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.

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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
Thank you for your attention

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