

RIGHTS CLEARANCE FOR VIDEO CONTENT: FOUR KEY AGREEMENTS TO EASE THE PAIN

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Probably the least enjoyable part of producing audiovisual content for screens – but one of the most important – is Rights Clearance.

What is Rights Clearance?

Rights clearance is the process of ensuring that the ultimate distributor of the content has all the rights necessary to do so legally – without the threat of a third party making an infringement claim that could result in having to pay significant damages or even having the content removed.

Whether the ultimate distributor is a movie studio, television network, independent digital distribution platform (e.g., YouTube) or any company distributing videos about its products on its own website, the rules are the same: Every second of footage must be “cleared.”

Sometimes the Rights Clearance process is fairly simple and straightforward: If the content consists entirely of newly created original video with no people in it, accompanied by newly created original music and newly created graphics, the creator may already own all the rights necessary to distribute the content (or to license someone else to distribute it).

Most video content, however, contains more component parts, and thus more rights may be involved. Those rights also may be in layers – one inside another, so to speak – so you'll have to analyze your content carefully to make sure your ultimate intended use is covered. Here are the four most likely to be present in your content.

Copyright Clearance

Each piece of video content has a copyright owner – and if a finished project contains any third-party footage (other video or photography images), a [License Agreement](#) or [Video/Footage Release](#) will be necessary to include that footage into the finished project. A key component of that

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agreement will be a description of your intended use of the copyrighted footage. Ideally, you'll get the broadest possible usage rights - to incorporate the licensed footage into any project, in any media, for any distribution platform, throughout the world.

However, that might be more expensive to acquire than what you need - the key is to match the rights you get with the rights you need for your intended use. One thing to watch out for though - the copyright owner can only grant the rights he or she has - and those rights may not include all the rights you need depending on your intended use, especially for advertising purposes. Read on.

Rights of Privacy/Right of Publicity Clearance

This is one area that can easily get overlooked. If people are included in any footage to be cleared, certain rights must be obtained in addition to the copyright in the footage itself. This can often be handled with an Appearance Release or On-Air Talent Agreement - the key is that the individuals appearing inside the footage grant the ultimate distributor the right to use their identity - name, likeness, image - in the finished project. And if the ultimate user wants the ability to use the footage for promotional or advertising purposes (including to advertise the project itself), this type of usage invokes the Right of Publicity directly and must be granted in writing.

Trademark Clearance

If any footage to be cleared includes any images of other trademarks - background signage, logos on shirts, etc. - these also need to be cleared. This is often handled with a Materials Release, perhaps combined with a Location Agreement - this permits the producer to film at a particular location and to include any images (logos, etc.) that appear in the location.

Music Clearance

Any recorded music contained in video content requires a particular type of clearance - a Synchronization License. This requires the consent of two different and distinct copyright owners - the owner of the copyright in the underlying musical composition (the songwriter/publisher), and the owner of the copyright in the particular sound recording being used (often a record label or the performer). Sometimes these are the same parties, but often they are different and both are required.

With all of these rights, there are some situations in which clearance is not required because the doctrine of Fair Use or some other First Amendment protection applies, but those are less common and must be analyzed on a case-by-case basis. And even then, the ultimate distributor may still require signed releases even where Fair Use might apply because it's paying to be able to use the content now without fear, not to potentially win a lawsuit later.

Rights Clearance is a necessary part of the production process. Better understood and with the right agreements to work from, it doesn't have to be painful.

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