

CHAIN OF TITLE OF A FILM OR OTHER AUDIOVISUAL WORK

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Abstract. The purpose of the article is to determine the place and importance of Chain of Title of a film or other audiovisual work, which is the basis of the successful sale of film industry products. The role of Chain of Title for film producers is imputed by film distributors, sales representatives and broadcasting organizations. The importance of proper and prompt formalization of business relationship between the industry product creators – which are the intellectual property rights holders, and the film producers is fundamental to the possibility the producer to generate revenue and profit from the film that will recoup the investment made, and also to provide rights holders with additional remuneration. In the Republic of Bulgaria, for the producers of films and other audiovisual works, the issue Chain of Title is still not fully clarified and the article focuses on the process of presenting this essential information from the point of view of the current regulations in the field, the requirements of distributors, broadcasters, and to present the author's experience in obtaining the Chain of Title process. The methodology used, allows to present accessible and practical information, both for professionals in the field of the film industry, as well as for teachers and students.

Keywords: film; audiovisual work; intellectual property; distribution

Introduction

Of primary importance for the development of the creative industries, and the film industry in particular, is the ability of each one to successfully sale its products, which gives the opportunity to return the investments made, and the freedom to invest in the creation of new products. The implementation process is highly dependent on multiple factors such as:

- artistic value of the product;
- technical quality performance;
- internationality of the product;
- opportunity to build effective international contacts;
- settled intellectual property rights.

While the first four factors are rather subjective, settled intellectual property

rights are completely objectively quantitatively and qualitatively measurable. In practice, in the film industry, a term has been imposed, which represents a collective concept of settled intellectual property rights on audiovisual work – chain of title. The chain is the set of documents that agents, distributors, streaming platforms and any other type of broadcasting organizations require as proof that the producer of the film owns all rights to it, and has the right to offer it for sale¹.

The creative sector, as a sector that creates high-risk products, given the subjectivity of consumer evaluation of content, should rely on any potential market opportunity for the realization of the product, and precisely for this reason, a deep knowledge of the different requirements that would have sales agents, distributors, streaming platforms, broadcasters, etc., to whom the relevant work would be offered for broadcast. In addition to the technical requirements, and even before them, the first documentation that must be presented to the potential buyer is the chain of title, directly reflecting the settlement of intellectual property rights in a volume and type that will guarantee undisturbed use of the work by the relevant user.

Intellectual property in a film or other audiovisual work

The film and/or other audiovisual work is subject to protection by the system of intellectual property, through special legislation in different countries. According to Bulgarian legislation², as well as according to the Berne Convention for the Protection of Literary and Artistic Works³, the film is among the objects whose authors are granted exclusive rights over it. The specificity of audiovisual works is that they are a product created under conditions of co-authorship between the director, cinematographer, screenwriter and set designer in the case of animated films⁴. Apart from that, the figure of the producer also appears as a key to a success, and his/hers role is to organize the creation of the first recording and provides its financing, turning him into a major investor and a person whose interest is the quick market realization of the complete product. Producers themselves must be aware of what and for whom, and even for what, intellectual property rights arise. We can divide the rights holders into several categories:

- holders of rights in works on which a film is based;
- copyright holders of the film;
- copyright holders of works that are included in the film;
- holders of neighboring rights on their artistic performances;
- industrial property owners.

Rights holders of works on which a film is based are part of both the film industry, as they provide a work which adaptation leads to the creation of a screenplay, and the chain of title that the producer must prove if the film is

to be distributed on the international markets. The adaptation of a copyright work in Bulgarian legislation is defined in the CRRA and represents “making changes of any kind to the work, as well as the use of the work to create a new work derived from it”⁵. Of course, it is not necessary to use the whole work, only part of it can be used, such as the use of journalism and development of the story with events and facts that are fiction. Another common technique used by filmmakers is to take a commercially successful book and adapt it into a screenplay. With the authors of the works on which the creation of the film is based, the producers must sign appropriate contracts to ensure that the film can be produced, edited and subsequently distributed without limitation.

For the holders of copyright on the film, in addition to the above – director, cinematographer, screenwriter and production designer for animated films, it should be noted that in the CRRA, the duration of copyright protection is for the lifetime of its authors and 70 years after the death of the last survivor among, outside of those already mentioned (director, cinematographer, screenwriter and production designer for animated films), the author of the dialogue and the author of the music, if it was created specifically for the film. It remains unclear the purpose of the legislator not to include in the group of authors the composer and the author of the dialogue, but to include them in the group of persons on whom the expiration of copyright protection depends. The producer’s focus, when concluding the contracts with the rights holders, must be directed, except for those provided in art. 62, para. 1 of the CRRA, and with all others on which the duration of protection depends. Regardless of the existence of dispositive provisions of the CRRA, which could guarantee a desirable minimum of distribution rights, the law is categorical that authors enter into written contracts with the producer. Contracts with this group of persons, are the first to be checked in the chain of title by potential broadcasters or buyers.

Holders of copyright on works that are included in the film, are all authors of works that are protected under the CRRA, and that are included in the film, but are not its main component, such as:

- sets, architectural objects, photo studios;
- clothing and specific make-up (masks);
- a prop designed specifically for the film;
- virtual reality artists;
- music;
- other audiovisual works that have been published, etc.

The creation of sets for the film or the use of already created sets, requires the necessary consent from the author of the set (its designer, architect, etc.). When filming architectural objects (buildings, etc.), permission to carry out the filming process must be sought from the relevant architect who prepared the project and/or the person authorized by him, in order not to infringe his/her copyright.

In the case of studios, the possibility of infringement of rights is minimized, since these are usually closed complexes with a special access regime, and the basis for starting production work is the existence of a signed contract that provides the necessary permissions.

Clothing, when its design is created specifically for the film, must be settled rights between the producer and the author of the design. Such a contract must be entered into even when the relevant costume designer combines pre-existing outfits in a way that supports the artistic concept of the film.

In the case of make-up, the regime is lighter, since in order to conclude a copyright agreement with the make-up artist, his work must include the creation of specific make-up, masks etc. – make-up as a technical act is not subject to protection under Bulgarian legislation as copyright.

In terms of props, this is a large part of the film, and extreme care must be taken with the objects that are included in the usable props. It should be considered whether it includes objects that are created and made specifically for the film and/or ones that are rented. In large-scale film productions, the art director is directly responsible for the general look of the scenes, and not only determining the type of props, he/she considers what should be made, what should be hired, what should be purchased in order to achieve the artistic effect desired by the director. concept of individual scenes. Since the prop is of serious bulk, all responsibility is placed on the art director who cascades down responsibilities to other members of his/hers department. The contract with the art director is mandatory and must clearly define his role in creating a new design for the various items required for the production.

Virtual reality is increasingly entering the production of films and other audiovisual works, making it possible to quickly and easily shoot scenes of high complexity, by generating a virtual reality with the help of UNREAL ENGINE⁶, and reproduced on special walls. It's a money-saving tool for producers that saves both, production and post-production time. What the producers must take into account is that each created reality has its authors and the contracts that are concluded with the studios offering this service, must also contain clauses for ceding rights to use this environment in a volume that is necessary for the realization of the film.

The inclusion of musical works in a film or other audiovisual work is a process that is bound to increase the artistic value and emphasize the individual scenes. In the hypothesis that the music was created especially for the film, the contract must be concluded with the relevant composer, but all authors of the so-called sound effects, that do not represent complete musical works, but environments. Using music that represents finished, recorded and published works, the contracts are concluded either with each producer separately, or through licensing from a music publisher, or licensing from a music bank. This

is a much more cumbersome process as it involves contracting with multiple and different rights holders, if the contract is with multiple producers, while using a publisher or bank is limiting in terms of the repertoire that can be used. That approach works for small and medium-sized film productions, that do not have the budget to create music specially for the film. Attention should be paid to the territory for which permission is granted (especially when talking about a music publisher or a bank), as well as the duration of the granted rights. It must not forget the negotiate the rights for adaptation, and also for synchronization, which means “combining a copyrighted work or part of it with another copyrighted work” (Papagalska 2021).

Other audiovisual works that have been publicized may be included in the film, examples of such works are music videos, excerpts from news, editorial and other types of broadcasts, excerpts from other films, archival footage, etc. It is important to identify the relevant rights holder – whether it is a broadcasting organization, a music and video producer, or another film producer.

Holders of neighboring rights on artistic performances are undoubtedly the performing artists, who can be from the actors in leading roles to the so-called mass and stunt cast. Other artists, in CRRA, can be the musicians who participated in the process of performing the music for the film, as well as those who are included with their performances of works in the film. Of course, all other persons not mentioned above who perform a work in some way and this performance is included in the final version of the film, can also be qualified as performing artists. It is specific for all artists, hat they receive rights according CRRA, on their performances, but not on the whole product - the film. Incorporation of their performances into the audiovisual work is carried out, on the basis of a contract with a clear definition of rights, obligations and scope of transfer of rights.

Industrial property owners, are those persons who have possesses trademarks rights, designs, geographical indications etc., which in one form or another will be filmed and subsequently broadcast in the audio-visual work. It is of high importance to select products and services that are not prohibited for advertising by law (prohibited for product placement are tobacco products, medicinal products and treatments, etc.)⁷. In addition, to the initial selection for eligibility of product use, the permission of the rights holder of the industrial property – if it is a trademark, of the rights holder of the same, for a design also, etc. Even if the goal is not to make a product placement, but only to use a product for the needs of the scene, such permission must be requested, since “in recent years the way in which companies communicate with consumers has changed” (Todorova 2019) and the producer may not be aware of the communication strategy of the respective good/service, which may lead to a negative effect on the rights holders economic interests. Whether the goal is product placement, or

simply the use of a product that is or is labeled with an industrial property asset, formalizing the relationship with the rights holders is of paramount importance for the Chain of Title.

A set of documents and content necessary for the Chain of Title

The documents that the producer needs to possess in order to clear the Chain of Title, and through which he can prove his right to use the film are far from being complete just by having a signed contract. A large part of the future broadcasters, and even the investors (when there is a need for them to complete a certain film project), require the receipt of a complete package of documents, starting with the preliminary contract between the producer and the relevant person, and ending with proof of payment (paid statement, bank account statement etc.).



Figure 1. Chain of Title Document Set

The preliminary contract (Deal Memo) is a document in which the parties express their desire and intention to work together on the specified film project, as well as the conditions under which this could and will happen. Usually, the engagement period, his role in the process of creating the work, the amount of remuneration, personal data and other general conditions, that the parties agree between themselves are agreed upon. In Bulgaria, this contract is often neglected by the producers, but it is one of the elements of the Chain of Title, as the relevant broadcasters want to check, whether the producer has had a earnestly in fulfilment the contract subject, with the relevant person, (have the initial agreements been fulfilled and if not, why) and to minimize the possibility of subsequent claims by a person who was employed in the making of the film. Mandatory elements of the preliminary contract:

- date and place of signing;
- parties and their respective personal data;
- role and form of employment of the person who will work on the creation of the film;
- type and amount of the fee – fixed sum, daily rate (linked to working days) or mixed payment;
- term of engagement, as well as estimated date of commencement of work;
- name or nickname of the person – as it will be written in the opening and closing credits of the film.

The document is considered valid only when it is signed in person, by both parties on it or with a valid electronic signature. After signing, before archiving the physical copy, it is good to create a digital copy as well, which aims at a more efficient transferring of the documentation in the process of negotiations with broadcasters.

The contract is one of the most important elements of the Chain of Title. Its completeness and specific provisions are subject to serious analysis by any potential broadcaster in the realization process. Regarding contracts, it should be clear that although this article focuses only on those persons for whom intellectual property rights arise, it should be available to any person who was in some way part of the filmmaking processes. There are specifics in the contracts in Bulgaria, which are concluded with the rights holders, which are determined by various subjective accumulations of practice in the past, but regardless of this, the conclusion of contracts is observed primarily for the transfer of creation of works pursuant to Art. 42 of the CRRA, as the national practice tries to reach the liberal regimes of the USA, where the creation of a work made for hire exists. The main elements of the contract with the rights holders are (the presented structure is not exhaustive – the emphasis is on the key parts of the contract):

- date and place of conclusion;
- parties and their respective personal data;
- subject of the contract:

A clear definition of the rights holder’s role in the creation of the film, as well as a description of the film (working title, duration, etc.). The subject may also describe the transfer of rights and that the remuneration formed in the contract is also for this – sample: The Producer assigns and the Director undertakes, in accordance with the Producer’s requirements and for a fee, to participate as a director in the creation of a full-length feature film with the working title “Sample Film” with a duration of not less than 120 minutes.

- deadline:

It is important to make a distinction regarding the term – the term of the contract in the part of it that concerns the creation of the work, must correspond to the terms of the preliminary contract, and this is usually for the time of preparation, filming and post-production of the film. A term for the transfer of rights should also be agreed upon if a limitation is envisaged. Until very recently, in Bulgarian legislation (Article 37, Paragraph 2 of the CRRA), there was a limit regarding the maximum duration of a contract, with which the author can assign his rights – 10 years. This restriction was abolished with the latest changes in the CRRA, which entered into force on 01.12.2023. This legislative action allows for more flexible negotiation between the parties, and certainty for producers that they will be able to use the created work for as long as possible, so as to recover their investment. Example entry regarding the period

of transfer of rights: The rights under this Agreement are assigned worldwide and for an unlimited period, if the period is limited by law, they are deemed to be assigned to the maximum extent permitted by Law.

– remuneration

The terms, type and amount of remuneration. What is the type of remuneration – a fixed whole sum for the fulfillment of all commitments under the contract, daily rate or mixed, also gross or net is agreed in the contract. The conditions that must be met in order for the remuneration to be paid – filming a certain number of scenes, a certain number of days, etc. It is important to determine the method of payment of the remuneration – in cash or by bank transfer. This arrangement depends on what documents will have to be presented as prove of payment.

– forming the remuneration:

How much of it is for work done, and how much of it is for transfer of rights. This issue is not required to be settled by the potential broadcasters, but rather is used to reduce the tax-insurance burden and determine the amount of remuneration for extending the period of transfer of the rights. Regarding the tax-insurance burden, the remuneration is divided, conditionally between the parties, at 80% for the assigned rights and 20% for the labor and time, as well as for the fulfillment of other contractual obligations. The meaning of this distribution is that 80% of the amount received is considered as transaction royalties and 40% are legally accepted expenses⁸, which automatically reduces the tax base on which fringes is due for the person. The remaining 20% are 25% legally accepted expenses and are equated to remuneration under non-employment legal fee. Regarding the calculation of the fees due for the renewal of contracts, in practice, the sum of the fee received for the transfer of rights is taken, which is 80% of the total fee.

– transfer of rights:

The transfer of rights is the most important part of the contract because it is the basis for successfully closing the Chain of Title. Even with the presence of all other documents, if the necessary rights are not transferred in this part of the contract, then all other documentation is useless. Typically, distributors require proof that all copyright have been assigned to the producer, and while in the U.S. the possibility of a waiver exists⁹ of rights, in Bulgaria this is limited to a certain extent – there is nothing to do with one document – a declaration and a provision such as “I cede all my rights to the producer”. The provision of Art. 16 of the CRAA is categorical that “the alienation of other moral rights can only take place and expressly in writing”, for this reason, in addition to writing in the contract that all rights are assigned, each one must appear separately in order to have a valid arrangement.

– confidentiality

Confidentiality is an important element for potential users because “in a free market economy, the products of creative labor have the characteristics of an economic good intended for market exchange and consumption” (Krushkov 2020). In securing all processes that lead to the creation of the economic good – the film, the entire possible set of methods for unauthorized disclosure of information must be applied. Potential international broadcasters and buyers have realized that although the production of films and other audio-visual works is subject to certain fundamental and general principles, each individual producer applies his own unique approach to the act of creating a work. In this regard, they seek to minimize the possibility of revealing the competitive advantages of the product they are going to distribute to be known and this will lead to the minimization of profit opportunities. The special attention to be paid to the “Confidentiality” section depends on an analysis of the own business processes and the identification of unique ones, that should not be known to a third party, without this knowledge being controlled by the producer himself.

Insurance is necessary for any production to ensure the continuity of the filming process, as well as increasing the ability to respond to a crisis. Potential users require two types of insurance, but only at the pre-sale stage:

– completion insurance:

Completion insurance or completion bond is concluded at the expense of the producer, and in the name of an investor or buyer, who provided funds for the creation of the film at an early stage of its creation. The insurance itself is a guarantee to the third party, in whose favor is, that the film will be completed regardless of the producer’s capabilities. For example, if the producer becomes unable to complete the film (due to insolvency or otherwise) the insurance issuer, by virtue of its terms, acquires the intellectual property rights, removes the producer and completes the film, handing the investor and/or buyer a finished product. This type of insurance is mandatory for any production that will be sold in advance. In Bulgaria, this service is not yet available – Western European funds are used to conclude a completion bond.

– ordinary life insurance:

Basic life insurance with an accident coverage, are also subject to scrutiny in the film’s pre-sales process. Prospective buyers generally do not consider sales offers for movies that are in production and do not have insurance for the lead actors, stuntmen, directors, etc. In addition to the risk of a certain key person not being able to complete their work on the film, there remains the negative publicity that an accident that is not covered by insurance would accumulate. For this reason, the conclusion and presentation of this type of insurance is mandatory. In Bulgaria, you can use the services of insurance brokers who provide package insurance for entire teams.

The mid and final protocol, are protocols that certify the handover and acceptance of part of the work already agreed to be performed. The mid protocol (there could be more than one) is used when the payment of the remuneration is bound to achievement of a certain part of the filmmaking process. For example, when stipulating in the preliminary contract and subsequently in the contract of payment of remuneration on a weekly basis and number of working days, a protocol is signed every week, which reflects the type and volume of the work done, its submission and acceptance to and by the producer. In the protocol, an obligation to pay remuneration is taken, describing the period and method of payment. The protocol is signed by both parties. The final protocol reflects, in addition to the final payment, with it the respective rights holder transfers his work to the producer, declares that the work has been created and, respectively, the producer accepts the work of the rights holder, agrees that he has received the final form of the ordered work and undertakes an obligation to pay the remuneration due under a contract within a certain period. In this protocol, it is important that the parties declare to each other that they are completely satisfied with the work between them, that they consider the subject of the contract to be fulfilled in the time and volume that was agreed and that at the time of signing, they do not have any claims against each other. Protocols are an important element of Chain of Title documents, as they establish to potential buyers and broadcasters that the parties have fulfilled the subject of the contract, each is satisfied with the other, and above all, that there are no claims, which is largely what it is necessary for the unimpeded use of the work.

Proof of payment can be individual copies of bank payment documents and/or a general accounting statement. The important thing in this case, is to make it clear that the producer is the person to whom the rights are assigned, and the recipient of the payment is the person who assigned these rights. Only if there is a proper and clear financial relationship between the parties, potential buyers can distribute the film.

We can talk **about a closed Chain of Title when:**

- preliminary contracts have been signed with all rights holders;
- there are signed basic contracts with all rights holders, with a subject that corresponds to the relevant position;
- there are agreed deadlines and remunerations for the right holder that correspond to the prior agreements;
- has assigned rights to an extent and in a manner that complies with the law and implies an undisturbed use of the film;
- there are confidentiality clauses included;
- the appropriate insurances are in place for the film and for the individuals;
- there are duly formed mid and final protocols to the concluded contracts;

– there are indisputable documents proving the payments made under the contracts in the volume and form in which they were agreed.

Conclusion

The Chain of Title of a film or other audio-visual work is essential to be prepared and executed professionally, resulting in an increase in the chances of the producer to meet all the requirements of potential international buyers and broadcasters. Knowledge in national legislation is important to be able to adapt the documentary requirements without infringing the rights and economic interests of those involved in the creation of the product. A serious administrative capacity and a timely fixing and settlement of the relations between the parties are necessary for the implementation of all the planned activities to secure the chain. Any incompleteness in the documentation or in the regulations governing the rights to the film and the objects of copyright or neighboring rights included in it, would lead to the impossibility of international market realization. Apart from the Bulgarian producers, who would greatly limit the possibility of maximizing their profits, locating only in the national markets, for the international producers this would mean an absolute impossibility to use the products that they filmed on the territory of Bulgaria with Bulgarian crews and artists.

NOTES

1. By sale, the author of the article will understand the transfer of rights to use the audio-visual work, which are assigned to a third party, who will personally and/or through third parties carry out actions to bring the work to the public's attention.
2. Art. 3, para. 1, item 4. of the Copyright and Related Rights Act, published SP. no. 56 of June 29, 1993 (CRRA).
3. Art. 2, para. 1 of the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886. /BC/.
4. Art. 62, para. 1 of the CRRA.
5. Art. 18, para. 2, item 8 of the CRRA.
6. <https://www.unrealengine.com/en-US>.
7. Art. 84, para. 2 of the Law on Radio and Television, promulgated DV. no. 138 of November 24, 1998. (ZRT).
8. Art. 29, para. 1, item 2, letter "b" of the Law on personal income taxes, published DV. no. 95 of November 24, 2006.
9. Section 106A(f) of the US Copyright Act of 1976.

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