



Digital Rights Toolkit



Sound Symphony, Oily Cart

The task of clearing digital rights can seem like a dark, swampy wasteland. What rights do you need to license for your digital project? How do you get them? Who are the rights holders involved? What are digital rights anyway? In this series of articles, we've tasked ourselves with lighting the way, hopefully showing how you can navigate the rights landscape and make your digital project a success.

Under all the legal jargon, there's a fundamental principle that underpins copyright law: that all creators of artistic works have the right to decide how, when and where their work is used and distributed.

So when you enter into negotiations with an artist to license their work, you're giving value to their craft and presenting it to an audience. If we can approach clearing digital rights from this perspective, it can become a positive process. After all, everyone around the table wants the same thing: to share great art with audiences and ensure that the creatives and artists who have created it are fairly rewarded.

But there are, undoubtedly, customs and processes around rights for digital projects that can be complicated to navigate. In this toolkit, we'll guide you through the rights-clearing process step by step, demystifying jargon, clarifying contract terms and helping you to avoid the pitfalls along way.

*Please note: this toolkit is aimed primarily at performing arts organisations. If you work in the museums, heritage or libraries sector, **this toolkit** published by the National Heritage Lottery Fund might help.*

Tundra, National Dance Company of Wales



Let's start...

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Part 01 The Basics

An introduction to copyright law and digital rights, who your rights holders are and what constitutes a licence.

Secret Summer, Stand and
Be Counted Theatre

What is copyright law?

The key law that covers artists' intellectual property (IP) and copyright in their work is the UK Copyright Designs and Patent Act 1988.

This act gives artists the right to control the use or distribution (whether commercial or non-commercial) of their work in the following categories:

- **literary work**
- **dramatic work**
- **musical work**
- **artistic work (including photographs)**
- **films**
- **sound recordings**
- **broadcasts**
- **typographical arrangement of published editions**

The law also protects the use of artists' IP in work that is digitally-native, or work created or recorded for online distribution.

This means that in order to use someone else's creative work or performance in your project or production - whether it's live or digital - you have to clear the rights, by which we mean obtain legal permission from the rights holder to use the work.



How do digital rights differ from live performance rights?

For live performances, there's already an established set of protocols, payment structures and collection mechanisms that producers can follow to clear the rights they need for a show, such as agreements with unions including Equity and the Musicians' Union around minimum rates of pay for performers, or the licensing system set up by the PRS for Music that enables public venues to play commercial music.

But – and here's where it starts to get sticky – agreements and licences you obtained for a live performance do not cover you to film or publish a digital copy of that work. As soon as you record the show, put it online or make some other form of digital copy of it, a whole new set of rights need to be cleared. This is due to the fact you have created a new product, which will be available to different audiences through a different medium – perhaps also taking the work to new territories too. You might have been meticulous over your clearances for the live show, but, sadly, you'll have to be meticulous all over again for its digital iteration.

Clearing digital rights is often a more complex process than that for live performance because there are few protocols, standards or minimum rates established for the digital landscape. Digital media is fast-moving, and the licensing world is struggling to catch up.

What is being done to streamline digital rights?

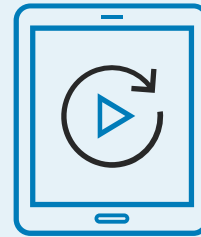
But there has been progress in the quest to make digital rights contracting more streamlined and straightforward. In 2017 The Space started consulting with talent unions, organisations and practitioners across the arts and culture sector and identified the need for common terminology. As a result, we published a new 'lexicon' for digital rights (agreed with the key talent unions), which you can [find here](#).

Since that time of course, the Covid-19 pandemic has had a huge impact on live performance, forcing artists, producers and venues to think quickly about delivering work digitally to retain their audiences and survive. Some projects and platforms were incredibly successful (and very creative), and audiences rapidly became more used to watching artists in the digital space.

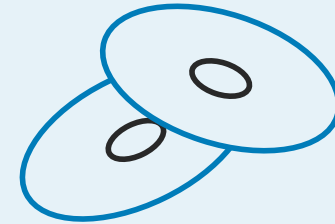
During the pandemic, digital rights took 'centre stage' in negotiations, and, with digital remaining an important output for many arts organisations post-Covid, discussions are now taking place to try to find a way forward on the issue of digital rights longer term.

What constitutes a digital copy?

In these pages, when we refer to digital content, we mean work that is distributed using these means:



Mobile Apps



CD/DVD



Online

Including but not exclusively:

- Promotional short-form and marketing content including trailers
- A live-stream
- A downloadable recording
- On-demand services



Who are the rights holders?

It's important to think in terms of who when clearing rights, rather than what – not only because it's the artist you'll need to contact to secure the licence, but also because there may be more than one artist behind a piece of work. For instance, a piece of music may be performed by one person, but composed by another, or several – so you'll need to secure licences from both the performer and the composer(s).

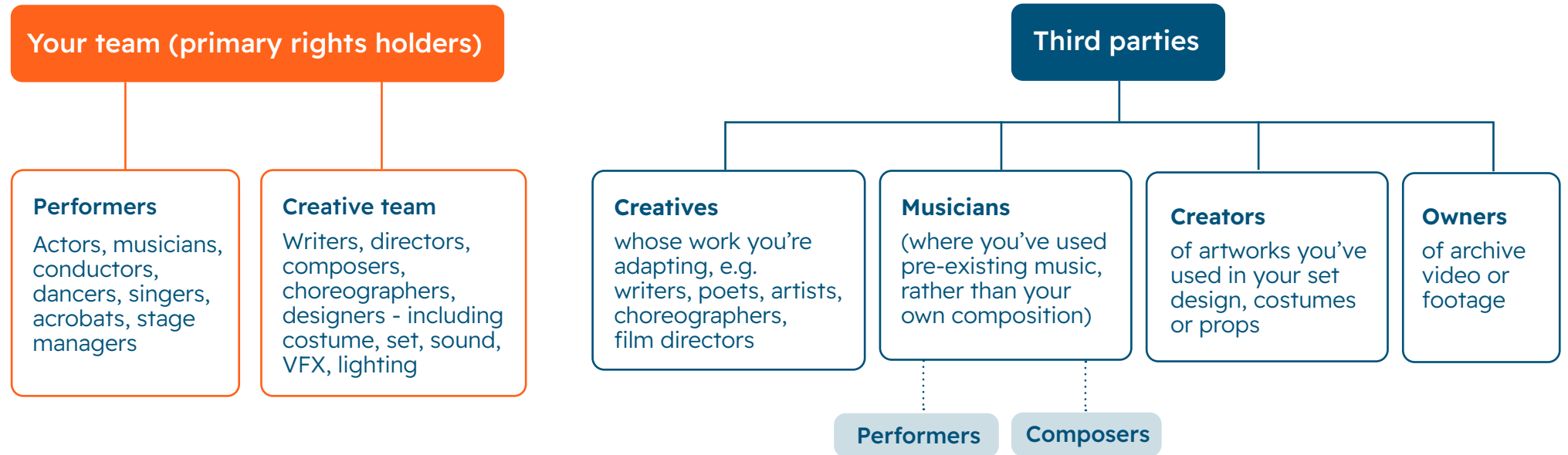
When tracing the rights holders for your project, a good place to start is to divide them into two branches – the primary rights holders (these are your team members, the people working with you directly on the production), and third parties (these are the creators of pre-existing work that you've used in your production – that can be anything from a logo on a t-shirt to a piece of archive film footage, along with any commercial music).

The diagram on the next page maps out potential rights holders within a production.

But a word of caution – sometimes rights holders are 'bundled' up together. For example, the rights in opera, ballet and musicals are often classed as 'Grand Rights', which bundles together the book/ libretto, music, choreography, set and costume design. We explain this more fully [in the music section](#).



Potential rights holders include:



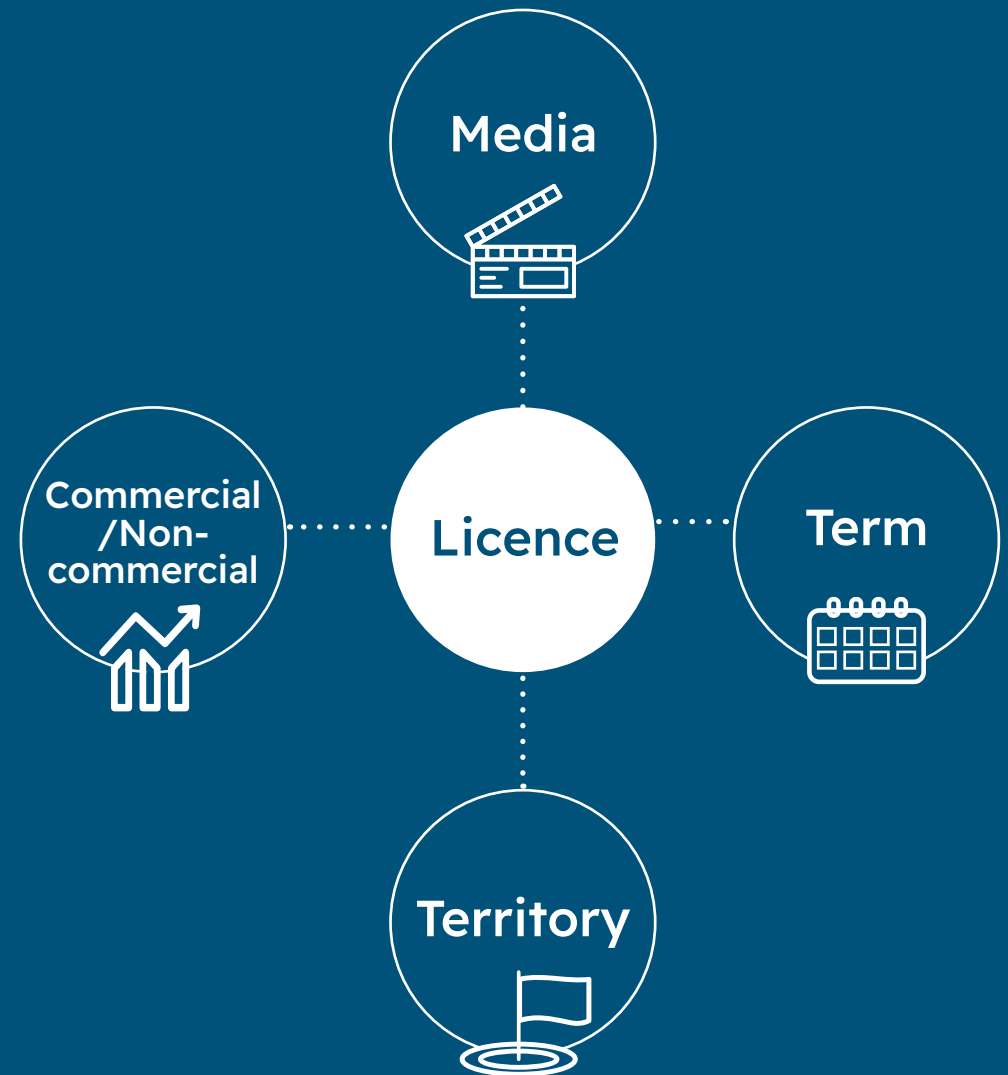
What makes a licence?

There are four fundamental elements that make up a licence:

- **Media:** the format you're using to distribute your content
- **Term:** the amount of time the content will be made available for
- **Territory:** the geographical region your content will be available to audiences in
- **Commercial/non-commercial:** whether you are aiming to generate revenue from the work or not.

Your decisions on these essential elements will influence your request and offer to your rights holders, so it's important that you're clear about the scope of your project from the outset of planning and completely transparent when drawing up the paperwork.

Read more about the contracting process in Part 2 below.



Part 02

The Process

A step-by-step guide to clearing digital rights, from making early decisions about your production to tracing the rights holders and drawing up the contracts.



Step 1:

Decide early on where and how you want to publish your content

It's essential to embed your thinking about digital rights into your project from the very beginning. Fundamental decisions about your project will influence the licence terms you want, and your plans may be limited by the licence terms you can get. Ideally, you want to avoid having to re-contract to buy extra rights further down the line. Be warned though – you might not be able to get everything you want and there are likely to be compromises along the way.

So what decisions do you need to make before you start contracting or 'clearing'? Referring back to the fundamental elements of a licence, you'll need to answer these questions about your project:



Media

How and where will you be distributing the work? What channels and platforms will the work appear on? E.g., terms could include 'all media', 'online', 'TV', 'theatrical' (cinema) or other.

Will you be streaming the content live or on-demand, or offering a downloadable recording (i.e., will the content be temporarily available, or permanent)?



Term

How long do you want to license the work for? Will a few months or a year be enough, or do you need longer?

Please be aware that, for certain types of artistic contribution, you may be restricted to a limited term aligned with the run of the live performance. The maximum duration – 'in perpetuity' – is also regarded as an inappropriate request by some rights holder groups.



Promotional use

Will the work be used to promote something? For example, will you be using the creative contribution in promotional activity, such as a trailer? If so, this can incur a separate fee if 'promotional use' was not part of your initial contracts. That's why everything has to be thought through at the beginning of your process, and spelt out to the creatives involved so they know how their work will be used.



Territory

Where will you be making the work available to audiences? In the UK and Europe, for instance, or worldwide? Please note that online distribution generally means a worldwide licence, unless you are geo-locking your content, which may be impossible on some publishing platforms.



Commercial/ Non-Commercial

Are you hoping/planning that the work will generate income for you or your company, or is it a free-to-view piece?

If you'll be generating income, what is the revenue model? Subscription? Advertisement-funded? Pay-to-view on an individual temporary basis, or permanent download copy?

It's worth adding that, if you want to avoid getting into all the gritty detail of these decisions, you could – budget permitting – ask for an 'all rights, all media buyout', which gives you blanket rights across the board and means you will then only have to agree the fee. Of course your rights holders may not grant this.



Top Tip

Allow more time than you think you will need for negotiating and clearing rights – build in time for things to go wrong, and have alternative choices if possible, in case a rights owner refuses permission or demands too much.

“Negotiating contracts with everyone from our cast to music publishers took a long time. There was a lot of to-ing and fro-ing and everyone had their own (different) set of questions along the way. If I was doing it again, I would start the process of clearing and licensing earlier and make everyone involved aware that it was going to take time to get everything ironed out.

In particular, get as much of a head start as you can on music, which is notoriously difficult to license. We had to substitute some pieces in Windrush that proved impossible to clear – in the end, we had to get some replacement library tracks and commission a composer who we often work with to reversion them into what we needed. This was only possible because we (just) had enough time, but it went all the way down to the wire.”

Mark Hollander

Former Executive Director, Phoenix Dance Theatre



Phoenix Dance Theatre’s Windrush: Movement of the People was broadcast on the BBC in February 2019 and subsequently made available on digital on-demand platform Marquee TV



Windrush: Movement of the People, Phoenix Dance Theatre

Step 2: Make a list of all the copyright holders whose work is in your project

With rights clearances, record-keeping is your friend. If you can be meticulous in keeping track of all the work that needs clearing, you'll save yourself headaches later on.

To draw up the list, **refer back to the diagram of rights holders** and go through your production with a fine-tooth comb to ensure you've tracked everyone's contributions to the piece.

If you are filming/recording/adapting an existing production for digital distribution, we suggest watching an archive or scratch recording (a video recording from a phone is fine) alongside a programme with the cast and creative team and making notes as you watch. Remember to note down any artwork included in the set, props or costumes that you see and any music you hear, for further investigation. If the show hasn't been created yet, walk through the script with your director, set, costume and sound designers.

Once you've got a list of the rights holders, it's time to enter into negotiations and draw up the contracts. This list and record of contracts and rights clearances should also be kept with the other digital assets connected with the production for future reference (and possible legal defence!).





Top Tip

Expect the unexpected and keep your options open

“All sorts of things can come up and change during the process of negotiations and production, so be prepared. Something is almost bound to catch you out at some point, and you will never be able to anticipate everything. Keep an eye out for pitfalls where you can – for example, have you checked in with your composer/set designer/writer that you have an accurate list of any third-party material that is in the finished piece.

Try to build some flexibility into your approach because your situation might change as the project develops. Therefore, try to construct things so you can adopt and adapt as necessary. Don't box yourself in so much that, if you find you have a hit on your hands, you can't extend or expand your screening scope.”

Anne Beresford

Independent producer working in film and television



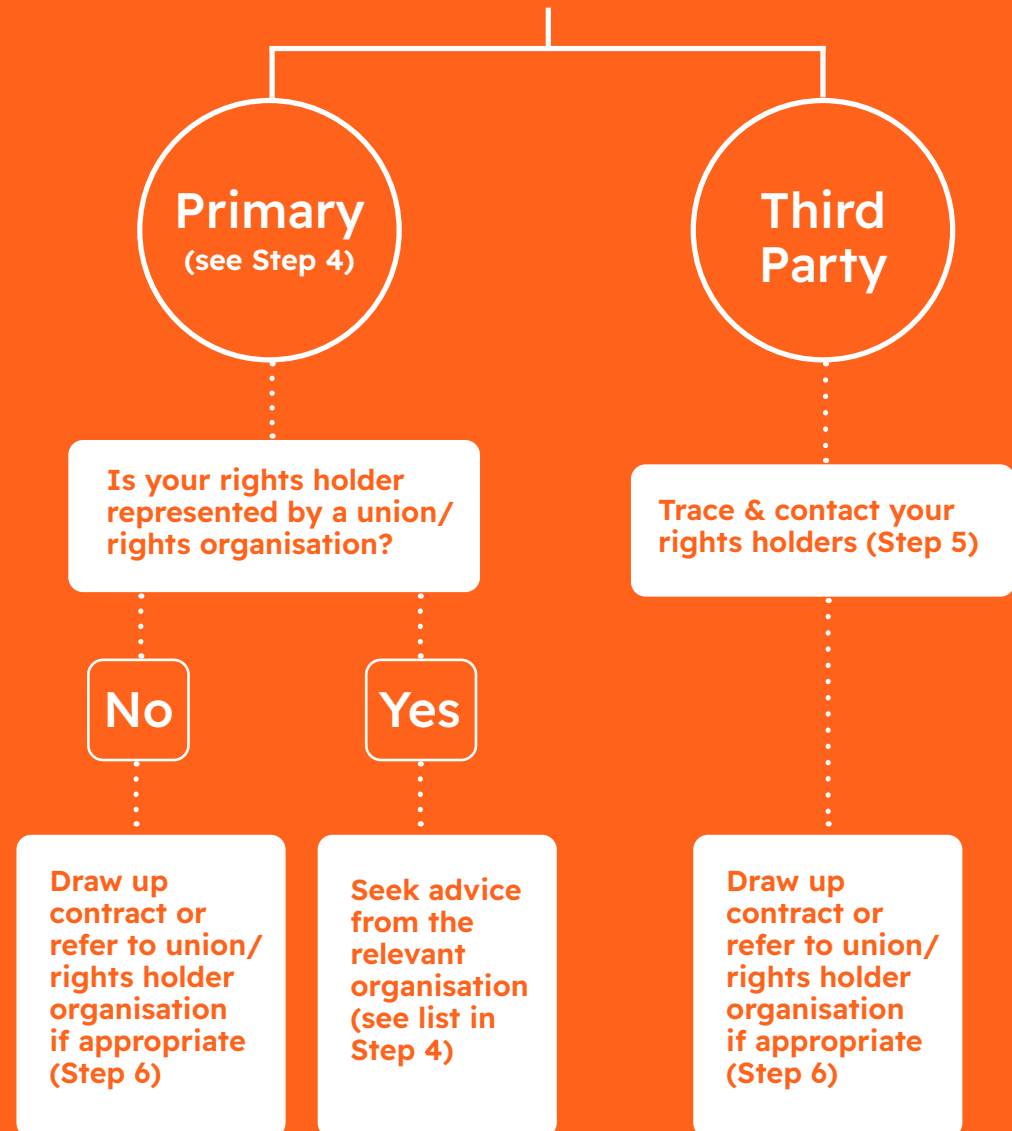
Anne Beresford is an independent producer working in film and television. She has a long track record of producing award-winning music and arts films. Stage-to-screen credits include Peter Grimes on Aldeburgh Beach, Maxine Peake as Hamlet, King Lear and The Railway Children. Other recent films include the deaf hip hop music drama Here/Not Here and the performance circus documentary Showwomen for The Space. She is currently completing the feature film Chuck Chuck Baby for BBC Film, BFI and Ffilm Cymru Wales.

Step 3: Navigating the rights holders tree

The way in which you approach your negotiations will vary depending on who the rights holder is, and what agreements or memberships they might already have in place. Before you start getting into the detail, have a look at the 'rights holders tree' on the right – this should give you a better idea of where to start, and what existing terms you might be able to work with.

If you're working on a medium-to-large-scale production it's quite probable that you'll encounter several of these scenarios, so use this tree to navigate through our pages and find the guidance appropriate to each situation.

Is your rights holder a member of your team (a primary rights holder) or a third party contributor?



Step 4: Drawing up the contract with primary rights holders

The first question you need to consider when entering into negotiations with your primary rights holders – those who are contributing directly to your production – is whether or not they're represented by a union or rights organisation. In this instance, you can approach the relevant union or rights organisation and ask for their advice on how to draw up the contract and guidance on terms. Some relevant unions and rights organisations are listed at the bottom of this page.

Sometimes an organisation may be able to agree collective terms on behalf of its members. This means they set the minimum working standards and rates, but you will still then have to negotiate the scale of rates that relate to your specific production. How prominently a performer features in a show, for instance, will lead to differences in fees, and a really high-profile artist might have their own agent who you'll need to negotiate with separately.

If there are no existing agreements in place, you'll need to draw up your own terms. **See Step 6** for our guidance on this stage, which applies to both primary and third-party rights holders.

Talent Unions, Collecting Societies and Trade bodies representing rights holders include:

Performers: Equity
equity.org.uk

Script Writers: Writers' Guild of Great Britain
writersguild.org.uk

Musicians' performance: Musicians' Union
musiciansunion.org.uk

PMA creative artists: set designers, costume designers, choreographers, lighting directors, sound designers
www.thepma.com

Stage Directors UK: directors, choreographers and movement directors
stagedirectorsuk.com





Top Tips

Talk to people

“Emails have a place, but not always for negotiations. You can often much better judge how the other side feels and their negotiating position if you talk to them – so pick up the phone or meet face-to-face and then follow up with an email to confirm the detail.

During these conversations, think about what you can more easily identify and potentially offer which matters to the person on the other side of the table.”

Anne Beresford

Independent producer working in film and television



Frankenstein, How to Make a Monster,
Battersea Arts Centre Beatbox Academy



Get the expert advice you need

“If this is your first experience of capturing work for TV/ cinema/online, be aware that often you don’t know what you don’t know until a specialist flags it up to you.

It can be bewildering at first – for me, just trying to work out and understand the differences between the contracts sent to me by the various agents and companies alone was challenging. The help that we were given by The Space was enormously helpful and I would strongly advise companies that are in our position to seek help.”

Mark Hollander

Former Executive Director, Phoenix Dance Theatre

Step 6: Drawing up the contract and setting your terms

If you've identified your rights holders and found there are no existing framework agreements nor talent union / rights organisation to work with, then it's time to start negotiating your own terms. There are currently no set fees for digital rights, so you will enter a negotiations process, involving open conversations with your rights holders and compromises. It can also be useful to seek advice from other producers who have cleared digital rights for a similar project, in order to gain a sense of the going rates and benchmark your offer accordingly.



1.

Decide your desired licence terms

Refer back to **Step 1** and decide the licence terms you are seeking. Ensure you are crystal clear about these terms in your negotiations and your paperwork.

2.

Do your research on costs

Be aware that some rights clearances are much more expensive than others. Third party music and archive film footage, for instance, can amount to hundreds – or even thousands – of pounds per minute. It's good to research these as early as possible to ensure you have the budget, and be open to alternatives if you find that funds are lacking. There is, however, always room to negotiate, so don't be shy to ask.

As above, seeking advice from other producers working on similar digital projects may help you to benchmark your fees, particularly those for your primary rights holders.

3.

Familiarise yourself with contractual language

In order to establish a common language that can be used across the digital rights clearance process and help clarify terms, The Space have drawn up a '**Lexicon**' which includes some example contractual wording that you can use when drawing up your contracts. Please feel free to refer to and use this if you're unsure about terminology or wording in your contracts.

4.

Decide what terms to offer your contributors

If appropriate, one option you could consider is offering the same terms and fees to all your contributors. This means everyone is treated equally, and has the added benefit of saving you a lot of time in negotiations. You might use a 'Most Favoured Nations' agreement, where everyone receives the same fee and if one person is later offered more favourable terms, every other contributor must be offered the same. If you use this, just be sure you don't want to buy any 'star' talent later down the line!

5.

Decide whether you want promotional usage

Bear in mind that if you want to use a contribution (either primary or third-party rights holders) for promotional purposes – for instance, a trailer or social media clip from your marketing team – then you’ll need to specify permission for promotional usage in your terms. This can make clearances more expensive, especially for music if you are asking for ‘non sync promotional use’, where music is taken out of the context it was initially written for and used as, say, the track for a trailer. Also be clear if you are requesting additional non-commercial uses, such as educational rights.

6.

Keep track of licence expiry dates

Once you have agreed the licence period or term of your clearances, make sure these are recorded on your clearance records, diarise when they expire, and make an organisational plan for taking the content down. Once the term expires, you no longer have the rights to distribute the content so you must take it down or you will be in breach of your contract. If that is in 5 or 10 years from now, you may not remember or indeed may have left your current role, so make sure there is a reminder system in place.

7.

Keep track of royalty payments

If you agree to share commercial revenue with a rights holder(s) – often called royalty payments – then you need to ensure that you have the administration set up to honour that commitment. Sometimes this can get very complex as there are many factors to consider, such as:

- whether the share is based on gross or net revenue, or other metrics
- what deductions are made by the producer before payments go out to a rights owner or contributor
- if you have a royalty pool, deciding what share every IP holder has (normally a share of ‘points’)

Royalty shares are a very fair way of recompensing artists in the success of a production, but they need managing carefully and have the down-side of being administratively burdensome.





Top Tips

Do your homework on costs

“There can be an assumption by creatives that broadcasting means money. This is often not the case, and it’s important you are clear about this upfront.

You need to check what your financial obligations are to your cast and creative team. Depending how the filmed piece is commissioned or funded, there are different requirements and it may also depend what union contracts (or not) your cast and creative team are on. These factors will determine whether you have a financial obligation to the cast and creatives in order to film the piece.

At Phoenix Dance Theatre, because of the salaried and non-unionised nature of our contracts, we did not have a financial obligation. Nevertheless, we wanted and did make a payment to the cast and creative team as a goodwill gesture and came to an understanding that if the filmed version resulted in a substantial financial income (above and beyond its own costs) we would re-negotiate with the cast and creative team. This arrangement was a mutually agreeable approach to managing and affording the licensing and to get the project moving.”

Mark Hollander

Former Executive Director, Phoenix Dance Theatre





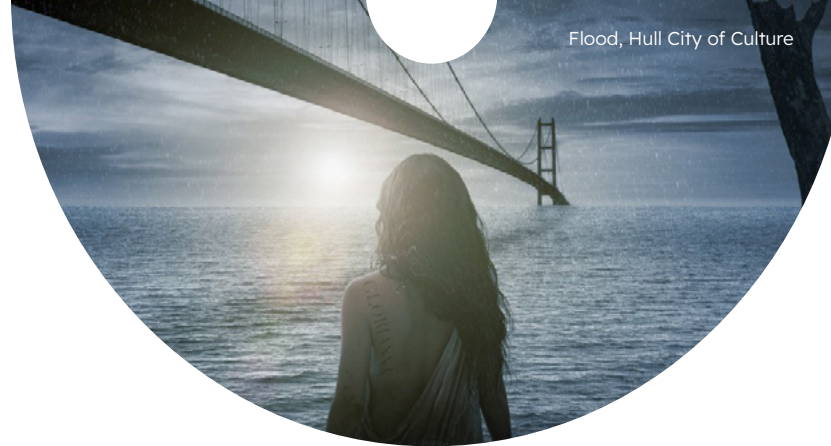
Top Tips

Keep it real and consider compromising

“In negotiations, people can become locked into disagreements about what are – in reality – small points. For example, a percentage point or two might be the equivalent of a lot of money for one production, but a tiny amount for another. Keep a sense of what things mean in real terms and, during negotiations, work out how close the parties really are and what compromises can be made to get the project over the finishing line.”

Anne Beresford

Independent producer working in film and television



Part 03 The World of Music Rights

In-depth advice from a music industry professional on securing music rights – the most complex of all the digital rights clearances.



Clearing the digital rights to music is notoriously tricky, and one of the most common stumbling blocks on the way to a successful production launch.

Music Supervisor Alex Hancock talks us through exactly what makes them so devilishly complex, explains the best way to secure the music you want, and shares his top tips for avoiding the pitfalls.



Why is securing the digital rights to music so complex?

Music is different to most other art forms in that one piece of music can contain many different rights.

For example, there are two principal sets of rights you need to secure for each recorded music track:

The publishing rights:

these rights belong to the person or people who wrote the song. That includes both the lyrics and melody. A good way to picture these rights is in terms of sheet music: this is how music was written and passed on for over a thousand years, and the same principle applies today – whoever arranged those chords and wrote the accompanying lyrics owns the rights to those pages of music.

The recording rights:

these rights belong to the person or group who performed and recorded the song. Please note if a performer or musician creates their own recording of a song, you do not need to secure the recording rights from the record label.

In some cases, a musician might have written and recorded the song entirely by themselves, which makes things much simpler. But sadly that's rarely the case! A classic example of where the rights diverge is Whitney Houston's ballad 'I Will Always Love You'. The song was written by Dolly Parton, so in order to secure the publishing rights, you would have to approach Dolly Parton's publisher. But in order to secure the recording rights, you would need to approach Whitney Houston's record label.

There is also the added complexity that very often music is written by more than one person. In some cases – particularly with pop music – there might be up to ten writers on one song. A few might have written the chorus together, one the bridge and others the lyrics – and you have to clear the rights with every single writer. This is why there is such high potential for the process to fall down: it only takes one person in that chain to turn down your offer, or not reply, for the whole thing to grind to a halt. Even if nine out of ten have given their approval, you still need that tenth writer to come on board.

Finally, there can be a third set of rights to consider: the musicians' unions rights. These generally only apply to American music, and luckily you don't have to seek them out separately. But the record label might be obliged to pass on some of their fee to the recording musicians who played on the song. In these instances, you can expect the record label to add something like 3-5% on top of the fee in order to cover this. Please note a PRS licence for playing commercial music in a venue does not give you permission to use that music in a digital recording of a live production or show. Each track must be fully and properly cleared separately to be included in your digital asset.

What are 'small' and 'grand' rights?

The above relates to recordings of commercial music that you used in live performance which are then recorded and distributed online.

Other music rights may apply depending on what type of artform and production you are recording or adapting for digital distribution. These include 'small rights' – a bundle of music rights in concert performances – and 'grand rights' – a bundle of music rights that apply to operas, operettas, musicals, revues, pantomimes and ballet productions or what are broadly called 'dramatico-musical performances' and have been created by more than one person, ie composer, choreographer, dramaturg etc **(more information is available here)**.

Grand rights are usually licensed directly through the rights owner (usually the publisher), although PRS for Music do license in certain instances. Small rights can be licensed through PRS for Music.

Further music rights include synch and print rights and there is a helpful table of the rights you may need to clear here.

As you can tell, music gets very complicated very quickly. It is often worth bringing in a specialist music supervisor on music clearances who is experienced with the rights and clearance processes required.



What's the best process for securing the rights for a commercial track?

The first step is to trace the rights holders. This can be quite easy, as there are two databases you can search:

The PRS database for the publishing rights

www.prsformusic.com

You need to request a login for this so allow time to be set up

The PPL database for the recording rights

www.ppluk.com

No login needed.

Occasionally, especially for older music, there might be some instances where it isn't so clear who owns the rights. In these cases, you have to do some detective work and search out the artist's relatives or estate – sometimes it comes down to searching for people on social media!

Once you've got a list of the people you need to contact, it's a simple 'copy-and-paste email' job. Write an email that tells the recipients a little about your production, the clearance terms you need, explains why you want to use the song, and what fee you can offer. The fee you can offer often comes down to what you have in your budget, but bear in mind that the lower the fee, the lower down the priority list your request will come and the slower the process will be.

This is where a well-crafted email comes in. If you're able to express why the song is important to the production and why you've connected with it so strongly, then the rights holder is more likely to grant you permission on a 'for-the-love-of-it' basis. Ultimately the artist will probably have poured love into that song, so if you're able to connect with that passion and the song's underlying meaning, you might place yourself on a better footing.



How can I avoid the pitfalls?

You've probably realised by now that there are several areas where this process can get snarled up! But luckily there are also several ways to make things simpler and less stressful:

1

The most important thing is to allow yourself **plenty of time** to clear the music rights. I always advise three months per track as an absolute minimum, and six months as an ideal.

2

It's absolutely essential have some **back up options**. You have to think to yourself: what happens if I can't get the rights to this piece of music I want? It's good to have another couple of tracks up your sleeve that could work just as well. And remember – if the first track doesn't come through, you'll have to go through the clearance process all over again with the second track, so that's where allowing plenty of time comes in!

3

Another great tip, especially if you're using classical music, is to **buy library music** – also called production music. These recordings are often really good quality, and there's a set fee to buy them and to buy a lot of rights at the same time. It's all very simple and straightforward and could save you a lot of time.

4

Be wary of using music in the public domain. Technically, publishing rights pass into the public domain 70 years after the last writer's death, and recording rights 70 years after release. But many organisations don't trust public domain – film distributors, for instance, are very wary. It's all too easy for someone to claim it's a public domain recording from 1930, but in reality they've accidentally used a re-mastered version that was recorded in 2015 – or ripped it from YouTube, in which case it isn't theirs to use. Even if you have managed to find a genuine public domain recording, the algorithms that trawl the internet for copyright infringements don't read recording dates, and therefore can't recognise public domain recordings. That means your recording could be taken down, even if it's free to use.

5

Don't mistake a PRS licence for a digital licence. It might sound obvious, but this often catches people out. A live venue can be covered by an all-encompassing PRS licence, which gives you the rights to perform any song you want to a live audience. But as soon as you record that performance or create a digital version, you need to clear the rights separately through the process outlined above. So it's worth bearing in mind from the beginning that if your performance features a smash hit by Queen, you'll have to spend a lot of money to buy the rights to it, if you want to release a recording of your show.

All in all, clearing music rights is undoubtedly a complex process, but there are ways to make it work for you.

Just remember these three top tips:

1. Allow plenty of time
2. Have a plan B
3. ...and a plan C!





Conclusion

Clearing digital rights is an exercise that suits the swot in all of us – if you can be meticulous with your record-keeping, organised with your time and clear about your aims, you can tick it off like any other production task. Having said that, there are bound to be little obstacles and surprises that demand a bit of flexibility and on-the-hoof thinking. But isn't that all part of the fun? If you bear in mind your reasons for wanting the rights in the first place – to reward the artist and create your own brilliant piece of work out of it – then the process can become a pleasure rather than a chore.

Appendix

The Space has been consulting with arts organisations and practitioners across the arts and cultural sector since late 2017 around the area of digital rights. The desire to offer audiences greater digital and online access to their work, and an increased focus on digital audience development from UK public funders to increase both engagement and reach, led to the identification of two clear needs from the sector:

- a greater understanding of intellectual property rights when seeking to publish creative work digitally, and
- simplification and clarity around terminology and the different uses on digital platforms: to make contracting contributors, creators and existing copyright holders easier.

Through negotiations with rights representatives and talent unions led by The Space and digital rights expert Ben Green, it was agreed that a sensible starting point would be to set out some common terminology and example definitions, or a 'lexicon' of different digital uses and rights, which has now been signed off by all of the major rights holders and which we are publishing here. We hope you find it useful.

It is important to stress that the intention of this terminology is not to undermine the current rights framework or Union agreements where digital use rights are already in place. Rather, it is to hopefully complement them, by identifying the primary online uses and rights increasingly required by cultural organisations and developing some common language around them, which may be referred to and/or negotiated where not already covered under existing agreements.

Note: This guidance is for general advice only, correct at the time of publication (April 2023). It does not constitute or should be read or interpreted as legal advice. For detailed contractual matters please seek advice from an experienced digital media lawyer or your representative trade body or union if you are a member.

‘Live Streaming’ or ‘Simultaneous Streaming’



What does this mean?

An audio/audio-visual recording and stream of (e.g.) a live performance, interpretation or event.

(This may be either ‘simultaneous’ as it happens, or ‘near-simultaneous’ to allow for a brief time delay in case of disturbance or compliance issues e.g. offensive language, or unexpected event taking place).

‘Exemplar’ contractual wording

“The act of recording and transferring the live performance and/or event containing the contribution (‘the Work’) as an apparently steady and continuous stream of data to the user without a permanent copy of the material being made, provided always that such streaming shall:

- (i) be simultaneous (or near-simultaneous) with the live event as it occurs;
- (ii) be streamed in the same language as the Work has initially been performed or delivered in;
- (iii) not permit downloading for the viewer to retain and/or store the Work permanently.”

‘On demand access’



What does this mean?

Digital access by the user of the recording at a time and place of their choosing, where there is no transfer of a permanent copy of the Work to the user’s local storage / playback device.

Access to the work may be given by the owner to the user free of charge, with or without the inclusion of adverts (which may generate revenue for the owner), or the user may be required to pay for access, via a service subscription and/or a pay-per-view charge.

N.B. ‘Commercial On demand’ rights are subject to separate negotiation and agreement with the rights owner (or may be covered under existing framework terms).

The cultural organisation publishing the work may wish to seek an additional period(s) of on-demand availability after the initial licence period (for example, to celebrate a future anniversary, or archive access purposes), subject to negotiation with the contributor(s).

‘Exemplar’ contractual wording

“The act of making the Work available on demand for private, personal viewing, where:

- (i) delivery of the content follows an individual request, whether free or paid for, by an individual person, such request being at a time determined by each such individual, independently of any other person, including interactivity with the Work by or with the said person in relation to the audio/ audiovisual on demand material only for sequential access (for the avoidance of doubt this does not include interactivity by the user where the narrative structure may be altered – see ‘Interactive’;
- (ii) there is no transfer of a permanent copy of the Work to the user’s local storage / playback device.
- (iii) Agreement has been reached with all rights holders in the work on the terms under which the work is made available, including period, territory and financial remuneration, if applicable.

‘Distribution/Delivery’



What does this mean?

To deliver and distribute the Work via any form of digital delivery, so whether via cable or wireless distribution (including the internet, mobile, cable, virtual augmented or mixed/ enhanced reality), on digital platforms or devices however it may be delivered.

‘Exemplar’ contractual wording

“The act of delivering distributing and making available the Work via any means including but not limited to the internet, cable, wire, fibre, satellite and/or wireless, in actual virtual augmented mixed or enhanced reality; and (i) delivery is to any form of reception device or platform capable of receiving the content; and (ii) playback is via any means, whether integral to the reception device or otherwise capable of being connected thereto, or where a copy is made and transferred to another device to allow playback independently from the reception device either via a direct (wired or wireless) connection between devices or via any form of external storage including but not limited to memory cards or chips.”

‘Download’



What does this mean?

Digital transfer of a copy of the work to the user’s own storage / playback device from where they are able to access it locally at-will without further reference to the service from which the work was transferred.

The work may be made available to download by the user free of charge, via a paid-for subscription service or on a pay-per-download basis, and may be permanent or temporary.

‘Exemplar’ contractual wording

The act of transferring a copy of the Work to the user’s local storage / playback device, for private, personal viewing, where:

- (i) the user can access the Work from their local storage / playback device as and when required within the term, without further reference to the originating source
- (ii) Agreement has been reached with all rights holders in the work on the terms under which the work is made available, including period, territory and financial remuneration, if applicable.

‘Interactive’



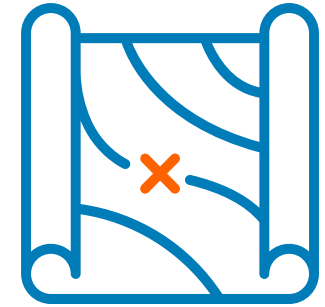
What does this mean?

An ability by the user or audience to interact with the recording (for example, for them to make interactive choices to enable a different narrative storyline(s), interact with characters, or explore additional or background information)

‘Exemplar’ contractual wording

“Use of the Work, in whole or in part, by all means and in all media (including but not limited to CD-ROM, CD-I, discs, cassettes, wired or wireless systems and delivery platforms, and any other media or interface between the end user or audience and the medium capable of carrying analogue and/or digital information) for either simultaneous or non-simultaneous use by means of playback systems or devices which respond to the user’s actions to enable that user to select elements of the Work, singly or in combination, to interactively respond to and engage with actions and changes taking place within or around the Work provided always that the user is not able to distort mutilate or treat in a derogatory manner the contributor’s original work.”

‘Territory’



What does this mean?

The geographical area where the Work is distributed.

N.B. Recognising that the internet is a global platform, unless there are specific restrictions identified by the contributor / rights holder upfront, the territory licensed for online distribution should, ideally, be for World.

There is also the additional practical and cost point that, if restricted to UK only, technical provisions will need to be implemented by the cultural organisation publishing the work to limit such territory through Geo-IP blocking or similar.

‘Exemplar’ contractual wording

This will be subject to separate negotiation and agreement with the rights owner (or may be covered under existing framework terms).

(e.g. “Use of the Work throughout the [Universe/ World / UK]”)

‘Promotional Extracts’



What does this mean?

Use by the producer of brief extracts of the Work featuring the contribution for promotional and publicity purposes, including so-called ‘EPK’s’ (Electronic Press Kits).

N.B. If practicable, and at their sole discretion cultural organisation may permit the performer or contributor to use such extract(s) for their own promotional purposes (e.g. a showreel, or their own You Tube page), in which case the performer or contributor will be responsible for clearance of other rights owners contained within the extract.

‘Exemplar’ contractual wording

Limited amounts of the overall work, used for promotional and historical record keeping purposes. Rights, Term, Territory & Fees subject to agreement (or may be covered under existing framework terms).

(e.g. “The act of using a limited amount of the Work (amount tbc) to promote the Work only and for historical record purposes across all media.”)



Edited by Rachel Broomhead

The Space is a commissioning and development organisation, established by Arts Council England and the BBC to support greater digital access to the arts. The Space is committed to supporting and facilitating the UK arts sector to realise its digital ambitions.

The organisation commissions arts projects, offers online audience and digital skills development, and provides a production and distribution pipeline to ensure that these projects reach a wide and diverse range of audiences.

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