

Visual Arts Rights

Pictorial, Graphic, and Sculptural Works (Visual Arts)

This category includes any copyrighted photographs, graphics, art reproductions and works of art. As with other acquisitions, care must be taken to identify the copyright holder of the work used, which is not necessarily the publisher of the source of the visual. While the publisher may be of help in finding the copyright holder, they are not usually the copyright holder. In the case of art reproductions, there are two layers of copyrights — the reproduction and the underlying original work. Both must be cleared.

Don't confuse the supplier of the visual work with the copyright holder. You may obtain photos from a museum, historical society or archival source, but the institution does not necessarily hold the copyright and is not necessarily the holder's representative. Finally, don't assume that clearing broadcast rights for a photo, graphic, art reproduction or other work of art allows for use of that image in promoting your show. Negotiate broadcast and promotional rights together thus saving time and money.

VAGA Voluntary Agreement

All producers who are producing programs for public broadcasting, whether for profit or non-profit may benefit themselves of the voluntary rate agreement between PBS and the Visual Artists and Galleries Association (VAGA). VAGA represents over 200 American visual artists and is the U.S. representative for ten European copyright societies. The voluntary agreement provides a rate structure that matches the rates set forth by the Copyright Royalty Tribunal. For those rates, producers obtain standard public broadcasting rights and the right to use the visual in promotional print materials. You may need to clear additional rights for other markets.

If you use the work of an artist who is on the VAGA roster, payment is made to VAGA. A Sample letter is included in Chapter 6: *Sample Forms*, for your adaptation.

PBS used to have a similar agreement with Artists Rights Society (ARS). ARS is the exclusive representative in the U.S. for the two French copyright societies, SPADEM and ADAGP, representing Mary Cassatt, Pablo Picasso, Henri Matisse, Pierre-Auguste Renoir and many others. However this agreement expired in 1997 and was not re-negotiated.

Section 118 Compulsory License for Non-Profit Producers - Visual Rights

As with published music, there is a compulsory license for use of copyrighted visual art works for public broadcasting. The visual arts compulsory license only grants you rights to use the work for public broadcasting for four releases in three years and for seven days of off-air recording. Unlike the Compulsory License for Music, there is a fee paid by you, the producer. The non-profit producer pays fees directly to the copyright holder based on a set rate schedule. The rates are on the back of the sample *Visual Arts Cue Sheet* (on the following page). Note that this rate is only good for three years. An additional 50% of the applicable rate will clear the material for an additional three years, which is necessary to make the program cleared for the six releases in four years required by PBS. Chapter 6: *Sample Forms*, contains a sample letter that you may tailor for your own use to accompany the payment. In the event that you cannot locate the copyright owner, PBS maintains a trust account into which payments may be deposited. You are then released from

any other liability for the public broadcasting use. Due to the discrepancy in the off air record period allowed by this provision and the off air period required by PBS, you will have to clear the educational rights for any piece of visual art where you are relying on this compulsory license.

Visual Arts Cue Sheets

All producers must complete the visual arts cue sheet. If you have not used any copyrighted visuals, note this on the cue sheet and submit it with the rest of your final deliverables.

Please see the sample *Visual Arts Cue Sheet* on the following page. Refer to side two for instructions and general rates. If you have questions please call the ITVS production department.

Attach (in the order listed on the cue sheet) copies of agreements, letters, and proof of payments. Please number each piece of documentation so that it corresponds with the number you assigned on the cue sheet.