angry broadside against the organization's film rating system.

The MPAA has admitted that it duplicated the documentary without the filmmaker's permission -- Dick had submitted his movie to its rating board in November. But the Hollywood trade organization said that it did not break copyright law, insisting that the dispute is part of a Dick-orchestrated "publicity stunt" to boost the film's profile.

"This Film Is Not Yet Rated," screened for the press on Tuesday morning and scheduled for its first public screening at the Sundance Film Festival tonight, examines what Dick believes is the MPAA's double standard for rating explicit depictions of sex on the one hand and gruesome violence on the other. Dick also explores whether independent films are rated more strictly than studio films, whether scenes of gay sex are restricted more than scenes of straight sex and why the 10 members of the MPAA's rating board operate without any public accountability.

Michael Donaldson, a lawyer representing Dick, has written the MPAA demanding that it "immediately return all copies" of the film in its possession and explain who approved the making of the copy and who within the MPAA has looked at the reproduction.

Dick said he was "very upset and troubled" to discover during a recent conversation with an MPAA lawyer that the MPAA had copied the film from a digital version he submitted Nov. 29 for a rating. ("This Film Is Not Yet Rated" was rated NC-17 for "some graphic sexual content," a rating upheld after Dick appealed.) Dick has since changed the film and it is now unrated. The MPAA's copy of Dick's film was viewed by Dan Glickman, the MPAA's new president, the MPAA said.

The filmmaker said that when he asked MPAA lawyer Greg Goeckner what right his organization had to make the copy, Goeckner told him that Dick and his crew had potentially invaded the privacy of the MPAA's movie raters.

"We made a copy of Kirby's movie because it had implications for our employees," said Kori Bernards, the MPAA's vice president for corporate communications. She said Dick spied on the members of the MPAA's Classification and Rating Administration, including going through their garbage and following them as they drove their children to school.

"We were concerned about the raters and their families," Bernards said. She said the MPAA's copy of "This Film Is Not Yet Rated" is "locked away" and is not being copied or distributed.

The standard the MPAA is using for itself appears to be at odds with what the organization sets out for others:

"Manufacturing, selling, distributing or making copies of motion pictures without the consent of the copyright owners is illegal," the MPAA's website says. "Movie pirates are thieves, plain and simple.... ALL forms of piracy are illegal and carry serious legal consequences."

Donaldson said in an interview that the MPAA previously had promised in writing that it would not copy the film, but an e-mail exchange does not completely support that claim.

Donaldson added that although he was not planning at this time to sue the MPAA for copyright infringement, he reserved the possibility of filing a lawsuit later. "It's my practice and style to wait and see what they do, go over all of our options, and then make a decision," he said.

Dick, who was nominated for an Academy Award for 2004's documentary feature "Twist of Faith," said in an interview that his film crew acted appropriately in tracking down the anonymous members of the movie rating board. But even if he didn't "follow all the rules," Dick said, "I don't know how that allows somebody else to break the law."

Bernards said the MPAA has made copies of other films submitted for ratings but did not identify any by name.

When Dick submitted his film for a rating, he asked in an e-mail for assurances that "no copies would be made of any part or all of the film," according to a copy of the e-mail exchange.

In a reply e-mail, an MPAA representative did not specifically say the organization wouldn't copy the film but did say "the confidentiality of your film ... is our first priority. Please feel assure [sic] that your film is in good hands."

The MPAA's Bernards, who said Glickman was unavailable for comment, said the organization was operating lawfully when it copied Dick's movie without his or his producer's authorization. "The courts recognize that parties are entitled to make a copy of a work for use as evidence in possible future proceedings," she said.

The MPAA has not brought any legal actions against Dick but did call the police when the movie raters complained about being stalked and were worried about their safety. The raters had no idea they were being followed as part of a documentary.

Donaldson said he was unaware of any legal cases that supported the MPAA's position.

One expert on intellectual property and copyright law said that although he was unfamiliar with any cases specifically addressing the issue, the MPAA's argument might work.

"You can't make a copy as a general matter, but you can if you meet several tests," said Mark Lemley, a professor at Stanford Law School. It helps the MPAA, Lemley said, that it is not selling the copy of "This Film Is Not Yet Rated" for commercial gain.

Dick "is right to say you can't make a single copy unless you have a legitimate defense," Lemley said. "But it seems that in this case, [the MPAA] may have a legitimate defense."

Credit: Times Staff Writer

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