

Is That Right, Aye?

Inner Ear's Guide To Dealing With Rights In Live Programme Making



This is an extract from my forthcoming book, *This Is What Streams Are Made Of*, a comprehensive guide to live stream mastery; a practical, theoretical and innovative approach to live programme making.

By Dougal Perman

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Rights matter. You need to have permission to include any element with protected rights in your live stream. This includes copyrighted material (audio, video, text, image), people, performances and sometimes places too. It's important to know what you need to know. And it's easy to get lost in the complexities of clearance. In this section we'll take you through the main points to help you navigate the world of media rights. We are not legal experts and this does not constitute legal advice, so if in any doubt, we highly recommend consulting a good lawyer.

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Contracting

Why do you need a contract? You don't always need one, of course, and often work relationships are fine. But, and this is an important but, as an old colleague from when I was on the advisory board of Co-operative Development Scotland once told me, "it's always alright, until it isnae!" And if things do go awry, having a straightforward contract to fall back on provides security for both parties.

In best practice, you should have contracts with clients, cast, crew — everyone with whom you engage professionally. Sometimes those arrangements can be simple, set out in emails (to provide a digital paper trail of what was agreed). But creating more formal contracts is a good idea to frame professional collaboration properly. So, how do you do it, and what should you include?

Key Considerations

- Roles and Responsibilities:
 - Identify the key roles and responsibilities within your live streaming project.
 - Who will be involved, on and off-screen?
 - Define the expectations and contributions of each team member.
- Contracting Scope:
 - Determine the scope of work (milestones, reports, deliverables, and end products) that requires a contract.
 - This may include on-screen talent, production crew, collaborators, or any third-party services.
 - Contracts should encompass all aspects of the collaboration.

You don't need to labour the point, but you do want to include all the important points and set them out clearly.

Preparing The Contract

Have considered the key points, you now want to include them in the contract.

- Well-defined Expectations:
 - Clearly outline the expectations, deliverables, and timelines in the contract. This provides a reference point for all parties involved and minimises misunderstandings.

- **Compensation Structure:**
 - Specify the compensation structure, whether it's a flat fee, hourly rate, overtime or other arrangements.
 - Define payment terms, including any advances or milestones.
- **Rights and Usage:**
 - Address rights and usage permissions.
 - Clarify who retains the rights to the produced content and how it can be used after the live stream. This is crucial for avoiding disputes later on.
- **Termination Clause:**
 - Include a termination clause outlining conditions under which either party can terminate the contract. This provides a safety net in case unforeseen issues arise.
 - Include a cancellation fee with a sliding scale depending on when the project is cancelled. For example, if a client or stakeholder pulls a project two days before the start date, then they may be liable to pay the full price of the contract because the crew and equipment have been booked, and it is probably too late to find alternative work.

Templates and Resources:

- **Online Contract Platforms:**
 - Explore online contract platforms that offer customizable templates.
 - Platforms like DocuSign, HelloSign, or even Google Docs can provide efficient solutions for creating and managing contracts.
- **Open-Source Contract Templates:**
 - Search for open-source contract templates tailored for the live streaming, media, marketing, events, etc.
 - Online communities or legal resource websites may offer templates that can be adapted to your specific needs.
- **Legal Assistance:**
 - Consider seeking legal advice, especially for more complex contracts. We highly recommend doing this.
 - Legal professionals can ensure your contracts adhere to relevant regulations, cover all necessary aspects and don't leave you exposed.

I'm pretty good at writing contracts but when I have to modify an agreement, I get a lawyer to check my wording to make sure it's clear and avoids ambiguity.

For in ambiguity, the loopholes lie.

Communication and Transparency

- Regular Communication:
 - Foster regular communication with all parties involved. Keeping everyone informed and aligned throughout the project reduces the likelihood of misunderstandings.
- Transparency in Changes:
 - If there are changes or amendments to the contract during the project, communicate these changes transparently and seek mutual agreement. This promotes a collaborative and positive working relationship.

Creating effective contracts involves meticulous attention to detail and open communication. By clearly defining roles, responsibilities, compensation and usage rights, you establish a foundation for successful collaboration in live streaming projects. Utilise available tools and resources to streamline the contracting process while ensuring legal clarity and transparency.

Again, this does not constitute legal advice. So do seek professional legal advice to make sure you are properly prepared. But I hope that offering our advice here is a useful frame of reference for you. Essentially, a contract is a record of an agreement. It's a form of communication. The better you communicate with everyone involved in a project, the stronger your relationship will be.

I've long thought that ill communication is the root of most of people's problems. And I mean "ill" like a sickness, rather than the "ill communication" the Beastie Boys talked about. And by "sickness", I mean disease, rather than something being really cool. This is getting confusing. Make sure you define the terms in your contact well. Let's get on to permissions.

If you engage us in professional consultancy, we can give you a contract template and help you customise it for your own purposes.

Permissions

You should have permission to use any piece of copyrighted material in your programme. But how can you obtain permission? What permissions are easier to get than others? And what alternatives are available for material that you cannot get permission to include?

Obtaining Permissions for Copyrighted Material

- Identify the Copyright Holder:
 - Determine the copyright holder of the material you intend to use. This could be the creator, publisher, or another entity.
 - Contact them directly to request permission.
- Permission Request Letter:
 - Draft a clear and concise permission request letter specifying the material, its intended use and duration. Include your contact information and any relevant project details.
 - Send this letter to the copyright holder.
- Alternative Licensing Options:
 - Explore alternative licensing options, such as Creative Commons licences or works under public domain.
 - These materials often come with predefined usage permissions.
- Fair Use/Dealing Consideration:
 - Understand the concept of “fair use” (or “fair dealing”) under copyright law, which allows limited use of copyrighted material without permission for purposes such as commentary, criticism, or news reporting. However, fair use is subject to interpretation and legal nuances.

Permissions for Interview Clips and Vox Pops

- Informed Consent:
 - Obtain informed consent from individuals appearing in interview clips or vox pops.
 - Clearly explain the purpose of the recording, how it will be used, and any potential implications. This is crucial for legal and ethical reasons.

- **Waivers:**
 - Interviewee Release Waiver:
 - Create an interviewee release waiver that outlines the rights granted by the interviewee for the use of their recorded content.
 - This document may include the right to use the footage in the live stream, promotional materials and related media.
 - Vox Pop Release Waiver:
 - Similarly, create a vox pop release waiver for individuals providing spontaneous reactions or opinions.
 - Clearly define the scope of usage and ensure their understanding of the context.
- **Legal Review:**
 - Have any waivers or release documents reviewed by legal professionals to ensure they are comprehensive, clear and legally sound. Don't leave yourself exposed through vague or ambiguous language.

Here is a sample interviewee release waiver. Keep in mind that legal language may vary, and it's advisable to consult with a legal professional in your area to ensure it meets your specific needs and jurisdiction.

When we are working with you in a professional consultancy capacity, we can provide you with an interview release waiver that you can use in your projects. We do recommend that you get a lawyer to look at the contracts and waivers that we help you prepare, but the work you do with us in advance of speaking to a lawyer will save you time and money.

The legal consultation we recommend need not cost you a lot of money, by the way. Connect with lawyers who work in the creative industries via social media and real life networking events. Ask one if you could meet them (for lunch, perhaps) to get them to review the documents you have drafted and check them over. Ask them for a quote for their time before they do so. It probably won't cost much, especially because you will have done a lot of the work yourself beforehand. (But that's just my suggestion. It doesn't constitute legal advice, of course!)

Alternatives for Unobtainable Permissions

During a big music supervision mainstream TV drama project I used to get amused and annoyed by director's telling us they were "going to fight for this track to be included". That was in reference to a tune we had suggested that they felt worked really well in a scene. I wondered who they were going to fight? Us? The producers? The commissioner? The record label who were being evasive in our attempt to clear the piece of music? In the end we were able to clear most of the tunes, but that isn't always the case. Sometimes we had to find alternatives.

So sometimes it just won't be possible to obtain permission to use a copyrighted work, or a personal contribution, in your live streamed programme either. If that is the case, you either need to cut that part of the programme or come up with an alternative. Usually the latter is preferable. With contributors, you can try to find someone else. For media content, you have several options:

- Royalty-Free and Creative Commons Resources:
 - Utilise royalty-free music, images, and videos available from reputable sources.
 - Creative Commons-licensed content, when used in accordance with the licence terms, can also be a viable alternative.
- Public Domain Material:
 - Seek out material in the public domain, which is free from copyright restrictions.
 - This includes works whose copyright has expired or those explicitly placed in the public domain.
- Create Original Content:
 - Whenever possible, create original content to avoid copyright issues. This ensures that you have full control and ownership of the material.
 - This includes music, video clips, photographs and artwork. If you have time and budget then you can make work yourself — if you have the time and inclination — or you can commission original pieces from local artists (of any discipline).

AI tools are making original content creation easier than ever before. Here are a selection of them, all of which are very accessible to beginner and intermediate-level users.

1. Text Generation

- OpenAI's GPT-4:
 - Powerful language model capable of generating human-like text. It can be used for various creative writing tasks, including articles, stories, and more.
 - And if you really want to know, according to ChatGPT: 'GPT stands for "Generative Pre-trained Transformer." It refers to a type of artificial intelligence language model developed by OpenAI. The term "Generative" indicates its ability to generate text, "Pre-trained" highlights the model's initial training on a diverse range of data, and "Transformer" refers to the underlying neural network architecture used for processing sequences of data, such as language. The GPT models, including GPT-4 (the third iteration), have demonstrated advanced natural language understanding and generation capabilities.'
- Gemini (by Google):
 - Similar to GPT-4, designed for conversational interactions. Useful for a multitude of applications. It can assist in generating dialogue and engaging content.

2. Graphic Design:

- Canva:
 - While not exclusively AI-driven, Canva incorporates AI features for design suggestions, colour palette recommendations and more.
- Runway ML:
 - Offers various models for graphic design tasks, including generating images, altering styles, and creating visual content.
- Adobe Express:
 - The online suite for visual art editing includes Adobe's impressive AI image generation tool.

3. Visual Content Creation:

- DALL-E (by OpenAI):
 - Generates images from textual descriptions.
 - Users can input written prompts, and DALL-E creates corresponding images.
- Deep Dream Generator:
 - Applies neural network algorithms to images, creating visually unique and often surreal results.

4. Video Creation:

- Runway ML (for video):
 - Offers models for video-related tasks, including style transfer, object recognition, and more.
- Lumen5:
 - Uses AI to transform text into engaging video content. It automates the video creation process by suggesting visuals and animations.
- Sora (by OpenAI):
 - Video clips generated entirely from user prompts.
 - Initial test productions are impressive, albeit riddled with artificial artefacts. But this is the worst the technology will ever be, it will only improve (rapidly).
 - Not available publicly (at the time of writing).

3. Music Composition:

- AIVA:
 - AI-based music composition tool that can generate original compositions based on user inputs and preferences.
- Jukedeck:
 - AI platform for creating royalty-free music tracks. Users can customise music for their projects by adjusting parameters.

6. Voice Synthesis:

- Descript Overdub:
 - Allows users to edit audio content by adding or modifying spoken words using a voice synthesised from their own recordings.
- Lyrebird AI:
 - Offers voice synthesis capabilities, allowing users to create custom voiceovers based on provided samples.

Remember to review the terms of use and licensing agreements for these tools, and ensure compliance with copyright regulations when creating content. Check for the latest advancements and new tools in the AI content creation space.

Navigating permissions requires a combination of legal understanding, communication and ethical considerations. Obtain permissions for copyrighted material through direct contact or alternative licensing options. Prioritise informed consent and use well-drafted waivers for interview clips and vox pops. Always seek legal advice to ensure compliance with copyright laws and ethical standards.

Music Use

What are the considerations for using music as part of your live streamed programme? Let's discuss both audio online and video streams and think about theme music, incidental music, backing tracks or "beds" underneath links and interviews and live music performances. What licences might you need to obtain to use commercial music in live streamed programmes in the UK and how do they compare to other major territories around the world? Which platforms pay music licences and therefore enable you to use copyrighted music as part of your live programmes? What might happen if you do use copyrighted music without permission? What copyright-free alternatives are there?

Audio and Video Streams

When incorporating music into live-streamed content, consider the impact on both audio and video aspects of the stream. Music can enhance the atmosphere, evoke emotions, and contribute to the overall viewer experience.

Theme Music, Incidental Music, and Backing Tracks

Identify the specific roles music will play in your live-streamed programme. Theme music sets the tone, incidental music enhances scenes or transitions, and backing tracks provide a foundation during links, interviews, and live performances.

Licences Needed

- UK Regulations:
 - In the UK, using commercial music in live-streamed programmes typically requires obtaining licences from relevant copyright management organisations (CMOs) such as PRS for Music (which covers composition, songwriting and publishing rights) and PPL (for sound recordings and recording artists). These licences ensure proper compensation for the use of copyrighted music.
 - Live Music:
 - PRS For Music have their Online Music Licence and Limited Online Music Licence, which cover various uses of commercial music in live streams, on demand content and podcasts. Obtaining an appropriate licence enables you to feature live music performances, especially those where the performing artist plays cover versions of commercially licensed music.
 - When you feature live music performance in your programme, there is no PPL licence required because you are not playing any commercial recordings (i.e. records, CDs, MP3s, etc.).
 - Recorded Music:
 - The PRS For Music licences can still cover you for the use of recorded music, although it depends on the way that the music is used. Check the terms of the licence for more details, but as a guide, background use is usually covered. In some cases use as theme music and jingles may be permitted.
 - However, if music is associated with a brand, or used to advertise something, then special approval — and most likely a premium fee — will be required. PRS For Music can help you find the appropriate publishers and music managers to speak to if you want to negotiate such usage. Also, where

commercially licensed recorded music is used as the soundtrack to a VT, this is known as synchronisation, or sync. Sync is not covered by PRS For Music or PPL online licences so use must be cleared with each rights holder individually.

- PPL has a Linear Webcast Licence, which covers online radio. They do not provide information about web TV, or use of music in live audiovisual streams so you will need to speak to them directly to find out more.
- Comparison with Other Territories:
 - Regulations regarding music licensing vary globally. Investigate the requirements in each major territory you plan to stream to, as licensing bodies and rules differ. Research local CMOs and licensing procedures to stay compliant.

Platforms Paying Music Licences

Streaming platforms that pay for music licences include established services like YouTube, Twitch, and Facebook. These platforms have agreements with PRS For Music to compensate creators for the live performance of copyrighted music. However, they do not have PPL licences so you cannot include recorded works in your programme unless you have negotiated a licence. to do so. And because there is no blanket licence agreement with PPL, permission must be cleared with each rights holder individually, which is often impractical.

Mixcloud (one of our favourite platforms), the platform for radio programmes, DJ mixes and podcasts, is the one service we know of that holds licences for both PRS For Music and PPL so you can upload on demand audio content and run live video streams. However, video is limited because it is meant for DJs, live radio programmes and live music performances only and use of music as a soundtrack to video features, drama, advertising etc. is not permitted under their terms. However, it is a great platform for streaming music programmes to an engaged music community.

Consequences of Using Copyrighted Music Without Permission

Avoid copyright infringement. Using copyrighted music without proper licensing can result in legal consequences, including takedown notices, content removal, and potential legal action from copyright holders. Platforms may penalise users for copyright infringement, affecting your channel's standing.

Copyright-Free Alternatives

Explore copyright-free or royalty-free music alternatives to avoid licensing complexities. Platforms like Artlist, Epidemic Sound and YouTube Audio Library offer a wide range of music for creators to use without worrying about individual licensing agreements.

In summary, understanding the considerations, licensing requirements, and available alternatives is crucial for integrating music seamlessly into your live-streamed programmes while respecting copyright laws and ensuring a positive viewer experience. Check music and media resources (like my friends, the Scottish Music Industry Association and UK Music) and CMO websites to stay informed about changes in regulations and licensing agreements to maintain compliance.

In essence, understanding and navigating the legalities of rights, permissions, and clearances are crucial for live programme producers. By delving into the intricacies of contracts, permissions, music licensing, and clearance processes, producers can create content that is not only captivating but also legally sound, ensuring a seamless and risk-free live streaming experience.

The Right To Ask For Help

So now you know that rights matter. I'm sure you knew beforehand. But dealing with rights, permissions and clearance can still be confusing and give people the heebie-jeebies (that's a legal term). We are very used to dealing with rights and clearance. I often joke that I know more than I wish I did about the subject. Several times I have been in discussions with people at CMOs and realised that I know more than they do (a fact confirmed by some of their employees and our lawyers). So, I know the headaches rights and clearance can cause. If you have a headache, we can consult with you professionally, cure that headache and help you enhance your content in a way which both engages your audience and is legally sound.

Get in touch with us: innerear.co.uk/contact and let's sort it out.

