

The Ultimate Cookbook

FOR CULTURAL MANAGERS

INFOGRAPHIC
VERSION

COPYRIGHT CLEARING IN AN INTERNATIONAL CONTEXT

This infographic is based on The Ultimate Cookbook for cultural managers: Copyright clearing for live events (March 2021) and Connecting the EU Digital Strategy with live performance organisations (Dec 2023)



1

What's the basic information I should remember *when clearing rights for live performance?*

COPYRIGHT is still mainly a matter of national law!

However it is based on international treaties, European directives and regulations, European court of justice rulings

Remember!
Rules may vary from country to country



Rights!

COPYRIGHTS

Granted to authors of music, theatre, dance, opera, film, etc.

NEIGHBOURING RIGHTS

Granted to performing artists, musicians, producers of films or phonograms, publishers, broadcasters, etc.

Remark
The rights have no priority one over the other

OTHER RIGHTS to be cleared as well, such as:

- Image rights of the performer
- Right to use name and bio data of performer or author
- Rights on printing images and info in programmes and adverts

2

What kind of protection *has a right holder or right owner?*

REPRODUCTION RIGHT

All kinds of dissemination on physical support

RIGHT OF COMMUNICATION TO THE PUBLIC

(*making available right*)
dissemination other than via material support, such as broadcasting or streaming

ROYALTIES



ROYALTIES FOR REPRODUCTION are referred to as mechanical right

ROYALTIES FOR COMMUNICATION to the public are referred to as performance right

What are royalties?

The right to **authorize** results in a **license** of the use of the works/performances/recordings happens through payment of dues or **royalties**.

Can be basis of discussions

Moral rights or paternity/ personality rights allow the author/heirs to oppose modification of a work (right of integrity)

Advise: negotiate beforehand on modification of the work

3

What are the basic rules

for clearing rights of a live performance?

RULES

1 RIGHTS have to be cleared

- If nobody does, the venue/ festival will be liable to the rights owners
- It is advised to: consider whether and when to include guarantee clauses in the agreement between the organiser and production company

2 ALL rights have to be cleared

- It is advised to:
 - ✓ List all creative input used
 - ✓ Ask for a chain of title
 - ✓ Check presence of guarantee clauses in agreements with production companies

Remember under national law specific rules may exist

IN PRACTICE

TIPS / CHECK LIST

TOURING COMPANIES

- Communicate with venue/organiser and agree who is in charge of copyright clearance
- Obtain the copyright licenses before the start of the production
- Negotiate directly with author/composer of high profile and ask them to mediate with their CMO
- Look at the territory where you will tour (do not ask for worldwide rights if only touring to a few countries)
- Negotiating a lump sum can help to avoid burdensome administration

RECORDED MUSIC

- Clear copyright with publisher and CMO
- Clear neighbouring right with record company (master owner)
- Check if synchronisation (and reproduction) rights have to be cleared
- Check to clear performing rights

General principle (Directive on CMOs)

CMOs must offer users fair and equal financial terms and conditions

There are **two types** of organisations/people who should give authorization

COLLECTING MANAGEMENT ORGANISATIONS (CMOs) OR COLLECTING SOCIETIES

- CMOs manage as a 'union' one specific type of right owner
- CMOs manage both reproduction right and right of communication to public
- CMOs collect the levies and others in case of compulsory licensing. The tariffs are often non-negotiable.
- CMOs are mainly active in 1 country and have reciprocity agreements with sister CMOs (territoriality principle)

3 All rights have to be cleared IN ADVANCE

It is advised to: do so well enough in advance and not just before a performance

VENUE / ORGANISER / FESTIVAL

- Check different types of exploitation during performance (recording, broadcasting, etc)
- Include those in agreement with production company, i.e. co-contractor

STREAMING OF PERFORMANCE

- Think about an extended budget
- Split the different parts of copyright fees: for music, text, choreography, etc and different rightholders
- Use a same basis of calculation for each share of rights depending on importance and duration
- Make a time schedule to plan ahead the clearance process and whom to negotiate with
- Know the repertoire and copyrighted material and who to contact: publisher, licensing hub, CMO

4

Who has to give clearance of the use of the rights related to a performance?

RIGHTS OWNERS

COPYRIGHTS

- **AUTHOR**: the physical person who created a copyrighted work (writer, composer) or has some creative input in a work (choreographer, set designer, stage director, ...)

NEIGHBOURING RIGHTS

- **PRODUCER**: is the person who takes the economic risk for the production (phonograms, first prints, films)

Comment: a producer in live performance making a recording for online exploitation can join a CMO of AV producers to be able to claim levies

- **PERFORMING ARTISTS**: actors, singers, musicians, dancers and others

Comment: depending on national law the director of the company may speak for the members of the group

5

What are the essentials to know regarding royalty calculation in copyright clearance?

2 MAIN SCENARIOS

CONSIDERATIONS

on royalty calculations for online and streaming of performances

! Points of attention:

- **Technical possibility to restrict** to a specific audience or territory
- **Worldwide exploitation:** royalties can be high (better per group of territories)
- **Producer gets a lump sum** or share of income from the platform in charge of the exploitation depending on type of exploitation

Scenario 1 = THE PRINCIPLE *A share in the income*

- ✓ Minimum guarantee is foreseen
- ✓ Share is calculated on gross income from box office (eventually others)
- ✓ Reduction for specific types of live performance (e.g. education purpose, non-prof events, classical music, ...)
- ✓ Share may vary on size of event and depending on the country

Scenario 2 = THE EXCEPTION *lump sums*

- ✓ Saves administrative work
 - ✓ Allows to have an accurate budget (versus variable based on share in income)
- Comment:* for dramatic productions grand rights are usually negotiable

6

What provisions to take into considerations in clearance contracts with a right holder?

To summarize...

TRANSFER OF RIGHT CLAUSE

To obtain the right to use a work (i.e. a license) for each nature and for each type of right and its purpose :

- **Nature of the rights :** copyright, neighbouring rights, others (image, right to use the name, right to use personal data)
- **Type of rights :** Adaptation rights, translation rights, synchronisation rights, performance rights, reproduction rights, distribution rights, publicity rights, merchandising rights, further exploitation rights

WARRANTY CLAUSE

To allow settle a case in the best mutual interest of the parties and cover all possible damages

REMUNERATION CLAUSE

To describe per form of exploitation the type of remuneration (i.e. share of income or lump sum)

Remark: consider to include tax issues to avoid misunderstanding afterwards

POINT OF ATTENTION!

AGREEMENTS WITH PERFORMERS to include provisions on:

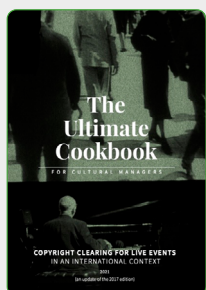
- ✓ Exclusivity clause
- ✓ Possibility if revocation
- ✓ Moral rights
- ✓ Use of bio data
- ✓ Use of image
- ✓ Provisions on rehearsals
- ✓ Provisions on social security and tax regime
- ✓ Provisions on rights

TERM CLAUSE

To define the period of time of the license

TERMINATION CLAUSE

To define grounds for termination



For further information read

The Ultimate Cookbook for Cultural Managers:

[Copyright clearing for live events in an international context – March 2021](#)

[Connecting the EU Digital Strategy with live performance organisations – December 2023](#)

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