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FAIR USE AND THE FIRST AMENDMENT: CORPORATE CONTROL OF COPYRIGHT IS STIFLING DOCUMENTARY- MAKING AND THWARTING THE AIMS OF THE FIRST AMENDMENT

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I. INTRODUCTION: DOCUMENTARIES AND THE FIRST AMENDMENT

From the New York Times, October 16, 2005:

The moment seemed innocuous enough.

Michael Vaccaro, a fourth grader, had just left P.S. 112 in Brooklyn and was headed home with his mother. Two filmmakers were in front of him, their camera capturing his every movement on video, when his mother's cell phone rang.

"It was such an indicator of today's culture," said Amy Sewell, a producer of "Mad Hot Ballroom", the documentary that follows New York City children as they learn ballroom dancing and prepare for a citywide contest. "Michael's mom had just asked him how school was, her cell phone rings, she answers it, and the look on his face says, 'I don't get to tell my mom about my day.'"

In addition, the ringtone was "Gonna Fly Now," the theme from "Rocky," and the neighborhood was Bensonhurst. "How perfect was that?" Ms. Sewell said.

Perfect, but a problem. Had the ring tone been a common telephone ring, the scene could have dropped into the final edit without a hitch, the moment providing a quick bit of emotional texture to the film. But EMI Music

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