

Copyright Guidelines

What is copyright?

In basic terms, copyright is literally the "right to copy". A person who creates a work (such as a film or a song) owns and controls the copyright, which means they have the right to determine who makes copies and on what terms. A copyright can be bought and sold or assigned to another person on particular conditions.

A copyright work may include other copyright works. For example, a television program may include a piece of music, or the author's copyright in the script of a dramatic work. The copyrights in these incorporated works are referred to as the underlying rights.

A person who has created a work that includes other works may want to license the work to others. If so, they must also have permission to make copies of the material covered by the underlying rights. Sometimes there may be restrictions on the underlying rights. For example, a film may contain a piece of music that is licensed only for use in Europe. The owner of the film can only distribute the film in Europe. If the owner allowed the film to be screened outside of Europe, it would be a breach of the copyright in the music.

What do I have to do to use copyright material in my programs?

The most important thing is to ensure that you have sought clearance to use the material from the copyright holder of the material. This may be the copyright owner, or someone the copyright owner has licensed the material to and who is authorized to license the material on to other parties.

A clearance from someone who does not control the copyright material is worthless. For example, a letter from a country's embassy stating that you can use anything broadcast on any television station in that country is not valid, because the embassy does not hold the copyright to the material broadcast on those television stations.

- Any limitations or restrictions on the use of the material (e.g. it can only be broadcast twice, if you need to put in a graphic acknowledging the source, if you can re-cut the source material etc.).

Most film and television producers and broadcasters should have a standard clearance form for licensing material. If they do not, a sample Television Program Content Supply Agreement is available upon request by the programming department.

When licensing material which contains underlying rights, try to ensure that the person licensing the material to you is authorized to grant you the underlying rights as well. Some licensees may not do this, which means that even though you have licensed the material from them, you may still have to go out and get additional clearances on any music, film clips, scripts etc. that were used to make the material. This is obviously a lot of extra work for you, so it is preferable that when you license material, the license includes all the underlying copyrights. It is worth taking particular care over material which includes footage of high-profile events (such as the Olympic Games, sporting finals, concerts by famous artists etc.), as they often have much tighter restrictions on the use of their material.

If I'm not making any money, do I still have to get clearances?

Unfortunately, there are very few exceptions to copyright law, and the fact that you're not making any money out of producing your program is not one of them.

You still need to get clearances for the material, but you may be able to convince the licensor to reduce or waive any fees if you can show that you're a community producer who isn't profiting from the use of their material.

All clearances should be obtained in writing, and contain the following:

- A declaration stating that the person or company you are licensing the material from is an authorized copyright holder of the material, and has the right to license it on to you.
- A description of what the material is (e.g. whether it is a single program, or a series).
- The period of time the license covers (e.g. if the license is for 2017 to 2018, you may not be able to use the footage again after that without renegotiating the license).

What happens if I don't get copyright clearances?

If you do not have clearances to use copyrighted material, you run the risk of the owner or controller of the material taking legal action against you and Channel 31. Legal action is often lengthy, expensive and traumatic, and as such it is best avoided.

Each season, you as a producer sign a Broadcast License Agreement with Channel 31 to allow the station to screen your program. This agreement includes a section where you warrant that you have obtained all the necessary clearances and permissions for any material contained in your program, and also a section where you agree to indemnify Channel 31 against any legal action arising from breach of that warranty.

In the event that Channel 31 is sued for the breach of copyright for something broadcast in your program, you would be liable for all of Channel 31's legal expenses (including any settlement payment) in addition to any expenses from legal action taken against you separately.

With this in mind, it's a much safer route to make sure you get the necessary clearances for any material you use.

If you can't get the clearance, don't use the material.

What can Channel 31 do to help me?

Whilst we can't actually clear material for you, we can offer some forms of assistance, such as:

- Providing a letter of support, stating that you are a producer with Channel 31 and that the station is community based and not-for-profit.
- Confirming that the station has a license with APRNAMCOS for the use of published music, with reciprocal arrangements with many collection agencies around the world. This can be especially helpful if you are trying to clear music clips of concert footage.

What should I look for in a content supply license?

Is the licensor warranting that they hold the copyright in the material?

Make sure the person or company you're getting a clearance from is prepared to clearly state that they hold the right to license it to you. If they don't hold the copyright, the clearance is worthless.

Is the licensor also clearing all the underlying rights?

If you have to go about getting separate clearances for music, footage or other items contained within the material you are licensing, it could end up being a very difficult and expensive venture. It is far easier for community television producers to source material that has all underlying rights pre-cleared.

Is the licensor indemnifying you against legal action?

If a licensor is warranting that they have the right to license the material to you, they should also indemnify you against any legal action that may arise if they haven't cleared the material or any underlying rights correctly. If they're not indemnifying you, you are at risk of being sued for something the licensor has failed to do.

Specification of the material covered by the license

The license should include a description of the material you are licensing. If you're licensing a particular series, the license should include a list of which episodes are covered. If you're getting a license from a broadcaster to cover a range of material, it should detail which programs or footage you can use, and also any material which you cannot use (e.g. any material which cannot be licensed due to issues with underlying rights, such as Olympics footage).

Period of agreement (number of times to use material)

An agreement will typically specify the period during which you can use the material, the number of times the material can be used, or both.

It could say that you can broadcast the material five times within an unspecified time period, meaning you could use the material in one program shown five times, or in five programs that can only be shown once each.

There could be a combination of terms, such as being able to use the material six times before June 2023, in which case you have to stop using the material once either of those terms apply. If you've only broadcast the material twice and it's prior to June 2023, you can broadcast it another four times before the agreement expires.

Are you able to edit the material?

You will probably need to have some right to edit the material. You may have to edit to allow you to remove anything that might be in breach of Channel 31's license or Codes of Practice.

The program may also need to be trimmed to fit Channel 31's timeslot length, or to have sponsorship breaks inserted.

Do you have to acknowledge the source of the material?

Your contract may state you have to acknowledge the licensor in your credits, or with a graphic when the material is used.

Are you able to license the material to a third party?

You need to be able to license your show to Channel 31 (and possibly other community television stations) for broadcast, so you need to make sure your agreement doesn't prevent you from doing that.