

BZ/Brief

FILM & TV CLIPS

CLEARING FAMOUS FILM & TV CLIPS FOR COMMERCIALS

Clearing the rights to use movie and/or TV clips is a very complicated, very expensive and very time-consuming process. When the intended use is for advertising, the size of the budget available can become the crucial factor in securing the clip. But if you have the money, and have planned for the time required, many things are possible in the world of clips.

YOU NEED LOTS AND LOTS OF LICENSES

What makes clip clearing so tough and so costly is the sheer number of rights involved in each clip, each requiring a fee. It can be hard to track down both who the rights holders are and where to find them. And — even one permissions refusal may take (at best) some fast footwork to get around, or (at worst) stop the project cold.

First stop is with the movie studio or TV production company that owns the show's copyright, or another company to whom they have sold their rights. The Turner organization, for example, owns all the famous MGM musicals and every pre-1950 film produced by Warner Brothers. Some studios say no to commercial use of all their films; sometimes they turn down all requests for particular films. Others can't wait to take your money.

The general rule here is that the older the show, the more likely you are to be able to negotiate a clearance, and one you can afford. And, of course, the more famous the show, the more you must pay for your clip. You may indeed get a clip from "The Wizard of Oz," and yes, you will pay a stiff price for it. On the lower end of the scale, the 'monster' movies (*Frankenstein*, *Dracula*) and the silent comics (Charlie Chaplin, Buster Keaton) all cost considerably less.

Films & TV shows we have cleared for advertisers include *King Kong*, *The Wizard of Oz*, James Cagney in *Yankee Doodle Dandy*, Errol Flynn in *The Sea Hawk*, Rita Hayworth in *Blood and Sand*, Ingrid Bergman and Humphrey Bogart in *Casablanca*, Fred Astaire in various MGM musicals, Clark Gable and Vivien Leigh in *Gone With the Wind* as well as "Gilligan's Island", "Leave it to Beaver", "Ozzie and Harriet" and "The Ed Sullivan Show," among others. The most recently released movies and current hot TV shows are almost impossible to obtain.

Second stop lies with permissions from the actors appearing in the clip, all of them, living and dead. These clearances are required by both SAG contracts and publicity rights laws.

Each actor must be cleared in a separate negotiation; if the actor is alive, with the actor's agent, and if dead, with the actor's estate. Finding all these people always takes time, as does the negotiation itself. And what do you do if locating an unknown actor's estate proves impossible? Cancel the project? Is going ahead an affordable risk? This problem is best discussed with your attorney.

Moreover, there are some actors who say "no!" to any appearance in advertising. You have no recourse from this refusal except to find another clip in which that actor does not appear. Or to find another film.

Third. Most films require payments to the Writers and Directors Guilds of America, except for some older films. These relatively simple payments usually are covered by two several-hundred-dollar flat fees.

Fourth stop is with any music on the clip's soundtrack. Film studios are now charging extra fees for the right to the original soundtrack. You will usually have to pay for a synchronization license and for a master recording if you use the score. The music in a film can also be a popular song that belongs to someone other than the studio and has its own copyright, a category which includes the well-known themes of many TV series.

Fifth and last, the clip must be carefully checked for any other possible rights problem — a trademark or other protected symbol, a work of art making a brief appearance in the scene, use of a stunt man substituting for a character in the clip.

The bottom line in clips should by now be obvious. Think about them only when the envisioned impact and audience is big enough to justify the size of rights clearance budget you can expect — and well ahead of campaign kick-off date.

WHAT ABOUT USING FILM STILLS?

Movie stills can put the impact of a major motion picture behind smaller-scale print advertising or promotions involving thousands of brochures. If the still is an actual frame of the film, a clearance from the owner of the copyright (usually the movie company) must be obtained. Although costly, it is not usually as expensive as the fee for an actual film clip.

If the photograph is a *publicity still* you might be able to skip this clearance altogether. In the old days, studios produced thousands of stills for use by newspapers and fan magazines in the promotion of their upcoming films. And, photo copyrights had to be renewed within a narrow window of the last year of their first 28-year copyright term or fall into the Public Domain. Nobody knows whether these publicity stills were ever copyrighted in the first place. If they were, the copyrights probably weren't renewed. Talk to your attorney about this alternative. *Either way, the actors in the still continue to control their own publicity rights and their permission is required.*

Advertisers can get permission to use clips and stills — but it's a complex process. You are welcome to call BZ/Rights to discuss it in more detail.

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