A Guide to Clearing Rights for the Performing Artist
from The Research Center for Arts and Culture
and
The Actors Fund

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Disclaimer: the Guide to Clearing Rights for the Performing Artist (the “Guide”) is for educational purposes only. The Guide was created to educate performers in the Performing Arts Legacy Project (“PAL Project”), as they document their legacies, of frequent legal issues performers encounter while creating archival websites and not to provide legal advice. Before reproducing any materials, we strongly recommend that readers consult an attorney independently.
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I. INTRODUCTION

Navigating legal issues often proves challenging for performers as they seek to publically document and archive their legacies. The goal of the Guide is to provide information and direction on some key legal issues that performers must address, in an effort to avoid legal roadblocks, as they pass along the lessons of their experience and careers. The Guide is meant specifically to educate performers about legal issues on a very general level; specific questions relating to each performer’s own personal website will likely require consultation with an attorney who specializes in arts issues.

SUMMARY: As actors, there are many sets of competing legal rights connected to the work you do. The Guide will assist you in determining what general legal issues you need to consider when creating a public webpage such as the PAL Project and how to begin navigating them.

II. UNDERSTANDING COPYRIGHT LAW

A. WHAT IS COPYRIGHT?

A major undertaking and responsibility when it comes to archiving and displaying artwork on a website is to comply with Title 17 of the United States Code, the United States (“U.S.”) Copyright Act of 1976 (“Copyright”). Understanding Copyright and how it may impact each PAL Project webpage is difficult. The Guide is meant to offer the very basics to get performers started in developing an online living archive.

Copyright is designed to protect original works of authorship fixed in a tangible medium of expression. Copyright generally lasts for 70 years after the death of the author, but this can vary if a work is “made-for-hire” (as discussed below), or if the work was first publicly distributed before 1978 (when current Copyright took effect). It is essential for you to gather all relevant facts about the work you wish to post, so that you can determine what Copyright related permissions will be required. You should always assume the works you encounter are protected by Copyright, including: pictorial, graphic, sculptural, literary, musical (including melody and lyrics), dramatic, pantomime, choreographic, sound recording, architectural, and audiovisual works including motion pictures (“Work”), unless you have been told definitively by the owner of the Copyright that the Works are not protected (this assurance should be obtained in writing, for future reference, if any issues arise) or the Works only consist of factual information (such as a list of actors in a performance, or information on where and when a performance will be held). As discussed below, Copyright has expired for all Work published in the U.S. before 1923. If a Work was published in the U.S. before January 1, 1923 then that Work is in the public domain (as discussed later in the Guide) and may be used freely.

When an individual wants to use or display another artist’s Copyright protected Work, he/she must obtain permission from the Copyright holder before such use. While oral agreements (such as a telephone conference) are legally binding contracts, they are difficult to prove. Ideally, permission will always come in written form. A sample letter requesting a Copyright license appears in Appendix C. Only the owner of the Copyright to a Work can grant a Copyright license. However, you should be aware that the Copyright owner is not necessarily the original creator of a Work. As
described below, a creator can be hired to create something for which he/she does not retain Copyright ownership rights, regardless of who has possession of the physical Work. A Copyright owner can gift or will Copyright ownership to someone or an original Copyright owner can assign, sell or license rights to others for specified uses that are sometimes exclusive.

As a general matter of Copyright, the person who creates a Copyright protected Work is the owner of the Copyright rights to that Work. However, often the original creator is not the legal owner of the Copyright rights. For example, when a Work is created by an employee in the scope of his/her employment, that Work is often deemed a “work made for hire”; in such event, the employer will be the “author” for Copyright purposes and own the Copyright in the Work. Additionally, when a person is hired as an independent contractor to create, or contribute to creating, a Work which falls within certain specific categories listed in the Copyright act (such as a motion picture or other audiovisual work), and both parties enter into an express written agreement specially ordering or commissioning the Work, such Work may also be deemed a “work made for hire”; in such event, the employer is deemed the “author” for Copyright purposes and owns the Copyright. In many other cases, even though the original creator may initially own the Copyright to his/her Work, the creator is often required to grant certain rights (and sometimes to assign the entire Copyright itself) to a producer, movie studio or other company per their employment terms.

One way to begin to determine who owns the Copyright to a particular Work is to order a search of the United States Copyright Office (the “Copyright Office”) where Copyright ownership is sometimes registered. You can do this by going to www.copyright.gov/rrc/ and following the instructions on “how to request.” By no means will all Works be registered with the Copyright Office, and registration does not affect whether or not a Work is protected by Copyright. In addition, performers may need to do some careful detective work by contacting the individual artists (or their estates), and producers, financiers and/or distributors who are known to have been involved with the subject’s Work or by seeking the advice of an attorney. This process is rarely easy or clear-cut; there is no master list of Copyright owners. You should also feel free to reach out to one of the rights groups mentioned in Appendix A for assistance.

As a general matter, in order to have Copyright protection a Work must meet three basic requirements. First, the Work must be an original work of authorship, meaning the creator must have created the Work without copying another's Work. Second, the Work must meet a minimum requirement for creativity (strong emphasis on minimum). Third, the Work must be fixed in a “tangible medium,” meaning it must be in physical form, such as paper, film, CD, DVD, etc. Computer memory can suffice. This is a crucial point consider for dancers.

Copyright protects all kinds of creative endeavors that performers may come across, such as: photographs, articles, news, choreography, dance, sound recordings, lyrics, music, architecture, audiovisual, motion pictures, trailers, sculptures, television, awards shows, video (full films, short clips, screen grabs), set designs, costumes, costume designs, sketches, story boards, screenplays, books, written performance reviews, advertisements (print and video), promotional materials, illustrations, playbills, posters, graphic design, designed invitations, paintings, video games and audio recordings.

Copyright holders control five basic exclusive rights to their work: (1) the right to make copies of
the Work and to reproduce it in various formats; (2) the right to make derivative Works (that is, to create new Work based on or derived from the original Work (such as producing a film based on a book); (3) the right to publicly distribute their Work; (4) the right to publicly perform their Work (sound recordings have a narrower performance right, which extends only to certain digital transmission); and (5) the right to publicly display their Work (which is at issue when creating your PAL Project website with other individual’s Work).

A Copyright owner also has the right to assign, license or sell, to any extent, to any person, any or all of the five rights on an exclusive or non-exclusive basis (non-exclusive meaning the owner may give the same license to multiple people). Owning a physical copy of a Work is not the same as owning the Copyright and does not convey to you any of the above five rights. You can own a physical Work yet have no right to post a photograph of it on your website.

The Guide will go through some of the more common Work as examples.

SUMMARY: Only the Copyright owner is permitted to grant permission under Copyright law to use a Work. The Copyright owner is sometimes not the original creator nor the person/people featured in the Work (such as a performing artist).

Copyright owners have five basic exclusive rights to their work. They have the right to:

1. Make copies of their work; to reproduce it in various formats.
2. Make derivative works (that is, to create new works based on or derived from the original work, such as producing a film based on a book)
3. Publicly distribute their work.
4. Publicly perform their work.
5. Publicly display their work.

A Copyright owner also has the right to license or sell, to any extent, to any person, any or all of the five rights.

Should a license agreement is to occur orally, it is best to send a follow up email reiterating and confirming that permission was granted and asking the Copyright holder to reply if they believe otherwise.

B. COMMON PERFORMANCE MATERIALS PROTECTED BY COPYRIGHT

As we discussed above, not every creation is protected by Copyright. Below, we briefly discuss a few common examples types of Work performers will likely come across while documenting their careers as a performing artists. It is always good practice to consult with a lawyer and to ask for permission to use any Work on a personal website.

SUMMARY: Identify and contact the Copyright holder, or consult with an attorney, to determine if a license is required before making any use of any Work.
1. Photographs

Photographs are common items that generally require a Copyright license to post online. The Copyright rights to a photograph most commonly belong to the photographer or to the company which commissioned it. Requesting information from various parties associated with a photograph, or consulting with an attorney, will be critical to determining if a license is required for the use of a particular photograph.

If a performer hired a photographer to take headshots for the purposes of promotion, the performer is likely free to post the photographs on a personal website. An agreement with a headshot photographer is presumably that the compensation for taking the photograph included a perpetual license to use such images for the exact reason they were taken (promotion, posting to a personal website).

SUMMARY: Photographs generally require a license to use, unless they are a promotional image the photographer was hired by a performer to take.

2. Films

The core question to be addressed in the case of film, video or other forms of audiovisual footage is who owns the Copyright rights to that footage. This question becomes layered depending on the nature of the footage. There may be multiple levels of Copyright rights in one piece of footage. For example, whether or not the footage is from the audiovisual recording of an actual live performance of a stage play or from a film or other form of audiovisual adaptation of a play, a performer must determine who owns the rights to the actual film footage and who owns the rights to the underlying play or script produced in the film. If the footage is of a musical, there may be additional clearances needed from the composer, musicians or lyricist of the underlying musical. Rights to the actual film footage, for example, may be owned by a production company, financier, Hollywood studio, distributor or other third party. The film, video or television project owner generally obtains all the necessary Copyright permissions and may grant them in conjunction with the film’s use; however, the less commercial the film, video or recording, the greater likelihood that you will need to seek separate permissions. Performers should be aware that videos of some plays and musicals are archived at the New York Public Library for the Performing Arts. Further in the Guide, linking is discussed.

SUMMARY: The question you should begin with is - who owns the Copyright rights to the footage you want to use? In the case of a project originally made as a film, TV show or digital production, the right to grant the permission you require is most likely held by a single entity – e.g., a distributor, financier or production company.

Before attempting to clear rights to post a piece of film on a PAL Project website, see if you can link to an existing clip online, this will save you the trouble of securing a license.
3. Articles/Reviews

It is likely that you saved a review or article that featured you or a production you were in. Though the article is in your physical possession and includes your name and other information, you do not automatically have Copyright rights to use the Work in any way. Permission from the Copyright holder must be obtained for use of the Work on a website or otherwise. Though these Works have authors, the author often does not own the content to the article he/she wrote. As discussed above, companies hire writers on the condition that the company owns the Copyright in such content. Newspaper articles are often examples of situations where Works are deemed works-for-hire and the newspaper owns the Copyright rights. Many newspapers have “terms of use” or “copyright notices” that include information on non-profit or educational use. You may want to review these and determine if your use fits within the permitted uses. If you are unsure, consult an arts attorney or submit your request to the newspaper regardless.

A performance review is in the similar category as an article written for a magazine or newspaper. It is often a work-for-hire in which case the review belongs to the newspaper or magazine publishing the review and not to the individual reviewer. However, sometimes reviewers or columnists own the Copyright to their own written pieces and license them to local newspapers around the country for publication; in those cases, permission may need to be secured from the original author.

Linking to an article or review without copying any of the content is one way to lead your website viewers to the information without copying the work and violating Copyright. We will discuss this in detail later.

SUMMARY: Just because a review or article is in your physical possession doesn’t mean you have the legal right to do anything with the content. The original writer/reviewer/journalist may own the content of the article; though permission will likely need to be secured from the newspaper/magazine in which the article first appeared. If you cannot link to it, the best place to start seeking rights is the original publication.

4. Promotional Materials

Promotional materials such as a movie poster or playbill in which your name or likeness appears are also not yours to post online freely without a Copyright license. The Copyright is likely owned by either the film’s Copyright owner or the distributor that commissioned the poster (rather than the graphic artist, who was likely creating it as a work-for-hire). Further, when a theatre company places an advertisement for an upcoming performance in a local newspaper, the content of that advertisement likely belongs to the theatre company and not the newspaper (contrary to the above statements about articles).

SUMMARY: An advertisement was likely created for the underlying Work it is promoting, and is most likely owned by the company that produced the underlying Work or is distributing it.
5. Music

A recorded piece of music will generally have two separate sets of Copyright rights. One is for the musical composition and covers the music and lyrics. The second is for the sound recording of the performance of that musical work. Thus, in some circumstances, publicly playing the recording without permission can violate two Copyright owners’ rights and likewise to obtain permission to post the Work online you will need to obtain licenses for both sets of Copyright rights. Publicly playing the notes of the musical composition on an instrument and singing the lyrics (a cover) without permission could violate only the Copyright in the musical composition since you would not be using the recording made and owned by someone else.

Public performance of musical compositions in a recorded piece of music is licensed by performing rights organizations (PROSs), e.g., ASCAP, BMI or SESAC. These organizations issue licenses and collect license fees for artists so that they are standardized and the artists are not continually bothered by the task. See Appendix A for rights organizations that may assist you in acquiring licenses to reproduce Work. Please note that such licenses do not cover the public performance of a musical composition synchronized with an audiovisual work (e.g., videos and films), which requires permission directly from the Copyright Owner.

Public performance of sound recordings is limited to digital audio transmissions. Some digital transmissions such as digital downloads, “on demand” services, and any digital recordings synchronized with videos or film must be licensed directly from the Copyright owner (usually a record company). Other digital audio transmissions that act more like traditional radio stations, e.g., webcasting where the user cannot select the material to be transmitted, are licensed under a statutory (standardized) license by SoundExchange. See Appendix A for information on SoundExchange.

SUMMARY: Any piece of recorded music will have two separate copyright protections: that of the musical composition and that of the sound recording. The musical composition covers the music and lyrics of the composition. So, playing the notes on an instrument and singing the lyrics without permission can violate Copyright and playing a recording without permission can violate Copyright separately. Organizations that license musical compositions and digital sound recordings are listed in Appendix A.

6. Choreography

Copyright specifically provides protection for “choreographic works” and “pantomimes.” The complication for securing Copyright protection for these types of artistic pieces is that they too must be fixed in some tangible medium of expression. A dance you developed or were part of may be recorded on video, be described in a written form, or secured in a Dance Notation, for example. The rights in the choreography or pantomime are separate from any underlying music. Sports activities and performance art fall outside of the Copyright protection afforded to dance.

SUMMARY: Dance and pantomime pieces are protected by Copyright, however, they must be recorded in a tangible form. Copyright in any underlying music is separate.
7. Scripts and Notes

A script and the associated notes can also be protected by Copyright. The script for a film or TV program may be owned either by the screenwriter (probably only if the script has not yet been produced), or, more likely, by the studio/producer that produced the footage or other audiovisual production based on such script. In the case of a live stage play, the playwright usually retains the Copyright (although there is no guarantee). If a script or text version of a play contains handwritten notes (even if they are on the margins of the script/play) from a third-party (e.g., producer, director or performer), the Copyright in the notes is likely owned by the third-party who drafted the notes, if he/she didn’t already assign his/her rights to those notes to their employer (the producer/director).

SUMMARY: If you have written notes in the margins of a film/TV script or a play where you provided services as an actor or director, you will need to determine whether or not you own those notes, provided those notes as a work-for-hire or assigned your Copyright rights to those notes. Notes by a third-party are likely owned by that third-party or the production company that employed them.

8. Contracts

While it is theoretically possible for a contract to be protected by Copyright, it is more likely that if you post a copy of a contract on your page you will encounter claims of breach of confidentiality. For performers, common contracts include confidentiality agreements, employment agreement, performance agreements, exhibition agreements, or publication agreement. Many contracts include language as to the confidentiality of the terms within. You should first look at the contract for this kind of provision.

SUMMARY: Before you post any pages from a contract, you should review the contract to see if confidentiality terms prevent sharing; if so, you cannot post any part of it. Consult an attorney.

C. COMMON EXCEPTIONS TO CLEARING COPYRIGHT

Copyright does not protect facts, so you are free to describe true incidents you experienced or historical facts without the need to seek any Copyright permission. The first page of a script that simply states the title of the production and names of directors/writers in plain font is likely not protected by Copyright. However, you should be careful not to simply copy material from a Work of non-fiction, because the way that certain facts are organized and presented may be sufficiently original and creative to secure Copyright protection. Not every creation is protected by Copyright. Items such as ticket stubs might fall outside of the scope of protection for being factual or not meet the creativity threshold. Further, Copyright protection is only for a specified number of years. As discussed below some Work is in the public domain. Some other Work may also have found their way into the public domain by intentional acts or unintentional acts by the original Copyright holders.

SUMMARY: Facts are not copyrightable, so you are free to post factual material with no creative elements without Copyright permission. This often includes the title to Works and the author of the
Work’s name. Do not simply copy passages from any non-fiction work as some of the design elements of the greater Work may be covered by Copyright and require permission.

1. Links

Fortunately, as of now, United States Copyright law allows websites to link to unlicensed Copyrighted Work. This means you can simply share where the material is located so viewers can be directed to it. Common examples of this for performers include playbill.com and YouTube.com. Work can be linked, but not embedded or copied. Attorneys speculate these rules will evolve as technology evolves. You should make every effort to confirm that the link is always to a well-known reputable website and not to a website which routinely posts unauthorized copies of Work (see Appendix B). Please be aware that if you do link to another website, you should regularly check that the link remains active (that is, that the website you are linking to continues to exist).

SUMMARY: You may freely link to material on other sites, but do not embed the material onto your site. Make every effort to ensure that the website you are linking too is not posting unauthorized Work, and that the link continues to function.

2. Public Domain

The public domain consists of Work that is not currently protected by Copyright. Work in the public domain can be used without a license (assuming the Work does not trigger legal protections beyond Copyright, such confidentiality agreements or right of privacy/publicity).

There are different ways that works can arrive in the public domain. Works will be in the public domain when: the Copyright term has expired, either because the Copyright owner failed to properly renew the Copyright (note that renewal is an old requirement, and is no longer required to maintain Copyright protection), or the Work has enjoyed the full Copyright term. In addition, the Copyright owner may have deliberately or inadvertently placed the work into the public domain. Some materials, such as materials of the U.S. government, are not entitled to Copyright protection, so they are always in the public domain.

Copyright has expired for everything published in the U.S. before 1923. If materials were published in the U.S. before January 1, 1923 then they are in the public domain and may be used freely. If you wish to use materials from works which (a) existed before 1923 in unpublished form but were later published in the U.S. after January 1, 1923 or (b) were created after January 1, 1923, we strongly recommend that you seek the advice of legal counsel before doing so since the law is very complex with respect to which of those works are currently in the public domain and which are still protected by Copyright. Materials in the public domain in the U.S. may still be protected by intellectual property laws in other countries.

While Copyright owners can also dedicate a Work to the public domain, you should never assume that a Work first published in the U.S. after 1922 is in the public domain: it is best to look for a clear statement by the Copyright holder inviting people to use the Work freely and to consult a lawyer before relying on the public domain concept.
SUMMARY: The public domain involves Work that are not currently protected by Copyright in the U.S. Work in the public domain can be used in the U.S. without permission so long as no other legal concepts apply. Never assume that a Work is in the public domain; it is best to consult a lawyer before relying on the public domain concept.

3. Fair Use

Fair use is a legal doctrine that enables unlicensed use of Copyright-protected Work in certain circumstances. It should be emphasized that fair use is a defense. That means, if you are sued for Copyright infringement, once you are in court you may bring forth the defense of fair use. Even prior, should someone send you a cease and desist letter, your attorney could choose to put forth fair use in an effort to dissuade someone from bringing a lawsuit. It is never a good idea to depend on fair use without thorough legal analysis and advice specific to your circumstances. If you believe something you are doing falls under fair use, you should consult a lawyer. Courts have very complicated analyses when it comes to fair use that many attorneys spend their careers understanding and navigating.

The provisions of the U.S. Copyright Law governing fair use only provide general guidelines. The exact text of 17 U.S. Code § 107 - Limitations on exclusive rights: fair use is as follows:

The fair use of a copyrighted work, including uses such as reproduction as copies or phonorecords or by any other means, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is fair use the factors to be considered shall include—

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; the nature of the copyrighted work;
(2) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
(3) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Courts weigh all four of the factors set forth above (as well as other factors they determine are relevant) in deciding whether or not use of a work is a fair use, but there is no formula or clear set of guidelines that you can follow to be guaranteed fair use protection.

SUMMARY: Fair use is a legal doctrine that enables use of Copyright-protected Work in certain circumstances without permission. It should be emphasized that fair use is a legal defense. That means, if you are sued for Copyright infringement, once you are in court you may bring forth the defense of fair use. So, it is not a good idea to depend on fair use when deciding how to use a work protected by Copyright.
4. Creative Commons

If a Work is offered through Creative Commons (“CC”) then that photograph or work can be used for free but the user must follow the stipulations in the CC license. Many YouTube videos are marked as CC. Go to the CC website to see the types of licenses are available and to search for the materials you wish to use:

https://search.creativecommons.org/

Different CC licenses allow different types of uses, sometimes with conditions. Under this structure, the owner of a Copyright protected Work can even choose to enter the Work into the public domain by relinquishing all rights.

Essentially, the CC license allows the licensor to retain the Copyright while others use the Work within the boundaries of the CC license that the Copyright owner selects. Furthermore, these licenses ensure that the licensor receives credit for the work. CC licenses are applicable globally.

SUMMARY: Essentially, the CC license allows the licensor to retain the Copyright while others use the Copyright protected Work within the boundaries of the CC license. These licenses ensure that the licensor receives credit for the work.

D. FURTHER COPYRIGHT CONSIDERATIONS

1. Including a “Credit Line”

An attribution line that accompanies a Work holds information that the author of a Work requests to be included next to the Work wherever it is used (“Credit Line”) and commonly includes author, title, date of creation, and © (Copyright symbol). It must be emphasized that crediting the author or Copyright owner of a Work does not protect you from a claim of Copyright infringement. This is a very common misconception. However, when you do negotiate with a Copyright owner for a license to use a Work, you should ask what type of Credit Line is required to go along with the Work. Many licensors have standard Copyright credit lines they require to be posted with any Work they license for use such as: “Used with Permission © Actors Fund 2018.”

SUMMARY: Crediting the author of a Work does not permit you to use that Work without the permission from the Copyright owner, but it may be a requirement within their Copyright license with you.

2. Deceased Author

Once a Copyright owner dies, Copyright rights to the Work they hold usually passes to the estate beneficiaries and remains in full force and effect for a period of time. The mere death of a Copyright owner does not place the Work in the public domain.
SUMMARY: If you use a Copyrighted work owned by someone who has died, unless their death was nearly a century ago, it is likely still protected by Copyright.

3. Works Registered with the Copyright Office

Some Works and assignments of Copyright are registered with the Copyright Office. A Work does not need to be registered to be protected by Copyright, it is simply an additional protection for rights holders to record and put users on notice of their ownership. Additionally, it has an effect on damages awarded for Copyright infringement (which is too detail specific to describe in this Guide). A search of the Copyright Office records may make it easier for you to identify the current Copyright owner of a Work, but it cannot be the only place you look. Registration merely provides certain procedural benefits but does not represent any judgement by the U.S. government that a particular work is currently protected by Copyright.

SUMMARY: Although a Work does not need to be registered to have and maintain Copyright protection, some Copyright information on individual Work is available from the Copyright Office. A search of the Copyright Office records may make it easier to identify the Copyright owner of a Work.

4. International Works

There is no such thing as “international copyright.” As a general matter, each country has its own intellectual property laws that govern intellectual property in that country. However, international treaties make the works of one country protected in other counties, and provide for certain minimum levels of protection. The most significant conventions governing the protection provided by one country to another country’s nationals include: The Berne Convention for the Protection of Literary Artistic Works; the TRIPS portion of the WTO Agreement; the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. There are also a number of bilateral agreements. For guidance on use of materials only created, published and distributed outside of the United States, you should seek help from an attorney.

SUMMARY: To use Work outside of the United States, this Guide does not apply, consult an appropriate attorney.

E. COPYRIGHT LICENSING ORGANIZATIONS AND DEPARTMENTS

There are several groups that represent large numbers of authors that can be helpful in securing Copyright licenses. The major groups for this are: American Society of Composers, Authors, and Publishers, Broadcast Music Inc., Society of European Stage Authors and Composers, and Artists Rights Society (see Appendix A). In addition, there are licensing departments for film stills and clips, and for likenesses. Contacts for these as of November 1, 2017, are listed in an Appendix A.

SUMMARY: Many individual artists outsource to agencies that handle intellectual property licenses for them. Check Appendix A for a list of possible agencies to contact prior to seeking out artists.
III. FURTHER LEGAL CONSIDERATIONS

Beyond Copyright, performers should consider laws surrounding privacy, publicity, and defamation before posting materials on their website. If you wish to include on your PAL Project website any materials where other people (living or dead) are identifiable (by use of their names, performances, likenesses, or other identifiers), you need to be careful not to infringe upon any rights of privacy, publicity or cause any defamation issues. The laws in these areas vary from state to state so it is important for you to consult with an attorney if you plan to include on your website material which, among other things, (a) might be embarrassing to someone or bring them into disrepute, or (b) reflects private information about that person that the public has no right to know, or (c) could be viewed by someone as infringing his/her right to control the commercial use of his/her identity.

SUMMARY: The rights of publicity and privacy and rights against defamation are separate and unrelated to Copyright. Privacy and publicity rights and rights against defamation protect the personal interests of the people who you may be identifying by name or image in materials on your PAL Project website. We recommend that you consult with an attorney prior to using materials on your PAL Project website which feature other people.
There are groups that represent large numbers of authors and can be helpful in securing Copyright licenses. Below are some of the licensing companies to search before pursuing an author directly.

**American Society of Composers, Authors, and Publishers:** Licenses works for songwriters, composers, and music publishers.
https://www.ascap.com/

**Broadcast Music Inc.:** Licenses works for songwriters, composers, and music publishers.
https://www.bmi.com/

**Society of European Stage Authors and Composers (SESAC):** Licenses works for songwriters, composers, and music publishers.
https://www.sesac.com/

**Artists Rights Society:** Licenses works for visual artists.
http://www.arsny.com/

**Allied Artists:** Licenses only from post-1980 Allied Artists Pictures library.
http://alliedartistsofamerica.org/

**HBO Archives:** Licenses the use of video clips from their in house productions and sporting events as well as the famous MARCH OF TIME newsreel series and the Universal newsreels.
http://www.hboarchives.com/

**Disney Consumer Products:** Licenses the use of movie stills, clips and audio from titles in the Walt Disney Pictures, Buena Vista Pictures, Touchstone Pictures, Hollywood Pictures, Miramax Films and Dimension Films libraries.
http://www.disneyconsumerproducts.com/

**MGM Clip+Still:** Licenses the use of movie stills, clips and audio from titles in the post-1982 MGM, post-1996 Samuel Goldwyn Films, United Artists, Orion, Polygram and Cannon libraries.
http://www.mgmstills.com/

**Paramount Clip Licensing:** Licenses the use of movie stills, clips and audio from titles in the Paramount Pictures, Republic Pictures, Rysher Entertainment, Spelling/Worldvision, and Viacom Productions libraries.
http://www.paramount.com/filmcliplicensing/

**Samuel Goldwyn Films:** Licenses the use of movie stills, clips and audio from titles in the Samuel Goldwyn Sr., pre-1996 Samuel Goldwyn Jr., and portions of the Rodgers & Hammerstein libraries.
http://www.samuelgoldwynfilms.com/contact/
Sony Pictures Entertainment Clip & Still Licensing: Licenses the use of movie stills, clips and audio from titles in the Columbia Pictures, TriStar Pictures, Screen Gems, and Sony Pictures Classics libraries.

http://www.sonypictures.com/corp/cliplicensing.html

20th Century-Fox Licensing and Merchandising: Licenses the use of movie stills, clips and audio from titles in the Twentieth Century Fox, Fox 2000 Pictures, Fox Searchlight Pictures, and Fox Animation Studios libraries.


Universal Studios Media Licensing: Licenses the use of movie stills, clips and audio from titles in the Universal Pictures, Universal/International Pictures and International Pictures libraries.

http://www.universalclips.com/


Screen Actors Guild: SAG-AFTRA - The place to start when attempting to contact a living performer about getting permission to use their image or likeness.

http://www.sagaftra.org/

CMG Worldwide: Licenses the image and likeness of dozens of movie stars and celebrities.

http://www.cmgww.com/

The Roger Richman Agency: Licenses the images of dozens of deceased Hollywood stars.

http://www.therichmanagency.com/

Global Icons: Represents the estates of stars like Bing Crosby, Marlene Dietrich and Greta Garbo.

http://globalicons.com/

MODA Entertainment: Licenses for the Gary Cooper, Lauren Bacall, Humphrey Bogart, Betty Garrett, Joel McCrea, Alan Ladd, Celeste Holm, Frances Dee, John Garfield, Robert Mitchum, Patricia Neal, and other stars.

http://www.modaentertainment.com/

Greenlight Rights: Manages personality rights for deceased celebrities, including Steve McQueen and Mae West.

http://www.greenlightrights.com/

SoundExchange: A non-profit collective rights management organization that is the sole organization designated by the U.S. Congress to collect and distribute digital performance royalties for sound recordings.

https://www.soundexchange.com/
APPENDIX B
Helpful Links

Online Resources for Career Information

Internet Theatre Database
http://www.theatredb.com/

Internet Movie Database
https://www.imdb.com/

Lortel Archives
http://www.lortel.org/Archives

The Broadway League
https://www.broadwayleague.com/home/

Playbill archives
http://www.playbill.com/vault

LaMama Archives
http://lamama.org/programs/archives/

Getty Images
https://www.gettyimages.com/

Channel 13
https://www.nyc-arts.org/

NY Times
https://www.nytimes.com/

SAG-AFTRA
https://www.sagafta.org/

Actors’ Equity
http://www.actorsequity.org/
APPENDIX C
Template for Requesting Rights

[USE YOUR PERSONAL LETTERHEAD]

[DATE]

[Dear ________________:

I am a performer who appeared [on stage, screen, etc] in [performance/film/novel]. I understand that [you/your company] own the rights for the attached work. I am writing to obtain your permission to display such work, on a new website created in conjunction with the Performing Arts Legacy Project (the “PAL Project”). The PAL Project was created by the non-profit Research Center for Arts and Culture (the “RCAC”) at The Actors Fund in New York City. The initial goal of the PAL Project is to help older performers document their legacies in an online platform. This initial phase includes seventeen New York City-based actors age 62 and older whose careers represent local, national and international theatre, Broadway, off, off-off-Broadway, regional theatre, dinner theatre, film, TV and more.

The long term goal of the PAL Project is to create The Actors Fund’s PERFORMING ARTS LEGACY website, located at performingartslegacy.org (the “Website”), available online in 2019, where older performers may document and share their own legacies with the public, particularly other performers, scholars, teachers, researchers and others. The Website will be educational, for non-commercial purposes, and will be a service to the performing community.

Joan Jeffri, the PAL Project’s director, is happy to discuss the PAL Project, the Website and RCAC further at any time. A more complete summary of the PAL Project is attached to this request.

I also attach a summary of the materials for which I am asking for a, non-exclusive, royalty-free, license to display such material on the Website. I am greatly appreciative of your consideration of my request to use this only for the Website and for the benefit of representing this important legacy.

Thank you for helping us. Please feel free to contact me with additional questions or Joan Jeffri, the Director of the RCAC at:

Research Center for Arts and Culture
The Actors Fund
729 Seventh Avenue, 10th FL
New York, NY 10019
212-221-7300 x 187 Direct: 917-281-5987
www.artsandcultureresearch.org
Email: jjeffri@actorsfund.org,
rcac@actorsfund.org

Many thanks for your consideration.
Sincerely, [Your Signature]
[Print your name]
PERFORMING ARTS LEGACY PROJECT at The Actors Fund (PAL)

is an online platform that performers can use to document and represent their careers with appropriate supports to assist in creating their legacies.

PAL was developed in conjunction with a small cohort of actors aged 62+ through The Actors Fund. The pilot group was drawn from New York City performers with a broad range of experience. The public launch date is planned for early 2019. Trainers, students and volunteers worked on this inter-generational project to create career timelines, oral histories, video and audio life reviews, collecting memorabilia and capturing experience in order to preserve this rich national heritage.

The digital legacies already assembled will act as a model for other performers to use as a guide to contributing their own legacies to this growing archive. We have also assembled a community engagement guide with links to related performers’ unions and libraries. PAL was developed by the Research Center for Arts and Culture (RCAC) at The Actors Fund (AF).

In addition, as more performers review and document their lives and careers, The Actors Fund will be instrumental in supporting life-related needs such as financial literacy, end-of-life documents, counseling, etc. THE PERFORMING ARTS LEGACY PROJECT has partnered with local universities to provide an intergenerational, interdisciplinary learning experience in this model of positive aging.

Some background facts:

Aging: US population projections confirm an explosion of the aging population. More than 1 in every 8 people is an older American. The over 65 population is projected to increase to 55 million in 2020.

Age has very different realities in different artistic professions. Performers depend on their bodies in ways that are both mandated and circumscribed by their professions. Dancers, who expect to dance until their late thirties, actually leave dance in their mid-thirties, often for injury and health reasons. Opera singers need to keep singing long enough to come into their mature voices, which may mean a career that starts in their thirties.

Performers’ work is time-based, and often ephemeral, making the need to capture
this legacy all the more urgent.

**Uses**

THE LEGACY PROJECT provides an important addition to existing archives by digging deeper into the histories and memories of those workers on whom the industry was built. It recognizes these performers’ lives and careers with dignity. And, it helps identify, empathize with and celebrate aging.

**THE LEGACY PROJECT:**

- **Provides** material for performing arts training programs, to give young performers a more realistic idea of the realities of a professional performing career.
- **Is a model** against stereotypes of aging, rampant in performing arts industries.
- **Embraces** Intergenerational Learning: Our work with older performers has shown us that the close attention of people across generations brings validation, more confidence, and satisfaction that their creations and their individuality can continue after they’re gone. Our pilot cohort of older performers said that working with young people and mentoring have been the best ways through which they can pass on their legacies.
- **Promotes** health benefits: Dr. Gene Cohen has demonstrated that engagement in the arts results in reduced medications, fewer doctor visits, less loneliness and depression. While many older performers may have a difficult time being hired to perform on a regular basis, participation in PAL has and will continue to enable them to engage with their present, past and future careers, and to share their experience with their younger colleagues.

The transition period from active to less active careers (many artists never retire) is different for each performer and is not well understood. While The Actors Fund does important work in areas that touch on transition (financial literacy, making a will, alternative careers) and has professional social workers who counsel clients, PAL can help fill the need for a sustained program that captures a performer’s life experience, lessons learned, and the gestalt of her career through the performer’s participation in this integrated process.

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**The Actors Fund,** founded in 1882, is a nationwide human services organization that helps all professionals in performing arts and entertainment. The Fund is a safety net, providing programs and services for those who are in need, crisis or transition. The **RCAC** has spent three decades providing data, ideas and programs in the service of living artists.