

**“Yes, you can!” –Where you don’t even need ‘fair use’
By Peter Jaszi, Washington College of Law, American University**

The answers to some of filmmakers’ most common clearance questions don’t really lie in the realm of “fair use” at all, but fall under the heading of “free use.” Some examples:

- Buildings that can be seen from public areas can be filmed for any purpose. Although there has been copyright in architectural works in the United States since 1990, the Copyright Act includes an exemption for filming. It doesn’t matter whether the building is the subject of the film or an incidental background.
- Federal government works enjoy no copyright protection whatsoever, whether they are the words of federal government employees or footage taken by camerapeople in civilian or military service. The purpose for which you use the material – as well as the source from which you obtain it, are irrelevant from a copyright perspective.
- Public domain works (such as 19th century paintings or medieval manuscripts) in museums or private collections are free for use as well, if you have access to a reproduction. Many institutions claim copyright in their own photographs of old objects in their collections. But if you have a different source, you’re free to proceed, without a license from the collection.
- For most documentary projects, filmmakers don’t have to be concerned about the so-called “right of publicity” that exists under some state laws. The cases (and sometimes the statutes themselves) make it clear that the right bars only the commercial exploitation of celebrities’ “persona,” and First Amendment-protected expressive uses are specifically exempted.
- In answer to a common (but not intellectual property-related) question, documentarians don’t need photo releases from individuals who are filmed in parks, streets or other public places where they have no expectation of privacy. If you single out an individual for special attention, you may need a release.
- Finally, documentary filmmakers generally don’t need to be concerned about infringing trademark rights by showing a logo on a T-shirt, the name of a household product, or the outline of a famous building. These sorts of incidental uses don’t confuse the public or suggest an endorsement by the owner of the mark. In unusual situations where their use of commercial imagery might reflect badly on a product or the company behind it, filmmakers should seek legal advice.