



Copyright and Related Rights Issues in the Licensing and Broadcasting of Artistic Works and Works of Mas

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The ownership of rights

Starting point under the law (S. 26):

- The author or performer him- or herself
- Employers as regards works created by employees
- The producer of films or works of mas
- Organizers of the creation of collective works



Transfer of rights and authorizations to use

Distinction between assignments and licenses (S. 28)

Assignments

Assignee is new owner with all the prerogatives of an owner

- Can freely change, adapt and dispose of
- Can re-assign and license
- Can sue for infringements in own name

Licenses

Licensee is not owner, but has permission to use; exclusive licensee, however, may in many countries sue for infringement in own name

- Can only change, adapt, dispose of and sub-license if permitted in contract



Overview of licensing issues

The different legal aspects:

- Intellectual property law
- Contract law
- Competition law

The different operations:

- Transfer of rights
- Contractual obligations

The core of the matter: there is not very much law, other than what you write yourself in the agreement

Who

Identify the contracting parties

Decide on assignability of license and sublicensing



What

Identify the production covered by the license

Identify the deliverables

Determine the scope of use permitted under the license

- Broadcasting, terrestrial or satellite
- Rebroadcasting
- Reproduction
- Cable distribution

Determine the payment, amounts and forms

- One-off payments
- Royalties, with or without payments up front
- Bases of calculation
 - Use
 - Sales turnover
 - Profits
- Shares of income from other sources incl. sublicensees

&c., &c.



Where

Determination of territories covered by license



When

Determine the term of the license, if any

- Exact indications of both when it starts and when it ends

Determine how to deal with copies, recordings, etc. when the license expires whether due to end of term or in case of forced termination, for example in case of non-compliance with terms and conditions



Various Other Clauses

Trademark protection and use

Audit clauses regarding use and accounting of royalties

Agreed sanctions (fines) in cases of breach of contract

Definition of defaults automatically terminating the license

Warranties regarding the transferred rights

Disclaimers

Choice of law and venue



