<table>
<thead>
<tr>
<th>RIGHTS CLEARANCE?</th>
<th>PROBLEMS</th>
<th>POSSIBLE SOLUTIONS</th>
</tr>
</thead>
</table>
| **Incidental Capture** | **Fair use?** Most incidental captures should be covered by fair use, but rights to these are often cleared anyway | • Clarify and educate: create accurate resources about fair use for filmmakers  
• Best Practices: develop statement of best practices for filmmakers  
(American University’s Center for Social Media is working on these ideas.) |
| **Documentarian filming dorm room happens to capture “The Simpsons” playing on television or Madonna on the radio** | **Private Gatekeepers:** E&O insurance companies or distributors may require rights clearances even though these are fair use | • Alternative Institutions: create a non-profit insurer or clearinghouse  
• Build Awareness: educate gatekeepers about fair use  
• Technology: distribute works through other channels, for example via the internet |
| **Deliberate Inclusion** | **“Orphan works”:** the copyright holder is difficult or impossible to find, or doesn’t care if you use the work | **Comments to the Copyright Office** propose solutions enabling uses of orphan works:  
• [www.law.duke.edu/cspd/orphanworks](http://www.law.duke.edu/cspd/orphanworks)  
• [www.publicknowledge.org/issues/ow](http://www.publicknowledge.org/issues/ow)  
• [www.copyright.gov/orphan/comments/OW0595-Glushko-Samuelson.pdf](http://www.copyright.gov/orphan/comments/OW0595-Glushko-Samuelson.pdf) |
| **Documentarian wishes to use newsreel footage, photographs, movie clips, music for soundtrack, etc.** | **The copyright holder refuses permission; clearance is too expensive; filmmaker has no negotiating leverage; rights thicket are impenetrable** | **Fair Use:** uses for criticism, commentary or other “transformative” (new and valuable) purposes can be fair use  
• End the Permissions Arms Race: just say no to excessive licensing practices (for example demanding payments for small fragments, or charging exorbitant prices)  
• A Licensing Scheme could ensure that rights holders get paid while enabling filmmakers to use copyrighted works for fair prices. (A panel at the 2005 Full Frame Festival explored this idea.) |
| **Disappearing History?** Even if rights are cleared, licenses can expire, leaving historical documentaries like *Eyes on the Prize* out of circulation | **Special terms or licenses** for historical documentaries that take into account heavy reliance on archival footage and importance of historical record  
• Best practice codes for historical documentaries |