

The Digital Ethical Space: Towards a Transnational Documentary Ethics, A Filmmaker's Point of View

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Abstract

Over the last decade the integration of web-based technologies into the film supply chain has accelerated a huge shift in the way documentary films are distributed and exhibited. This shift has seen a move away from the previous analogue systems- built on the exclusivity of time and space- into new convergent and transnational methods based on digital systems. This has (had) huge ramifications for all areas of documentary making, none more so than on the issue of documentary ethics. Above all other forms of film (and filmmaking), ethics is one of the key factors that define and distinguish the documentary film. However, much of the ethical frameworks and discourse currently used are from the previous analogue period of distribution and exhibition. Using the making of the feature documentary *Boys with Broken Ears* (2013), this article explores how the changes in exhibition and distribution have affected the ethical frameworks that have traditionally informed the making of a documentary. The study concludes by demonstrating how current ethical frameworks and safeguarding procedures, undertaken by both documentary makers but also regulatory bodies, need to be rethought in order to respond to the challenges inherent in this transnational landscape.

Introduction

Many of the seminal texts on the documentary film rightfully identify the period just after the millennium as a turning point for the documentary industry. Writing in 2004 about the spread of alternative film distribution models like satellite, cable and VOD, Rabiger wrote that significant things are happening at the grassroots level of documentary that 'nobody can accurately predict.' (2004, p.39). A mere four years later, the scene had changed so quickly that Jenkins noted, 'convergence isn't something that is going to happen one day when we have enough bandwidth or figure out the right configuration of appliances. Ready or not, we are already living within a convergent culture.' (2008, p.16) The four years between these two quotes saw the founding of YouTube, the massive improvement of bandwidth to enable smooth video streaming and playback, and the wholesale roll-out of broadband in most of the big cities of the global north. Now, it seems outdated to use words like Internet video or convergence, as films (and media content in general) have become digital entities that flow seamlessly between devices, platforms and national borders. These changes have had a huge impact on the film supply chain and the industry as a whole, from the way films are made, distributed and exhibited; but also on crucial but less salient areas like documentary ethics.

Ethics is one of the defining attributes of documentary films and filmmaking, and despite the conflicts over what constitutes ethical practices and how these are best adhered to, it is safe to say that almost all documentarians have to operate within what Nichols (1992, pp.77-78) has termed the 'ethical space'. The ethical space is best thought of as a code of ethical conduct that informs and underpins many of the key decisions in the making of a documentary film. The need for an ethical space is a direct response to the power (and hence responsibility) that documentary filmmakers possess in re-presenting real people and events to an audience (in the shape of a film). This is something that, according to Winston, (2002, p117) documentary shares with journalistic and media ethics; an ethics that exists to protect participants, accuracy of information, and audiences.

In documentary film theory, much of the current discourse and debate in ethics has helped to explore new grounds in areas such as consent and power (Nash, 2012), institutional constraints on ethics (Thomas, 2012), ethics, objectification and gender (Norouzi, 2018), participants' accounts of ethics (Nash, 2011), and a new critical history of documentary ethics (Winston, 2011; Nichols, 2016). However, the broader industrial contexts, in this case how the digital, trans-nationalisation of the distribution and exhibition landscape has impacted documentary ethics, is often over-looked.

One of the reasons this may have been overlooked is because these areas are not immediately nor automatically synergic: in other words, why is distribution and exhibition relevant when it comes to the question of ethics? Simply put, all ethical frameworks and procedures practiced by documentary filmmakers are predicated on the ability to identify, judge and navigate a whole series of complex situations that may arise in the making of a film. Some of these situations are primarily inter-personal, concerned with (and contained within)

the encounter between documentary maker and her participants. Situations like whether the filming will cause the participant to re-experience traumas, or whether by returning to a war zone the participant is being placed in danger, are primarily ethical issues between a filmmaker and a participant. However, there are other situations that are more concerned with how a participant's actions or even associations to a film will be viewed by others (with all the ramifications that this may hold). In order to even attempt to identify and navigate through these questions requires some attempt to gauge under what conditions (and contexts) and by whom a film is going to be viewed/seen/judged. There is, then, an intricate link between ethics, distribution and exhibition. Put another way, a film that was made to be viewed within a small classroom setting would have very different ethical considerations (and risks) than one that was aiming for a global release.

The idea and need to write this article came from the experiences I had making a feature documentary, *Boys with Broken Ears* (2013). I was a producer of the film and worked very closely on it from inception through to its international distribution via terrestrial, cable and satellite television, and also across the Web on VOD.¹ The film was one of the more difficult films I have worked on because it forced us- the director Nima Shayeghi, the other producer Golriz Kolahi and I- to reconsider how we approached the practice of documentary ethics; and to see the limitations of our current ethical practice, in light of the transnational space in which the film was being produced, distributed and shown. Indeed this is one of the key strengths of practice-research (or PaR) in that it can lead to the emergence of knowledge that responds to and engages with issues and concerns that come directly out of the practice. By using my own firsthand experiences, I hope to allow readers to gain some insight into the complexities of how a code of ethics is applied in the practice of making a documentary.

The Changes to Distribution and Exhibition

On the surface not much has changed in the way documentary (or fiction films for that matter) are distributed and exhibited. Films are still made by producers or production companies, and then usually passed over to sales agents or distributors, who then agree exhibition opportunities with various outlets (called windows) that exhibit the film. On occasions, especially in the documentary world, sales agents and distributors are dispensed with and filmmakers will attempt to distribute their own films, but this is an exception to the rule. Although this well-worn path from inception to market remains similar to the pre-Internet era, there have been many fundamental changes to the eco-system that have had subtle but important ramifications on the supply chain.

In the past, these exhibition windows were hierarchical and well-defined. Films could only be released to different windows (i.e. cinema, TV, VHS, DVD, VOD etc.) at differing times, to allow each window to have maximum opportunity to sell the film to its specific audience. Furthermore, these windows often existed within national boundaries- or what the industry calls territories. So, for example, a documentary producer or distributor could sell to the UK and France separately, demanding two separate fees for the same film. Whilst this system

wasn't always smooth, its order and stability existed on the ability to somewhat impose an exclusivity on how and where a film would be distributed and exhibited.

The erosion of this exclusivity can be seen as a continuation of what Harvey termed 'time-space compression' (1990: 232). Charting the changes brought on by early media technologies (telegraph and radio included), Harvey notes how these technologies have been steadily creating an eco-system that allows time to annihilate space by enabling the speeding up of time and the collapsing of space. Whilst an exploration of the way media technologies have changed our experience of time and space is outside of the scope of this article, the impact of digital media and the Internet on the flow of media products (in this case films) cannot be underestimated. According to Krady (2005,) much of the previous stability was already being eroded by 2005 when information technologies had 'overcome many restraints on terrestrial broadcasting' (p. 98). Largely due to technological changes like satellite, cable TV and the Internet, but also 'to a growing international regime of free trade and decreased government intervention' (p. 98), the stability of the windowed system is being challenged by a globalized digital territory, in which media can be accessed instantly, convergently across devices, anywhere and time (obviously, depending on your Internet access and speed).

How have these changes impacted the way films are distributed and exhibited? Ofcom's latest study Media Nations (2019) starts with a warning for traditional timebound broadcasting that young audiences 'are embracing new online video services from global internet platforms in place of linear services' (p. 11). It demonstrates with a case study from a BBC programme called *Killing Eve* that only 24% of its viewers watched the scheduled terrestrial broadcast and the remainder preferred a pre or post broadcast option made available online (Ofcom's Media Nations, 2019). One of the world's most important documentary festivals and forums, Hot Docs, commissioned a study entitled 'Documentary Audience Research' (2018) which concluded that documentary viewing is generally increasing and that finding documentaries to watch has become increasingly easier because of on-demand sites like Netflix, and via YouTube and beyond (Hot Docs Documentary Audience Research 2018). In effect what this equates to is that time-based scheduling (i.e. the notion of waiting to see something in a specific time slot) is becoming quickly outdated.

These changes in time have also had a knock-on effect on audience expectations towards the space(s) in which they watch films. Before the digitization of media and its transportation via the web, films were rooted in a physical materiality that limited their availability. For example, if a film failed to secure a distribution deal for a national territory, in most cases it would not be exhibited within that nation. If a film did secure a deal, it would gain a theatrical release and would therefore be shown in cinemas; which would help it to be sold onto VHS/DVD/PPV, Satellite and Cable, and then possibly (and finally) terrestrial TV. Outside of these exhibition windows, a film could be viewed via a pirated copy but even this would be limited in space or time- i.e. a specific market stall which is open during normal business hours.

The Internet has irrefutably changed this materiality. Firstly the web has challenged the exclusivity of the national territory so that a film which may not get a national release can easily be seen via the web. Even when films are made exclusive to certain regions on the web, there are simple measures to re-route IP addresses or obscure locations so as to get access to geo-blocked films. Secondly, whilst online platforms like Netflix or Mubi are attempting to create some form of digital exclusivity via their on-demand services and paywalls, the existence of peer-to-peer networks and other streaming services that offer films freely and without any restrictions has fundamentally changed the notion of spatial exclusivity. These digital pseudo-borders remain vulnerable to realities of an Internet that has yet to be controlled by copyright agencies and legislation against this unique form of widespread and decentralized piracy. Coupled with the relatively cheap storage costs of digital data, which allows for films to be kept online continually, and potentially in perpetuity, the web is now a vast archive of documentary films that can be viewed anytime and anywhere (as long as you have access to the internet and fast enough bandwidth to stream video).

How have these vast changes in distribution and exhibition outlined above affected the area of documentary practice, and more specifically documentary ethics?

A Transnational Documentary Ethics?

Although documentary ethics is separated into a topic for critical analysis in academia, or for risk management in the practice of making a film, in reality ethics cannot be neatly detached from the rest of the filmmaking process. It is a complicated practice that informs every part of the process from the initial idea and development, through to distribution and exhibition. Whilst a detailed discussion of the critical discourses and positions within documentary and media ethics is outside of the scope of this article, I will summarise and expand on some of the primary ethical ideas and positions outlined by Nash (2012) and Winston (2004), showing how these have been affected by the transnationalisation mentioned previously.

Nash (2012, p.321) identifies four key theoretical principles that underpin documentary ethics. These are as follows:

Respect for autonomy: *foundation for the ideal of implied consent and the right to privacy.*

In practice, implied consent is an important part of documentary ethics, designed to protect both filmmaker and participant, by navigating the inherent conflict between a participant's right to privacy and the filmmaker's right of freedom of expression. The signing of a consent form (or a release form) is the legal agreement between both parties that outlines the nature of the film and intentions of the filmmaker, while granting the consent for the filmmaker to use the audio-visual recordings of the participant in the final film.

In practice, implied consent is often an idealised scenario because the filmmaker and participant are never on an equal footing in terms of the power dynamics within their encounter. A myriad of factors including social class, education, wealth and status, and even language differences, influence and shape this encounter.² As Winston states, 'Consent trumps the right to privacy' (2004, p84.) because the documentarian's right to freedom of expression, the power of the "media" and the various discrepancies mentioned above, often stop participants who have signed release forms from being able to change their mind or to negotiate the nature of that release, once it has been signed.

'Honesty: *the main principle governing the relationship between the documentary maker and the audience, as well as having implications for the relationship with the participant.'* (Nash, 2012)

Two sets of expectations make up this principle. Firstly, there is an implied set of expectations with the audience, who demand that the filmmaker not falsify material purposefully or even worse falsify for effect. Since the controversies that beset Flaherty in *Nanook of the North* (1922), the question of a filmmaker's honesty in portraying "reality" has been a central concern of the medium.

The second set of expectations are concerned with the honesty of the conduct between filmmaker and participant. Some of this honesty is formalized in the consent form but other elements are around questions of how the filmmaker chooses to represent the participant on the screen. For instance, has the filmmaker been entirely honest about the nature and direction of the film? Or about how they might represent the participant, the community or the wider issues explored by the film?

'Non-maleficence: *a principle requiring that the documentary maker works to eliminate harm resulting from documentary practice.'* (Nash, 2012)

Obvious examples of harm here include being injured whilst filming due to the negligence of the film crew or apparatus or being placed into dangerous situations by one's inclusion in the film, situations which the filmmaker may have known about but were not discussed beforehand. However, how about the harm that neither the filmmaker nor the participant is aware of? For obvious reasons this is a highly problematic area that opens up all sorts of moral, philosophical and legal questions that cannot easily be answered. Apart from very black-and-white situations, how can a filmmaker or participant know what the effects of being in a film are, or might be? What does a filmmaker do in situations where their participant purposefully wants to be in a film regardless of the risks and harms associated to it?

In practice these problems are somewhat resolved by the filmmaker attempting to assess the potential harm and risk for the participant, and then communicating these risks openly in order to help the participant make an informed decision as to the nature of their involvement. Again this is an ideal scenario, one in which the filmmaker's and participant's interests are always

aligned and a scenario in which the duty of care towards one's participants outweighs the pressures to make a film, earn a living in a precarious industry, fulfil the briefs of a commission, try to win a festival award, and so forth.

'Beneficence: *acting for the benefit of others, this underpins arguments about the social value of documentary.'* (Nash, 2012)

Since Grierson (and public service broadcasting) the documentary has accumulated a social responsibility to educate and inform audiences. Inherent especially in the realm of broadcasting as opposed to theatrically distributed docs is the idea that a documentary must serve a 'higher' social aim. Broadcasters and regulators of media have codified this principle into laws that govern what type of content can be seen. This principle has also evolved into a series of expectations and ethical responsibilities on the filmmaker, which again are very problematic and hard to quantify. What does it mean to act in the benefit of others? Who are these others? How do we measure benefit?

These questions have never been straightforward and even within a national territory (as opposed to transnationally), questions of social value or deviancy are never neutral nor objective, neither are they agreed upon democratically or through consensus; they are contingent on the larger socio-political contexts that frame the filmmaker, the participants and the film in general.

There are obvious tensions in trying to apply over-arching, theoretical frameworks and expectations (like beneficence) in the murky realpolitik of practice. For Winston (2002, p.158) much of this over-arching legal and regulatory framework is often misguided and politically motivated, concerned with audiences (i.e. truth telling, honesty and non-harm by certain types of content) which like journalistic frameworks are about the control and limitation of freedom of expression and ideas. Therefore, Winston suggests that the most important area of documentary ethical practice is the relationship between filmmaker and participant; an area which thus far the regulatory framework has inadequately addressed. (2002, p.158).

In order to protect the participant Winston recommends every filmmaker must undertake a voluntary ethical risk assessment to determine the 'extent of the difficulties or dangers involved in recruiting a person to their project.' (2004, p.84) He suggests the risk assessment should attempt to answer the following four questions:

- What sort of person is being filmed? (how well-known or public personality is the participant?)
- How socially deviant is the action being filmed?
- How public or private is the location of the action?
- How widely will the final documentary be seen?

Whilst nearly two decades old, these recommendations are still some of the most flexible and progressive contributions made to the practice of documentary ethics; primarily because they re-root the ethical considerations back into the

encounter between filmmaker and participant, whilst also dispensing with oversimplified notions of social value. However, these recommendations were written at a time when the industry was not as transnationally oriented, when films were physically distributed, using mainly analogue systems that could limit their exhibition. Therefore how effective are the ethical principles and practices outlined above for documentary making in a transnational context?

To explore this question I will elaborate on my personal experiences of making the feature documentary, *Boys with Broken Ears* (2013) along with co-producer Golriz Kolahi, and director by Nima Shayeghi. The film was a co-production with Al Jazeera International's award-winning Witness strand. Al Jazeera allowed us to retain the rights for a feature version, which would go on to play and win awards at international festivals. In return, they got the rights to a repackaged 48-minute version called *Iran's Sporting Dreamers*, which they would exclusively broadcast around the world via their satellite channel and Internet based channel (on YouTube). Al Jazeera International is a good example of a transnational media outlet, with offices and bureaus in many locations around the globe (although its financial and HQ is in Qatar). It specializes in media that is of a more 'global' perspective than more traditional national broadcasters.

The film follows the trials and tribulations of three youth Olympic wrestlers selected to represent Iran at the world youth Olympics in Hungary. The main character, 15-year-old Peyman, is typical of the many boys, that try to make it to the national team. Peyman is from a struggling, single parent household. Like many of the other wrestlers, he sacrificed his education, his only way out of poverty, by spending most of his time training and taking part in wrestling competitions in order to make it to national team.

The ethical issues started whilst filming the championships in Hungary. In the quarter final, our main character Peyman unexpectedly loses to his Russian counterpart. Uncharacteristically, he starts weeping and arguing with his coaches, who are trying to keep him quiet. Initially we are not sure why he is so upset but as he explains this loss meant he would probably have to fight an Israeli to progress into the next round. Iranian athletes (in whatever sport) are barred from competing against Israelis because to compete means to officially recognize the legitimacy of the state of Israel.

Peyman knew the serious trouble he would be in with the authorities back home, yet he vehemently argued with his head-coaches to let him fight the Israeli. But the coaches- all ex-wrestlers themselves- were in a dilemma because they knew that if they allowed Peyman to wrestle they would all be in serious trouble back home. Also, if they boycotted Peyman's match with the Israeli then the whole team would likely be excluded from the competition by the international wrestling authorities.

The coaches hatched a plan to try to influence the officials at the tournament. Whilst we were not sure what they were specifically trying to do, we believed that there was some attempt made to influence the outcome of the Israeli wrestler's match (the match potentially before having to face Peyman). Our

cameras filmed them approaching one of the tournament judging officials, which proved unsuccessful. With few options left, the coaches hatched a new plan that involved pretending that Peyman had damaged his wrist and therefore must forfeit due to medical injury. This would protect the rest of the team from disqualification and also ensure that the authorities back home would be happy with them. In one of the most powerful scenes of the film we watch one of the coaches place an icepack on the wrist of Peyman, who questions what he is doing; and then on realizing the cynical ploy to which he has now become a part of, Peyman sobs deeply.

Our dilemmas started when we entered the editing stage. We knew the very inflammatory material with the Israeli wrestler was the heart of the film. It was clear that to show the events as they unfolded- without censoring any aspects of them- was in the best interests of the film. This would highlight the conflict, as well as make the film's themes more concrete and pronounced, in turn maximizing its chances of securing a better festival run and more exposure. However, our choices were limited by our duty-of-care towards the participants as we knew this incident could have serious repercussions for them back in Iran. But we also had to consider our relationship with our implied audience. What had occurred was the 'truth'; a truth that reveals the absurdity of the situation imposed upon Peyman and other Iranian athletes; and to censor this would be going against the ethical principle of being honest with our audience. We found ourselves in an ethical deadlock.

We sought counsel from Al Jazeera international about our editorial options and the first query was on the nature of our consent. We had been granted consent by all parties, their parents (because they were minors) and had even secured an official permit from the Iranian authorities, so legally speaking all consent forms were in order and we had been given full access to film everything. In hindsight, this scenario is a clear example of why the notion of consent is problematic in some documentary filmmaking situations. The consent forms were signed before the events in Hungary had occurred and only contained a simple synopsis of the film. This was enough for the participants to know what film they were consenting to; however, it did not mention what might happen should an event like the one we found ourselves in occur.

As a filmmaker, I appreciate that to raise all the possibilities that might happen in a film would terrify participants and one might never end up making another film. Also, when starting a film how can one guess what events might end up being filmed later on? After all, is not the beauty and power of observational documentary in the fact that surprising events that throw the story and characters into new, unforeseen directions might (and hopefully will) happen? But seen from a participant's perspective, these unforeseen events have long-lasting ramifications that our current model of consent-gaining/giving does nothing to address.

In a transnational context the question of consent becomes even more problematic because there is an 'inherent unevenness, instability and inequality' to the transnational space.' (De Jong and Dannecker 2018, p. 502). Firstly, both

cultural and legal notions of consent vary greatly in different countries, and some do not have regulations governing consent at all. For example, in Iran there are guidelines and regulations for the national media, and some of these are about consent. (Is Covert Crime a Crime, 2016). However, because of the unevenness of education and media literacy across the country, these regulations are not very well known outside of media circles, in the larger cities.

Whilst there are certain international laws that can be argued to cover issues of consent, for example the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UNDHR), and the European Convention on Human Rights (ECHR) which all have sections about the rights to privacy, there are many issues that stop them from being as effective as a national level regulator (like Ofcom in the UK). Firstly, the regulations at international level do not go into specific scenarios like consent in broadcast scenarios and so forth, and therefore the ability to apply them to specific cases remains difficult. Secondly as Frost suggests, 'Although a large number of countries are signatories to the Declaration, it does not always mean that they adhere to it.' (2015, p367) The fact that international law is often trumped by national law, or just simply ignored by nations that are powerful enough to ignore them, means that any application of these regulations remains uneven and unstable.

This is an important discrepancy that frames the transnational encounter between filmmaker(s) and participant(s). I have been organizing pitching and development events at documentary festivals for nearly a decade and in my experience, it is rare to see transnational projects about individuals or communities from the global south being made by filmmakers that are not affiliated with the global north. For example, on our project the core crew (director and producers) were Iranians living in diaspora in the global north and the film was funded by Al Jazeera's Witness strand based at the time in Knightsbridge, London. The cultural, political, legal and financial clout that we as global north filmmakers bring to the documentary encounter is incomparable to what the ordinary working-class Iranian like Peyman have at their disposal.

Did Peyman have any notion of his rights or the regulations that might act to empower him in this situation? Had Peyman had the opportunity to discover (or indeed be advised by someone who knows) of Ofcom's regulation 1.28 and 1.29 (The Ofcom Broadcast Code, January 2019), he might have been able to influence our editorial decisions. This is because these regulations, which aim to safeguard the welfare of minors, overrides the fact of whether a filmmaker has been given consent or not. However, based in Iran, with little access to the English language, coupled with the fact that as a foreign national he would have to commission a UK solicitor to fight this case on his behalf (which requires a lot of money) he was powerless to do anything as consent had been already been given.

Ethically, we could not simply ignore the duty-of-care that we had towards Peyman to ensure that he would not be put in danger because of the film. In order to find a way through the deadlock, we had to try to determine the nature of the risks involved in showing the scene in its entirety. Central to this was

trying to identify Winston's second recommendation of his ethics checklist, '**how socially deviant is the action being filmed?**' (2002, p.158) This recommendation seeks to establish the various ways an action or scene is likely to be contextualized and viewed by others.

This was a very problematic question to answer because the variables were so fluid and unstable. On the one hand and maybe to a non-Iranian audience, the incident may seem a little underwhelming. Any statements made by Peyman and the coaches were in the heat of the moment, made by people caught up in a high-stakes sporting competition. The incident- whilst showing how larger geo-political tensions affect individuals- was resolved without any lasting problems for any of the participants, as will be seen in the conclusion to this article; so why is there an ethical dilemma?

Although, we (the filmmakers) are based in the global north, we all have some knowledge of the contexts back in Iran to try to establish how these incidents could be construed, including as deviant acts of rebellion or protest. In trying to answer Winston's second recommendation we explored whether by questioning the edict and wanting to fight the Israeli, Peyman had broken any actual laws within Iran. The Islamic Penal Code of Iran, which was re-written after the revolution as a sharia based legal system, includes crimes such as insulting Islam, waging war against god, rebellion, spreading corruption on earth, and cooperating with hostile countries. These laws have been (and still are) used to punish oppositional or deviant acts seen to be against the regime. For example, in 2008 a well-known Iranian-Canadian blogger who had visited Israel, as a way of building bridges between the two nations' citizens, was charged with cooperating with hostile countries, spreading propaganda against the ruling establishment, promotion of counterrevolutionary groups, and insulting Islamic thought. (Iran Releases Blogfather Hossein Derakhshan, 2014) He was sentenced to nineteen and half years in prison. However, another problem we faced was that not all transgressions are punished uniformly. The Iranian legal system's interpretation and application of the law is often inconsistent, arbitrary, and motivated by all sorts of extraneous factors. This made our ability to determine the deviancy and risk of the incident even more difficult. Against the backdrop of a possible war between Iran and Israel, we wondered how harshly our participant's actions may be viewed in Iran by the authorities?

There was another factor that was hindering our ability to judge how the incident would be viewed. This is related to Winston's fourth recommendation: '**how widely will the final documentary be seen?**' (2002, p.158) Documentary makers have always faced issues with not being able to control or determine how their films might be interpreted, once released into the public realm. Nonetheless any ethical framework is built on some attempt to mitigate this risk by trying to estimate the nature of the harm that might occur. However, the Internet has meant films are now more easily accessed, making the ability to try to determine where, how and by whom a film might be seen proves extremely difficult. This has a huge impact on trying to gauge the various contexts that inform a film's reception.

Again, some may argue that films have always been distributed internationally, and the ability to control who sees them has always been a struggle. Whilst there is some truth to this, inevitably the analogue, physical distribution and exhibition system, conducted within national territories and one window at a time, allowed some form of control (or separation) in terms of who was watching a film, when and how. For example, sales agents and distributors understood that films that feature nudity would not gain national distribution in countries that outlaw nudity on screen, so these films would not get distribution (at least officially) in those territories. However the fact that these films can now be accessed online by potentially mass audiences has changed a filmmaker's ability to gauge the risks to their participants, especially when the film contains sensitivities due to its transnational nature.

An example of these issues can be seen by the problems Liz Mermin faced when making *Team Qatar* (2009). Mermin is a US-London based filmmaker and the film was produced by UK based production company Amber Television. The film follows a group of Qatari school children who are being coached by Oxford University graduates to take part in an international debating competition. The school children are from Qatar but from backgrounds ranging from Iran, Iraq and Syria. Ignoring the obvious and crude Orientalist prejudices inherent in the idea (i.e. white, liberal westerners coaching Middle-Easterners on how to intellectually debate), the film inevitably triggered situations in which cultural conflicts came to the surface. For example, some of the school children were taken to and filmed attending a Pride event in London, which caused Mermin ethical issues, not too dissimilar to the ones we faced:

Would we get the girls in trouble with conservative friends and family by showing that they were at the event at all... Would we hurt them in the future by showing their uninformed homophobic reactions? I had to walk a line conveying their feelings and their work coming to terms with what they'd seen without keeping them on record forever with ignorant or bigoted views. That was about very careful editing. A very complicated emotional and cultural clash had to be reduced to a four-minute scene, and that's never easy (Bershen, 2010)

As Mermin's account shows, the fact that the film can be seen across a wide variety of places and contexts means her ability to edit a scene becomes a very complicated balancing act that needs to take into consideration many competing factors and competing contexts. If this film was commissioned and shown in the UK only with little chance of it being seen by the school children's friends and family, Mermin's editing decisions would be drastically different.

Similarly, in our case the inability to control where our film was being seen was a huge insurmountable problem. At the time, the Iranian and Israeli governments were involved in a tense standoff and the geo-political situation in the Middle East was very sensitive. We could not discount the possibility that this film would be picked up by the enemies of the Iranian regime- for example by dissident groups in exile or indeed by some in the Israeli media and used for propagandistic purposes, as was the case. (Iranian Bias against Israel part of an

Al Jazeera Documentary, 2016) Imagine if the film went viral in Israel as an emblem of how cowardly the Iranian government's actions were in forcing Peyman to lie about his injury rather than fight an Israeli. Or, if it was picked up by an Iranian opposition group outside of Iran who might use it to show the rift between a young population who want to take their place on the world stage, and a reactionary government that is holding them back. Subsequently, how might these contexts influence the way this film would be seen inside Iran, by the authorities? And, what consequences might this have on Peyman and the other participants?

Let us consider this in another way, would our ethical dilemma have existed if this film was not made transnationally? If an Iranian based producer, after securing a permit and a commission from inside the country, had filmed the same footage? Instinctively, they would have had a much better idea of the limits and possibilities afforded to them, in terms of how far they could have pushed the red lines in their country. Had they been unsure, they might have even been able to gain some counsel from someone in the government or cultural ministry that could have provided guidance (or blessing) for a decision to be made in the edit. To put it simply, their ability to determine and mitigate risk would be much clearer and more stable, in turn allowing them to construct a much more meaningful and robust ethical framework and risk analysis.

As someone who has always welcomed the way the Internet has broken down physical borders and challenged the ability to maintain a hegemony over the flow of information and ideas, this experience made me rethink some of my assumptions and appreciate the importance of the local, at least when it comes to question of ethics. Imagine what might have happened had our team not had proper knowledge of the Iranian context? If we had not been able to see the potential ways this incident might be read, both inside and outside of Iran? In some way, the ethical needs of (and risks to) a participant are most often contained in a locality (a physical place). Yet, how this locality (this raw material) is transformed into a film, by transnational filmmakers and funders and shown transnationally requires much sensitivity and thought. But what happens if a documentary maker does not have that ethical compass or the sensitivity to gauge the local risks to the participant? What happens when these decisions are left at the behest of filmmakers, funders or distributors that might not have either these sensitivities, local cultural knowledge, or much worse the ethical compass to think of the complexities that may arise because of the transnational elements?

Dennis O'Rourke's *The Good Woman of Bangkok* (1991) might not strictly be considered a transnational documentary because it was made before the digital, Internet based distribution and exhibition landscape. However, the film adheres to many of the elements that inform the power dynamics of the transnational documentary encounter: it was funded by Channel 4- a London based broadcaster with a lot of legal and financial power; it was directed by a white Australian male who was living in Bangkok; and the subject is a Thai prostitute called Aoi, a village girl who he meets in a brothel in Bangkok.

Linda Williams (1999) describes the film as a 'challenge to conventional documentary ethics' (p. 176) because of O'Rourke's intervention in the film. The encounter between the filmmaker O'Rourke and the participant Aoi becomes more complex (and problematic) as he is paying to have sex with her, which reflects his status as one of the many privileged white males that are seen frequenting the brothels of Thailand in the film. By the end of the film, O'Rourke offers to save Aoi from a life of prostitution by buying her a rice farm in her village, but only on the promise that she gives up prostitution first. According to Williams this rice farm was offered to Aoi before the end so there is some controversy as to how factual the events or at least the reactions of Aoi are in the film.

Leaving all the ethical problems about intervention mentioned by Williams aside, currently the film is freely available on Youtube (Mercurio, 2012). Whilst O'Rourke and the commissioners at Channel 4 have arguably moved on from the controversies, Aoi's history as a prostitute is documented and open for any individual to find. She may have indeed left prostitution; she may have got married and had children; she may not want her past to be discovered and yet this film is a recorded account of her life that is currently and for the foreseeable future in the public domain.

It is difficult to blame O'Rourke (and Channel 4) for not being able to safeguard the future interests of the participant (if indeed they wanted to) because they were operating under a distribution and exhibition landscape that limited where, how and for how long a film was available. However, the fact that this film and many other films made in the pre-digital era have been excavated from the past, transformed into digital artefacts and made widely available in this new mono-territory introduces a whole host of ethical issues that were not accounted for in the initial ethical frameworks. Of course the filmmakers had no idea that thirty years later the film would still be in circulation and more freely available. Yet, there is some continuity between the unequal power dynamic in the original encounter between O'Rourke and Aoi, and the way that her history in the form of a film is now online for public viewing. The digital eco-system has only exasperated her powerlessness within this transnational encounter, rather than being the cause of it. If this encounter and its inherent inequality is not brought into the ethical framework and risk management procedures, it remains a dangerous imbalance for the safety and well-being of the participant, presently and in the future.

Hess and Zimmerman (2006, p.99) describe a transnational documentary practice that doesn't take into consideration the ethical needs of the local participant as a 'corporatist transnationalism', one that denies the specificities of the local in the act of turning it into a site and discourse of 'globalized' consumption. They advocate a new concept called adversarial transnational documentaries which 'wrenches the notion of the transnational away from its corporatist location, moving it instead into the disruptive realms of bodies, people, movements and representational practices that dislodge corporate influence by creating new places for social justice on a global scale.' (99) Whilst this idea sounds exciting on paper, in practice a new form of transnational

documentary ethical practice must be rooted in a new ethical dialectic built on the needs of a localised participant, whilst responding to the complexities of a transnational distribution and exhibition eco-system, and audience base. How might such a dialectic work in practice? How might filmmakers balance the needs of the local with the desires and expectations of audiences watching transnationally?

Coming back to our own ethical dilemma, after much deliberations on how to edit our film ethically, we decided to keep the overall incident in the film because of its importance in the narrative. This incident is also the most interesting aspect of the film for transnational audiences because of the tensions between Israel and Iran dominating the news headlines. The edict not to allow Iranian athletes to fight Israelis is well known in Iran but we felt it was something novel for transnational audiences. However, in order to mitigate against the localized risks we decided to leave out anything specific that might incriminate or cause offence, inside Iran. We kept in Peyman's sadness and reluctance to forfeit the match but left out any elements that may be seen as a political statement. In this way, the edict itself was never questioned morally in the film but the conflict for transnational audiences was still kept alive. Overall, we made a large compromise that may have dramatically and narratively weakened the film. In the end, we went against one of the most important aspects of documentary making- representing truth, in order to protect the more important ethical consideration- the safety and wellbeing of the participants.

Conclusion

As explored through this article, the new transnational landscape of distribution and exhibition has fundamentally changed the industry in the way films are distributed, exhibited and ultimately viewed. These changes have massively altered how, by who and when a film can be seen. From a filmmakers' perspective the inability to control and limit who sees what in a digital realm where everything is available on demand, has huge ramifications on the issues and application of a documentary ethics.

Whilst documentary filmmakers have always been required to operate from an internal code of ethics, and a duty-of-care for their participants, this internal ethical code has rightfully been encouraged or reinforced by some form of external regulatory ethical framework. In the transnational documentary industry, there is a noticeable absence of an international standard of ethics that can provide guidance or indeed a framework for the documentary encounter. The regulations we do have were made for a world in which either media can be contained within the simplistic ideals of a national territory; or much worse, the regulations favour those who hold the power in any transnational exchange (i.e. those that do not have to abide by international law). We are in desperate need of a new framework that can account for the complexities of a transnational industry and audience base, whilst retaining the localized needs and identifying localized risks factors for participants.

This framework would not replace national frameworks but should be seen as an addition, especially on projects that feature the discrepancies of power between filmmakers and participants highlighted in this article. This framework would need to embrace complexity and be flexible, with guidance and input from those that have knowledge of local contexts, but also to account for how these might be interpreted within broader transnational settings and audience bases. Practically speaking, this framework could simply be a more robust ethics procedure geared towards accounting for the complexities inherent in making films of this sort.

Instead of simply having release forms signed by participants, there could be a risk analysis conducted by the producers, making use of experts who are rooted enough in the locality to provide a meaningful picture of the real risks involved. This risk analysis could then be demanded by funders and distributors as part of the paperwork that they already require to get a film financed or distributed. These would be small, inexpensive but important developments helping to readdress the potentially destructive movements of a transnational corporate media that can have very real and unfortunate consequences locally.

In this final section I have formulated an ethical checklist that serves to transnationalize Winston's initial recommendations (2004, p. 84):

- What sort of person is being filmed in terms of gender and age? Where do they live? What is the level of their education? What is their financial and political standing? Do they have any knowledge of their media rights? I.e. consent, accuracy and protections afforded to a participant of the film in their locality.
- What social, financial, religious, personal, political or other contexts is that person part of that might actively inform the context of the film?
- Are participants aware of the possible distribution of the film and that the film it may be seen by people all over the world- including people in their country, village and neighbourhood?
- How much are they aware of the impact that being in the film may have on their life? Have you explored a range of possible impacts to see how these might affect the participants?
- What impact might the showing or viewing of this film have on the participants' life in the immediate and distant future?
- How socially deviant is the action being filmed according to both local and international contexts?
- What possible ways might/can the action being filmed be re-interpreted (in various contexts) so as to have a negative impact/danger on the participants' actions?

- Does the film in general, or the actions of the participants, transgress any local codes or morals, and if so which?
- Who in the local context might find problems or take offence through this film in general and the actions of the participants in particular?
- How widely will the final documentary be seen both internationally and within the local context? And for how long?
- How can you safeguard the film from being hyperlinked into contexts that you have not accounted for? Can you do this in negotiations with the distributors/exhibitors? Or is this something that you need take into account when crafting the film's narrative or character layers?
- How can you mitigate against the abuse of the inherent power you have as a filmmaker over the participant? Can you empower them in this encounter without jeopardizing your film or your role as the filmmaker? If so, how? If not, why? (Can they be co-creators?)

Not all of these questions would be useful for every project, but they do invite a more nuanced and complicated notion of risk management to emerge, one that is hinged upon other questions and variables that often accompany any transnational exchange.

This is the opposite of a corporatist risk analysis which in my experience is about the legal protection of parties. These questions move the realm of documentary ethics away from corporatist tick boxes to something that is more in line with a documentary ethics which Nash has called a 'situated practice', one that works dialectically to 'flexibly apply a moral theory within specific contexts'. (Nash, 2012)³ Whilst Nash's situated practice is not directly about transnational documentaries, the idea of applying an over-arching moral theory that takes into consideration the specificities of a locality is nonetheless a more productive dialectic that allows filmmakers to make films ethically, within a transnational eco-system.

¹ The broadcast version can be seen here:

<https://www.aljazeera.com/programmes/witness/2013/03/20133199280103811.html>

² A recent UK study found that only 7.9% of the film and TV industry in the UK is from a working-class background, compared to 34% of the total UK workforce. Can we extrapolate that most documentary films are made by filmmakers from a higher social class than their participants? What effects if any does this have on the encounter? (Workforce Diversity in the UK Screen Sector, p 24)

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