

## **An Introduction to Copyright for Video Producers**

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### **Intro**

Have you wondered about your rights as the creator of an original short video? Have you found the perfect song to finish your latest project, but don't know if it's okay to use music that was written, created or performed by someone else? The answers to questions like these are found in copyright law, which defines the rights and obligations of creators and those who use the original creations of others.

This document is written for independent video producers. It presents some copyright issues relevant to video projects, along with strategies for finding and securing permission to use the creative works of others, such as original recorded music.

Copyright rules are going through many changes and challenges, so clear answers to many questions aren't always easy to find – especially with the arrival of new forms of Internet-based distribution. The author is not an attorney, and this is not official legal advice. If you aren't sure about your rights or obligations in a particular circumstance, consult a real attorney. The author assumes no liability for the reliability of anything written here. Nonetheless, I do hope to give you useful information about copyright, and to describe some ways for independent video creators to work with, and to support, other independent artists.

With that understanding, let's take a look at copyright, starting with a handful of definitions so we're all talking about the same things.

## **Definitions**

**COPYRIGHT** – Legal protection for an original creation such as a work of art, book, song, article, movie, or recording that is “fixed.” “Fixed” means a book is printed, a video or music recording is made, a web site is “published”, and so on.

**TRADEMARK** – Legal protection for a name or image, such as a logo or distinctive design, used in business. Most CCTV producers won’t create trademarks, although a program’s name or logo *could* be trademarked if it is unique and the creator wants to protect it. A producer must take care not to infringe others’ trademarks. For example, a program can’t be called “The Coca Cola Comedy Hour” without permission, because “Coca Cola” is a trademark. Other than to provide that caution, this guide will not deal with trademarks.

**PATENT** – Legal protection for the design of a machine, process, chemical or other invention. Until recently, patents weren’t often a concern of media producers. Rules governing access to a new, patented format for Internet-based audio and video called “MP4” could require producers to pay license fees when they distribute their files. Thus, patent licensing could become an issue for media producers. As of Feb. 2002, the issue of who must pay license fees for MP4 isn’t fully settled. That’s all this guide has to say about patents.

**INTELLECTUAL PROPERTY** – A general name for original “stuff” that can be protected by copyright, trademark or patent. “Intellectual property” also refers to intangibles such as trade secrets (the recipe for Coca Cola) or even ideas that have monetary value. “Intellectual Property” is often abbreviated “IP”. Most IP issues for CCTV producers will involve copyright, and that’s what the rest of this document will discuss.

**PUBLIC PERFORMANCE** – In copyright law, “performance” refers to both a “live” performance (such as a stage show, live TV broadcast, concert or poetry reading), and to playing recordings for an audience. All television and radio broadcasts are public performances (if anyone is watching!). Playing music or a movie for your family at home is not a performance. However if you were to charge your neighbors to watch a pay per view boxing match, that’s probably, technically, a public performance.

**PUBLIC DOMAIN** – A work “in the public domain” is free for all to use in any way they see fit. Public domain works are those works whose copyrights have expired, works whose creators have deliberately committed them “to the public domain” and works whose copyright privileges are terminated for other reasons.

## **Where does the authority for copyright come from?**

The “1976 Copyright Act,” along with its amendments, court rulings and ties to international treaties, defines US copyright law. The Copyright Office of the Library of Congress administers copyright law. Its website (URL on page 7) is an authoritative source of copyright information.

While many copyrights are managed directly by their owners, music is different. Over the years, the licensing and management of most copyrighted music – from sheet music to recordings – have come to be handled by specialty firms that negotiate, collect and distribute license fees on behalf of record labels and artists. We’ll discuss these companies later.

### **When does copyright protection begin?**

An original creation is automatically copyrighted as soon as it is “fixed” (published, printed on paper, printed to tape, recorded, etc). Copyright coverage is free, requiring no paperwork and no notice. However, it’s good practice to put others on notice that a work is copyrighted. The international copyright symbol (©) or the word “Copyright” followed by “(year) (name) All rights reserved” provides sufficient notice.

Example:       © 2002 Joe Smith, All rights reserved.  
          or        Copyright 2002 Joe Smith, All rights reserved.

A video you produce for CCTV is copyrighted as soon as you print “the final cut” to tape. The music you may want to use as a soundtrack is probably also copyrighted (but not always) and subject to a controls over its use. Producers need permission to use copyrighted music or images. Later we’ll discuss some ways to seek that permission.

### **How long does a copyright last?**

The best answer today is “longer than ever.” For new works, a copyright lasts for the author’s life plus 70 years. In addition, repeated extensions granted by Congress have allowed expiring copyrights to continue indefinitely. It’s a safe bet that if the material in question was created during your lifetime, it *could* be covered by copyright. The owners of old works that still generate revenue (such as Mickey Mouse) have taken advantage of the extensions, so their work is also covered by copyright. However, copyrights do expire. New works are committed “to the public domain” every day. And some works are easy to license. So the pervasiveness of long-standing copyrights needn’t get in the way of a production.

### **Who owns a copyright?**

The independent creator of an original work owns its copyright. However, if the creator is an employee just doing his job, then the copyright belongs to the employer. This is called a “work for hire.” A copyright may be assigned (sold or given) to another party. For example, musical acts are often contract-bound to assign copyrights to their labels.

### **What are a copyright owner’s rights?**

The owner of a copyright can control who may:

- reproduce the work
- create derivative works
- sell, rent, lease or lend copies of the work (with very strong exceptions for noncommercial lending<sup>1</sup>, including lending by libraries)
- publicly perform a literary, musical, dramatic, or choreographic work, a motion picture, or other audiovisual work
- publicly display a literary, musical, dramatic, choreographic, pictorial or graphic work
- digitally transmit audio recordings to the public (obviously a new rule!)

### **What is the penalty for violation of a copyright?**

Civil penalties can range from an order to stop using the material to monetary damages including attorney’s fees and court costs.

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<sup>1</sup> Lending is covered by the “first sale doctrine,” which is not further discussed here.

### Fair use and free speech

A copyright owner's rights are strong but not unlimited. The "fair use doctrine" says that under certain circumstances, a work, or part of a work, can be used *without* prior permission of the copyright owner, perhaps even against the owner's wishes.

Fair use is *not a right* under copyright law. It is a *defense against a claim of infringement*. This is an important distinction. It means that even if your actions seem to be clearly covered by "fair use," you could still be sued and forced to make your "fair use" defense in court.

Some types of "derivative" works have had considerable protection from the courts. *Satire*, *criticism*, and *parody* for example, are protected by the First Amendment. However, nothing prevents the creator of a parodied work from having a fit about the parody, potentially leading to the need to persuade a judge that a work is original, a parody, and not a mere rip-off. Forewarned is forearmed: know what you're getting into.

The laws and practices around fair use and free speech are complex and well beyond the scope of this document. Anyone intending to claim "fair use" should research the doctrine and case law, or consult an attorney. Some references on page 7 offer information about fair use.

### The complicated case of music licensing... and how it affects you as a producer

The music industry has carved the concept of "copyright" into several narrowly defined, limited license rights, each of which is granted separately:

RIGHT / OBLIGATION	HOW IT AFFECTS YOU
<b>PERFORMANCE RIGHTS</b> allow the public performance of a work. Most major artists belong to either ASCAP or BMI, which together manage performance licensing for most popular music. Other agencies exist, but the biggies are ASCAP and BMI. Any performance of music – by playing it on the radio, web or television – requires a license.	Cablecast is a performance, so performance rights are required. Fortunately, ASCAP and BMI recently wrote blanket agreement with 95% of all US cable systems, including AT&T, giving performance rights to local access producers for all ASCAP and BMI music. NOTE: synchronization rights may <i>also</i> be needed (see below).
<b>MECHANICAL RIGHTS</b> grant the right to reproduce a work and distribute it. For example, the duplication and sale of a compact disc requires mechanical rights. Mechanical rights for major artists are administered by the Harry Fox Agency.	Mechanical rights only affect producers who are duplicating and distributing videos that contain copyrighted material. Small users must work with the Harry Fox Agency on a case-by-case basis.
<b>SYNCHRONIZATION RIGHTS</b> give permission to include music in audio/visual works including motion pictures, broadcast and cable programs, videos and TV/radio ads. "Sync rights" for major artists are administered by the Harry Fox Agency.	Synchronization rights apply to music that's coordinated with images or ads. Playing incidental background music behind random text panels is probably okay. But sync rights from the Harry Fox Agency are needed for music that accompanies a film or commercial.

### **Licensing popular music**

Producers who want to incorporate popular music by big-label artists into their videos will probably have to work with the Harry Fox agency, and perhaps also with labels or artists' representatives. Licenses aren't free. Paperwork, negotiation and strict compliance to the license terms will be required. Producers who want to use mainstream music should fully understand their rights and obligations, including such subtleties as *compulsory licenses* that could trim fees substantially. The references on page 7 may help. A small producer can request a license (and price quote) with a short form downloadable from the Harry Fox Agency website.

### **The world is full of great, low-cost (or free) original music: get some today!**

It's often easier to work with a peer than with an entity that's larger and more powerful than you. The musical peers of independent video producers are the many undiscovered, unsigned musical acts now making original music all over the world. By working with these acts, a video producer can add original music to his or her production, while introducing a talented performer to a new audience. Everybody wins.

Unsigned artists usually have full control of their copyrights. Artists signed to small labels, and the labels themselves, also need exposure and should be happy to work with you – no discussions with ASCAP, BMI or the Harry Fox Agency required. One caution: *cover music* can trigger licensing obligations because a band only owns *some* of the rights to a performance of someone else's music. *The simplest licensing terms* – possibly requiring nothing more than a promise to give credit the band on the video – will come from the use of original music performed by an independent act that owns its copyrights.

Who are these people? From your friend the singer/songwriter, to subway musicians and street performers, they're all around. Best of all, thousands of performers promote their music on the Internet at sites designed just for independent bands. The best sites are searchable, and even catalog their bands by genre. However, bands come and go, and not all musicians are responsible communicators. Find some possible music, then ask the artist(s) for permission *before* you tie your production to the music: permission to use a song may not come.

### **Web sites for independent and small-label performers**

Note: some sites offer lo-fi (less than 128kbps) and hi-fi (128kbps or better) files. Don't bother with the lo-fi files if you're planning to ever show your production to anyone whose respect matters to you. Low fidelity tracks sound terrible in broadcast; re-editing the audio track later, when you finally find a high quality copy, is a waste of time best avoided whenever possible.

#### **mp3.com**

A big, "corporate" site, with lots of music, a mix of big and small artists, pathways for sending messages to artists, and means of purchasing music.

#### **iuma.com**

The Internet Underground Music Archive is a great place to find unsigned artists.

#### **indie-music.com**

A homebrew site for independent musicians. Listings by state and category.

#### **musicdish.com**

This site's motto is "Discover and be discovered."

### **How to talk to bands / how to give credit**

A nice thing about working with small and unsigned artists is that they usually control the copyrights to their music, and can discuss its use directly with you. They want exposure for their music just as much as indie video producers want exposure for their films. A fair trade costs nothing, but moves everyone toward big, individual goals.

Be sure to give credit! Here's a frame from a video that credits a band found on MP3.COM. The band's original copyright is shown, along with a reference to the band's web site:



### **Sample request letter:**

*(the subject "Blaq Lily Fan Mail" was added by MP3.com when I wrote via the MP3.com site)*

From: "Jim Youll"  
To: blaqlily@blaqlily.com  
Subject: Blaq Lily Fan Mail

Hi folks. I'm putting together a short video and wanted to ask for permission to use an excerpt from Sanctuary or one of your other tracks behind the visuals. The end result will be 3 minutes long, I can add whatever attribution is preferred, and if broadcast it will only be shown on local cable access channel(s).

Best regards  
- jim

### **A favorable response:**

From: "Michael K. Schwab"  
To: "Jim Youll"  
Subject: Re: Blaq Lily Fan Mail

Hi Jim  
No Problem with using Sanctuary. All we ask is mention in the credits and the info on the video such as the name, when it will be aired, what markets etc.  
Thanks for considering us!!  
Michael

Check us out and buy our CDs at <http://www.blaqlily.com>

## Other resources for information about copyright

### **lcweb.loc.gov/copyright**

The website of the US Copyright Office at the Library of Congress is the source of the official word on US copyright law.

### **www.bitlaw.com/copyright**

Good discussion of copyright law, with specific definitions and examples covering many facets of the law and public performance.

### **www.rightsforartists.com/copyright.html**

Information about copyright, by and for artists. The site contains far more information than in this document.

### **www.pdinfo.com**

This public service site discusses fair use, and has a list of public domain arrangements of public domain songs. This seems to be mostly for performers looking for royalty-free music to play, but it offers other information about public domain material.

### **www.mit.edu:8001/afs/athena.mit.edu/activity/e/e-club/WWW/3.html**

Good article about copyright.

### **fairuse.stanford.edu**

Credible and detailed information about the current state of “fair use.”

### **www.nyfairuse.org**

New York-based activist group working to protect fair use rights.

### **www.concentric.net/~Outlawyr/zoetrope/cover.html**

The cover song and compulsory license FAQ.

## Licensing agencies

The Harry Fox Agency	Mechanical rights and Synchronization rights	www.nmpa.org/hfa.html
ASCAP	Performance rights	www.ascap.com
BMI	Performance rights	www.bmi.com