

# European Directors & Screenwriters Contracts Database

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## GUIDELINES OF EUROPEAN AUDIOVISUAL AUTHORS' CONTRACTS

Promoting Fair Remuneration and Collective Bargaining for Creators in the Digital Single Market, a project of UNI MEI – media, entertainment & arts, FERA – Federation of European Film Directors and FSE – Federation of Screenwriters in Europe, with the financial support of the European Union.



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## EUROPEAN AUDIOVISUAL AUTHORS' CONTRACTS GUIDELINES

In every country, the following items and clauses must be clearly set out in any audiovisual author's contract.

A general distinction needs to be maintained between clauses applicable to the **Work** (salary, terms, conditions, etc) and those concerning the **Assignment of Rights** (fees for use, term of assignment, etc). In some territories (e.g. France), there are separate contracts for each.

A general distinction needs to be made between **initial payments**, usually connected to the undertaking of the necessary work (for director sometimes as salary or self-employed), and **later payments**, more usually connected to distribution of the finished work and sometimes managed by Collective Rights Management.

Each section refers to a corresponding **Database Contract Term\***, which will allow for individuals to find existing contract clauses in use in a wide range of European countries.

Some of these clauses will be improved by the **2019 Directive on Copyright in the Digital Single Market** through the indicated provisions, which can already inspire contract negotiation prior to the completion of the implementation process.

\* European Directors & Screenwriters Contracts Database  
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## THE PARTIES WITH CONTACT DETAILS

### CONTRACT NEGOTIATION CHECKLIST

- ▶ Production Company/ Employer
- ▶ Financier/ Studio (if different)
- ▶ Name of Active (Nominated) Producer
- ▶ Name of Screenwriter/ Director
- ▶ Screenwriter/ Director's company (if applicable)
- ▶ Screenwriter/ Director's agent or legal representative
- ▶ Screenwriter/ Director's Collective Management Organization

### CORRESPONDING DATABASE CONTRACT TERM

- ▶ Date and parties
- ▶ Identification of the project
- ▶ Right of representation through guilds/ unions/ professional organizations

### CONTRACT NEGOTIATION CHECKLIST

- ▶ Working title
- ▶ Source material (if any)
- ▶ Proposed length
- ▶ Primary target market
- ▶ Conditionality, circumstances in which payment is guaranteed ('pay or play')
- ▶ Proposed budget
- ▶ Elements to be disclosed before contract is signed
- ▶ Health and Safety responsibility

### CORRESPONDING DATABASE CONTRACT TERM

- ▶ Conservation of the work
- ▶ Copy of the work/ non-commercial use of the work by the audiovisual author
- ▶ ISAN number
- ▶ Transparency/ Audit/ Book inspection

### DIRECTIVE EU 2019/790 PROVISIONS

- ▷ **Transparency obligation (article 19)**
  - In scope for reporting : all modes of exploitation (national and worldwide, including merchandising), all revenues generated and remuneration due
  - Up to date, relevant and comprehensive information once a year from contractual partner
  - Possibility for joint request to sub-licensee for additional information
  - Referring to collective agreement defining sector-specific aspects of the transparency obligation in practice

## THE PROJECT

## THE CONTRACT, CONTRACT TERM

### CONTRACT NEGOTIATION CHECKLIST

- ▶ Start date
- ▶ Development period (if applicable)
- ▶ Principal Contract Stages
- ▶ Contract length
- ▶ Final End date (if applicable)
- ▶ Periods of exclusivity/ non-exclusivity
- ▶ Hours/ days to be worked
- ▶ Holiday and rest days, holiday payments
- ▶ Maternity/ paternity leave (if applicable)
- ▶ Suspension and Termination provisions

### CORRESPONDING DATABASE CONTRACT TERM

- ▶ Assignability of the contract
- ▶ Confidentiality – NDAs
- ▶ Duration of the contract/ commitment/ services /rights
- ▶ Exclusivity of services
- ▶ Expenses
- ▶ Force majeure
- ▶ Liability clause
- ▶ Provision of information to Director
- ▶ Right of privacy
- ▶ Rights imposed by funding body
- ▶ Superseding previous agreements
- ▶ Termination clause/ Cut off (Producer capacity to replace the Screenwriter/ Director)
- ▶ Turnaround or revocation
- ▶ Working conditions

### DIRECTIVE EU 2019/790 PROVISIONS

- ▷ **Contract adjustment mechanism (article 20)**
  - Refer to right to representation by professional organization
  - Refer to existing collective agreement if relevant (only possible override)
- ▷ **Right of revocation (article 22)**

## PAYMENT FOR WORK

### CONTRACT NEGOTIATION CHECKLIST

- ▶ Fee for the work
- ▶ Stages of fee payments
- ▶ Any fee deferments or 'investments' (if applicable)
- ▶ Escrow Arrangements/ Minimum Guarantee (money legally held for later payment)
- ▶ Living allowances, 'per diems'
- ▶ Pension Scheme (if any)
- ▶ Retainer fees (e.g. during periods of Development or Suspension)

### CORRESPONDING DATABASE CONTRACT TERM

- ▶ Conditions and timing of payments
- ▶ Payment for work undertaken

## ROLES OF SCREENWRITER / DIRECTOR & NOMINATED PRODUCER

### CONTRACT NEGOTIATION CHECKLIST

- ▶ Respective areas of responsibility of Screenwriter/ Director and Producer
- ▶ Rights of approval

### CORRESPONDING DATABASE CONTRACT TERM

- ▶ Obligation to participate in publicity and promotion/ Publicity clause
- ▶ Use of Screenwriter/ Director's name/ image for promotion
- ▶ Warranties from both parties
- ▶ Work to be undertaken

## JURISDICTION, ARBITRATION

### CONTRACT NEGOTIATION CHECKLIST

- ▶ Area of legislative jurisdiction of contract
- ▶ Arrangements for settling disputes

### CORRESPONDING DATABASE CONTRACT TERM

- ▶ Data protection / GDPR
- ▶ Dispute resolution procedure
- ▶ Jurisdiction

### DIRECTIVE EU 2019/790 PROVISIONS

- ▶ **Alternative dispute resolution procedure (article 21)**
  - Engaging the contractual counterpart to a binding mediation process
  - Refer to right to representation by professional organization
  - Refer to existing collective dispute resolution procedure if relevant (only possible override)

## CREDITS

### CONTRACT NEGOTIATION CHECKLIST

- ▶ On the film or programme, and in any publicity for it (see also Moral Rights)

### CORRESPONDING DATABASE CONTRACT TERM

- ▶ Credits / Credits dispute resolution

## TRANSFER OF THE SCREENWRITER / DIRECTOR'S ECONOMIC RIGHTS

### CONTRACT NEGOTIATION CHECKLIST

- ▶ All rights assigned should be listed in the Contract, individually or in groups, with the territory, term and payment for each clearly specified

### CORRESPONDING DATABASE CONTRACT TERM

- ▶ Format rights (screenwriter) / Conceptual director
- ▶ Payment(s) for rights to be transferred
- ▶ Rights to be transferred
- ▶ Sequels, prequels, remakes

### DIRECTIVE EU 2019/790 PROVISIONS

- ▶ **Principle of appropriate and proportionate remuneration (article 18)**
  - Through collective mechanisms in conformity with EU law

## PAYMENT FOR ECONOMIC RIGHTS

### CONTRACT NEGOTIATION CHECKLIST

- ▶ All rights used must be paid for. Methods of payment, e.g. whether direct to the Screenwriter / Director, or via a collective management organisation or agent, must be stated, along with arrangements for access to distribution accounts or sales figures to verify the Screenwriter / Director's share.

### CORRESPONDING DATABASE CONTRACT TERM

- ▶ Conditions and timing of payments
- ▶ Relationship with CMOs / Getting remuneration through CMO
- ▶ Royalties

## CREATIVE RIGHTS & CONDITIONS, MORAL RIGHTS

### CONTRACT NEGOTIATION CHECKLIST

- ▶ Creative rights define the rights of the Screenwriter/Director to a final say in respect of their creative work on the project and need to be precisely defined.
- ▶ Moral Rights legally belong to the Screenwriter/Director as a private person and cannot be transferred.

### CORRESPONDING DATABASE CONTRACT TERM

- ▶ Awards/Recognition
- ▶ Creative rights
- ▶ Moral rights

## SIGNATURE & DATE

### CONTRACT NEGOTIATION CHECKLIST

- ▶ Every contract must be signed and dated, with witnesses, by Producer/Employer and Screenwriter/Director.

### CORRESPONDING DATABASE CONTRACT TERM

- ▶ Date and signature of the contract

## OPTION AGREEMENT (optional)

### CONTRACT NEGOTIATION CHECKLIST

- ▶ Option agreements give a producer an exclusive option to acquire rights in a project for a contractually defined period and usually summarise the main intended contractual terms which are intended to apply if the optioner exercises their option.

## THE DEAL MEMORANDUM, OR 'DEAL MEMO' (optional)

### CONTRACT NEGOTIATION CHECKLIST

- ▶ Optional short letter summarizing the main contractual terms agreed by Producer/Employer and Screenwriter/Director which includes key budget information (top sheet) allowing for the Director to safely commence work. It can be useful in cases where lawyers or agents may take a long time finalising the full contract. The Contract, once signed, immediately replaces the Deal Memo.

#### **FERA**

Founded in 1980, the Federation of European Film Directors gathers 43 organisations from 33 countries. It speaks for approximately 20,000 European screen directors, representing their cultural, creative and economic interests at national and EU level.

@Film\_directors

#### **FSE**

The Federation of Screenwriters in Europe is a network of national and regional associations, guilds and unions of writers for the screen in Europe, created in June 2001. It comprises 26 members from 21 countries, representing more than 7,500 screenwriters in Europe.

@ScreenwritersEU

#### **UNI MEI**

UNI MEI Global Union is the division of UNI GLOBAL, representing over 400 000 workers and 170 unions and guilds in over 70 countries in the media, entertainment and arts.

@unimei

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