

Related Rights Guidance

Copyright law provides for the ownership and management of rights in addition to the rights provided to the creator, identified in treaty and law as the copyright holder. Of particular concern are underlying rights and related rights.

Underlying rights are the copyright of creators of works that may be integrated, in whole or in part, into a work such as a video. Underlying rights that the video may contain include:

1. Musical score or sound track – the copyright belonging to the composer
2. Musical score or sound track – the performers' rights belonging to the performers
3. Musical score or sound track – the producers' rights for a produced phonogram
4. Scripts performed on a video, such as a copyright protected play
5. Works of art reproduced in their entirety, such as a recognizable painting or sculpture used on a video set

Underlying rights are copyright-protected works where the creator/rights holder is afforded all copyright protections with regard to the reproduction, distribution, public display and public performance of a work. A separate license or deed of gift must be obtained from the rights holder for each underlying work, unless the video creator has obtained a license to use the underlying work or has used the work in a manner that is exempt by reasons of fair use.

The Center for Social Media at American University has provided guidance on fair use for video creators in three publications:

Code of Best Practices in Fair Use for Online Video

http://www.centerforsocialmedia.org/resources/publications/fair_use_in_online_video/

Recut, Reframe, Recycle: Quoting Copyrighted Material in User-Generated Video

http://www.centerforsocialmedia.org/resources/publications/recut_reframe_recycle/

Documentary Filmmakers' Statement of Best Practices in Fair Use

http://www.centerforsocialmedia.org/resources/publications/statement_of_best_practices_in_fair_use/

How do I know if there are underlying rights issues with my video?

1. A video should always acknowledge the source and permissions for any copyright-protected materials used in a video, generally in the closing credit frames but possibly on the container or in the opening credit.
2. If the credit and permissions are lacking, contact the producer or rights holder to see if there are written releases and acknowledgments available.

Related rights concern the rights of entities that contribute in some way to the work but are not identified as the creator. These include:

- Agents involved in sharing a work (e.g., producers, distributors and broadcasters)
- Performers (actors, musicians, interviewers and interviewees)
- Holders of trademarked symbols and logos that appear in a video

Related rights may differ from copyright in the rights offered and in terms of protection. Rights for producers and performers of phonograms are explicitly addressed in copyright treaty and law. In other cases, performer and producer rights permitting their production or performance to be performed publicly, produced or distributed may be governed by state law or contract. It is best to have a license or publicity release for any identifiable performer, producer and anyone contributing creatively to the work, such as the screenwriter; or to have a license where the creator states that he or she has obtained all licenses and permissions to any related rights or underlying rights, and that the creator has all rights to authorize reproduction, distribution, public display and public performance of the work.

Other rights concern publicity and privacy for identifiable persons appearing in the video. Privacy and publicity rights with respect to the subjects of information resources are often conflated. The distinction that is generally made is that privacy refers to the right of a subject of an information resource to have his or her likeness or personal information kept private, while publicity rights generally refer to the right to control the commercial exploitation of the subject's persona or identity, as defined by the likeness, voice, image, name or personally identifiable mannerisms. Privacy rights often end with the death of an individual but publicity rights may continue beyond the lifetime of the individual and may be managed by the estate or heirs of the subject or by a representing agency. Publicity rights may be protected by national or local legislation. Libraries should obtain publicity releases for any identifiable living subjects contained within an information resource that the library intends to disseminate, particularly in digital form. Publicity releases should reflect relevant statutes and may vary if the person involved is a minor, or an active participant in an event, rather than a bystander. Publicity rights generally obtain to everyone by statute and not just to 'famous' individuals.

Research involving human subjects may be documented in video and generally requires clearance from an institutional review board that is tasked with ensuring that no harm, including violations of privacy, results for the research subjects. Libraries should be aware of the need for this review for research involving human subjects. Institutional review boards can also provide guidance on publicity releases and good surveying practices, such as providing 'opt ins' for personally identifiable information, such as email addresses for survey follow up.