



GUIDE ON CONTRACTUAL AGREEMENTS FOR AUTHORS OF CINEMATOGRAPHY

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I. – Introduction

Several years ago, **IMAGO** published a model contract for Cinematographers with comments and a checklist or guidelines for working conditions.

IMAGO's proposal admitted expressly that it was not a Standard contract, which could function in all countries, but **IMAGO** understood the former document as a “check-list” for member associations and an attempt to professionalize on an international standard the relationship of Cinematographers with the Producer and Financiers. **IMAGO** still insists, the discussion of “what is fair to include in a Cinematographer’s contract” should be a public discussion and not limited to the bargaining between Cinematographer and Producer. Nevertheless, **IMAGO** has started a new initiative.

This new initiative is different, **IMAGO** has received input about the first work: please no Standard contract form, but very useful and simple guidelines. Those guidelines are not only for the use for Cinematographers and Producers, but also for creators in the audio-visual sector and of course for the European commissioners, financiers, and media lawyers, etc.

IMAGO is convinced that all should work together and cooperate to make cinematographic Works available to the public for the long term, in the interest of all the parties, including, of course consumers and the film heritage and to make all creators involved in cinematography production to earn a decent living from their revenues, payment/remuneration, etc. of the utilisation of their creativity and even financial investments.

The purpose of this Guide is to provide Authors of cinematography with standard recommendations.

Authors of cinematography have a privileged condition regarding his or her contribution to the film, without disregarding the very important creation of Directors, Screenwriters, Composers of the music, etc.

1. – Cinematographers are (Co-)Authors of the film, cemented in the legislation of many Countries:

In particular, the visual design and the lighting design corresponds almost only to him or her. The lighting design is a particularly elemental part of the film, since it provides every individual image with its own special atmosphere and

influences the telling of the whole film, it is the Author of cinematography who imprints his or her mark of personality upon the film.

“The creativity of the Art of Cinematography in the action of making movies and as a consequence that the Cinematographer cannot be any longer defined as a “skilled technician” with some “aesthetic ambitions” but that he is fully and completely an Artist that as all the Artists utilizes specific technical resources. By that he can be defined Author of his work as it is of course for the Director and a Co-Author of the film as it happens for the Screenwriter and the Music composer. Only a restrictive late-romantic culture and plain ignorance about the making film process “de facto” can negate what appears more and more as a simple evidence.

Luciano Tovoli

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Conclusion

He or she has full protection under Intellectual property law: economic and moral rights

2. – Cinematographers are Authors of the individual photographic Work fixed in the film, cemented in the legislation of many Countries:

During the process of filming, he or she will decide on the focus of fixation of the image, the lighting, etc., creating individual photographic Works in his or her personal style.

Although the cinematographer will make a variety of identical or similar photographic Works, during the shooting, they will be protected as individual Works, as in fine arts every copy of a sculpture, every lithographic series enjoy individual legal protection too.

Conclusion

He or she has full protection under Intellectual property law: economic and moral rights

3.- Cinematographers are also, Producers of “simple” photographic pictures (will say, photographic Works without recognition as “original Works”), cemented in the legislation of many Countries:

Conclusion

He or she has protection by Intellectual property law, will say, economic rights (but no moral rights)

BUT: At the moment, the differences of legal systems regarding the determination of (Co-)Authorship of the cinematographic Work, the recognition of Authorship of photographic Works and additional recognition as Producer of simple photographic pictures fixed in the film are tremendous. At the same time, there are important differences in national legislation regarding the transmission of exploitation rights to the Producer and regarding the collection of equitable remuneration by Collecting Rights Societies in favour of Cinematographers.

The report of 6 December 2002 from the Commission to the Council stated the differences but concluded that no harmonisation especially about the question of authorship in cinematographic Work is necessary, because the differences can be overcome by “standard” contractual solutions. Well, **IMAGO**, always has defended and still defends a total different view of the situation, because the mentioned differences and the special “status” of Author of cinematography are causing mayor difficulties in practice of international co-production of cinematographic Works and of course, in the exploitation in the digital age.

Nevertheless, according to the mentioned recommendation, this guide is, as told before, to provide standardised contractual agreements for Authors of cinematography.

What are the “highlights” of the new guide?

We still consider it to be very important that the contract states that very special category of Cinematographer and his or her contribution to the film in comparison with other creators involved in the creation of the film: the Cinematographers have an **unique triple category or condition:** Co-authors of film, authors of individual Works of photography and Producer of photographic pictures, which are fixed in the film (as cemented in the legislation of many Countries).

- We define the roles and duties of Author of cinematography and Producer.
- We distinguish between payment of your work as Authors of cinematography and transfer of your economic rights as Author of

cinematographer, author of photographic Work and Producer of photographic Works fixed in the film.

- “Buy-out contracts” are not acceptable. Transferred exploitation rights must be specified, and should be ideally remunerated separately.
- The period of rights assignment should not be in perpetuity, there should be a maximum of 30 years.
- In case of a serious infringement of the contract, rights should revert to the Author of cinematography.
- We make special reserves of transferral of rights: The economic rights of equitable remuneration collected by Collecting Rights Societies refer only to the Author of cinematography without a reduction of the amount of fee or remuneration to be paid by the Producer. This is why the Producers will be obliged to register the film in the Collecting Rights Society.
- The Author of cinematography should have a right to be informed in certain periods about the income of any mode of use of the cinematographic Work or the photographic Works/pictures fixed in the film not only by Producer but also by third parties authorised by the Producer involved in the commercial use. He or she should have the right to let this prove by a neutral auditor.
- We reserve all your moral rights and creative rights and conditions, which includes rights of credits, of postproduction, for example and right of participation in international film festivals and conservation of a master copy for you.
- We are insisting on your hours/days to be worked, holiday and rest days, travel to base and transport from base to location, maternity, health and safety, etc. Nevertheless, Authors of cinematography must check both national and European legislation regarding working conditions.
- Nevertheless, perhaps in your country it is not possible to mix in a same contract the clauses applicable to the creative work of Authors of cinematography (and transferral of rights) and working conditions, so those subjects should be separated into two agreements.

2. – Scope and concept clarifications

Economic or exploitation rights: The original creator of works protected by author's rights and copyright has certain basic exclusive rights. He or she can use or authorize others to use the work on agreed terms. For example, the creator can prohibit or authorize the reproduction or recording of the work in various forms, its public performance, its broadcasting, its translation into other language, etc. Those rights provided by international treaties and national law are the economic or exploitation rights of authors.

Remuneration: The creative works require mass distribution, communication and financial investment. Hence, creators sell the rights to individuals or companies best able to market the works in return for payment. This payment is called remuneration. It may be fixed in a lump sum, or made dependent on the actual use of the work, then referred to as royalties.

Collecting Rights Societies: The advances in technology have expanded the possibilities to disseminate creative works worldwide. As a result, collective management organization has been established in many countries. These societies can provide members the collecting, managing and disbursing of royalties gained from international use of a member's work. According EU-legislation there are some rights of remuneration of creators, which have to be managed by Collecting Rights Societies in a mandatory form (the so-called rights of equitable remuneration). Those rights are normally not waivable, will say, no one can force the creators to renounce those rights. (See general information on copyright: <http://www.wipo.int/copyright>)

III. – IMAGOS proposal of terms and conditions regarding the Work of Authors of cinematography and transferal of rights

1. – The Parties:

Producer
(Contact details of company and legal representative)

Cinematographer
(Contact details of him or his/her company)

(As you should know, Authors of cinematography with self-employed status are generally deprived of all worker's rights)

2. – The Subject of Contract:

Author of cinematography

- Perform the creative work detailed in the contract
- Assign to Producer the economic rights regarding the Project, the individual works of photography or photographic pictures created

Producer

- Payment of Fee for the creative work
- Payment of Royalties for the assignment of rights
- Recognition of moral rights of Author of cinematography
- Overall financial and administrative responsibility for the Project

3. – The Characteristics of the Project

Title

Category
(Movie, TV-series, documentary film, series, etc.)

Based on the literary work and /or script/and or screenplay (if any)

(Co-)Authors of that source material (if any)

Principal Director

Type of exploitation envisaged

Format of the shooting

- Production Schedule
(Approximate duration of pre-production, shooting, edition, postproduction)
- Budget
(Necessary to reveal any details, about if the project is conditional on funding, etc.)
- Trailers and promos

4. – Contractual Obligation and Responsibility of Author of Cinematography

- Carrying the creative task to conceive and create images that suit the script and direction
(By composition of the image, light -design, dramatic movement and colour)
- Responsible for artistic and technical quality of the Project
- Obligation to work within the budget
(Any budget changes have to be communicated to Author of cinematography as soon as possible)
- Development of images in postproduction

5. – Contract period

- Beginning and End dates
- Principal contract stages
(Preproduction, shooting period, possible prolongation, post-production)
(Recommendation: Author of cinematography should insist to be entitled in the post-production, not only for economic reasons but also for protection of his/her moral rights)

6. – Fees and remuneration

- Fees for the artistic and technical work of Author of cinematography in the Project
(Stages of fee payments, with (no) possibility of retaining payment during periods of suspension of Project)
- Remuneration (royalty payment) as compensation for granting the economic rights to Producer

(Clear specification of the payment, ideally remuneration for each right or group of rights assigned)

- Percentage in net or gross profit of Distributor and Producer or other third parties authorised by Producer or Distributor

(Profit is a very ambiguous concept, Producer first recoups the investments and release costs, difficult to control, open to simulated accounting)

- Percentage in all income of all modes of exploitation of the Project made by Producer, distributor or third parties authorized by producer or distributor
- Right to review the above mentioned remuneration/participation in situations where there is a manifest disproportion between the Author of cinematography's remuneration and the gross/net revenues generated from the exploitation of the Project by the Producer or third parties authorised by Producer.

7. – Right of Information and Auditing of accounts

- Regular information of Producer about income of any mode of use of the Project, in the whole or in part, and of use of any works of photography or photographic pictures created during the performance of the encouraged creative work
- Obligation of Producer to keep proper accounts of the exploitation made by him or third parties authorised by Producer of the Project, in the whole or in part (included any use of works of photography or photographic pictures created during the performance of the encouraged creative work
- Obligation of Producer to allow a trustee duly appointed auditor to have access to accounting records and supporting documents

8. – The Transfer of Economic Rights regarding the Project

- Right of reproduction
- Right of distribution
- Right of communication to the public
- Right of access the public from a time and a place individually chosen by them (making available right)
- Right of dubbing and subtitling
- This transferral allows the Producer to exploit the Project and the individual Works of photography and photographic pictures in whole or in part as i.e. (and not restricted way):

Cinema

(Exhibition in national and international cinemas, exhibition in other public non-cinematic locations as institutions, auditoriums, airports, airlines, cruise-ships, etc.)

TV

(Free national TV television, pay-per-view, video on demand, pay-per event, satellite television, hotel transmissions, cable retransmission in Europe and on international level, etc.)

Digital/Internet

(Known mobile devices and formats, streaming, down-und uploads, video on demand, times shifts, etc.)

Other direct commercial purposes, substantially related to the Project

(Derivate and/or subsidiary works or products, advertising, promotion as trailers, etc. of Project and of individual photographic Works or simple photographic pictures, etc.)

9. – Conditions of Transferral of Rights

- Clear reservation of remuneration for Author of cinematography collected by Collecting Rights Societies, in his/or her condition as (Co-)Author of the Project, Author of photographic Works or simple photographic pictures directly to be paid to him/her or his/her representative

(Remember: those rights are non-waivable or inalienable, and should never suppose a reduction of the amount of fee or remuneration to be paid by Producer or third parties)

- Assignment is exclusive and made for all the world and for the maximum period of 30 years.
- The exclusive assignment entitles the Producer to subcontract, assign and sell the rights to third parties, as individual or legal entities under the above-mentioned obligation of information (point 7)
- Assignment does not include transmission of rights for still not known forms of exploitation
- Assignment does not include any transmission of moral rights of Author of cinematography in his/her condition as (Co-)Author of the Project, Author of photographic Works and simple photographic pictures
- Producer must register the finished project in the corresponding Collecting Rights Societies

- National or international prizes and rewards conferred to Author of cinematography's creative works correspond solely to him/her
- The Author of cinematography is entitled to be named in the usual form and order in the credits at the beginning and/or the end of the Project as in any advertising of the project or commercial exploitation of the Project, as in all exploitation of the photographic Works and simple photographic pictures.
- Notwithstanding the agreed in this point, the Author of cinematography is within his/her right to use part or whole of the Project, the photographic Works and photographic pictures created during the process of shooting of the Project for non-commercial and cultural purposes.

10. – Safeguard and protection of the Project

- Producer is obligated to assure the permanent safeguard and protection of the negative or digital image and sound of the Project, and a master copy in perfect conditions.
- Author of cinematography is entitled to 5 free DVD and/or Blue-Ray copies of the completed, dubbed film, or any alternative agreed format of the Project
- Notwithstanding if the parties have not made any special agreement regarding postproduction, in no way the final edition of the Project can be detrimental to the message and the artistic or creative character of the Work of Author of Cinematography

IV. – IMAGOS proposal for working conditions

Recommendations

- Check if there is a Collective Agreement between organized Film workers and a Producer organization
- Check, if possible, both national and European legislation regarding working conditions
- Freelance status – self-employed or salaried workers should check the established employment protection accorded by national legislation or by a collective agreement.

(If the freelancer is self-employed, insurance, holiday pay, pension entitlement should be added when invoicing the Production Company. It would be prudent to safeguard the danger of non-payment of money owing, in the event of subsequent bankruptcy of the Production Company)

1.- Duration of engagement

- Start and termination of engagement has to be fixed.

To avoid working clashes with other projects periods of shooting and schedule for pre- and postproduction have to be clear

- In the event the production is cancelled or shortened the Producer shall be liable to the Author of cinematography for lost revenue due to said cancellation.
- In the event the production is postponed Producer should only be charged for the change in schedule, when the job is moved for more than two days forward or backward and does not conflict with other work booked by the Cinematographer.

2.- Payment

- Salaries shall be paid at agreed date

I.e after 14 days, in arrears

- Salary for pre-production, research and location *reccees*.
- Salary, production
- Salary, post production

- Holiday percentage

(I.e. 12, 5 % of salary or as defined by national legislation)

- Salary, overtime and abnormal working hours**
I.e. basic hourly rate + 25%-100% – depending on notice; hours, days, week/week-end

- Salary, Saturday / Sunday and national bank holidays**
I.e. basic hourly rate + 50%-100%, minimum 4 hours, and penalty for not giving prior notice – for example 5 days

- Pension contribution**
I.e. Percentage of basic pay to pension fund approved by both parties

- Insurance**
Essential to check national legislation

- Taxation**
Essential to check if you are liable to pay taxes in the country of employment

3.- Hours of work

- Normal working hours**
I.e. 39/40 working hours from Monday to Friday

- Flexible working hours**
I.e. agreed production schedules with longer working hours with compensation by possible days off in lieu or longer rest periods

- Abnormal working hours**
I.e. 19.00 – 06.00 hrs

- Overtime work**
Notice of overtime – basic hourly rate for overtime work

- Night Premium**
This premium is in addition to the calculation of overtime

- Periods of rest and 24 hours off**

I.e. Minimum consecutive daily period of rest of at least 11 hours with a minimum weekly period of 24 hours off in addition to the 11 hours mandatory rest period

Breaks

Specifies maximum period of work without a break, i.e. 5 or 6 hours. Followed by minimum break period. i.e. one hour

Scheduling

The Producer shall endeavour to notify as early as possible in advance the scheduled days. An unscheduled sixth or seventh day working shall be paid at two times the basic rate with a minimum credit of nine hours. Any work performed in excess of nine hours shall be paid at three times the basic hourly rate

Cancellation of call

The Producer may cancel a Cinematographer's call up to the starting time of the agreed shooting call and shall not be required to pay for such a cancelled call except when cancellations occurs eight hours prior to the starting time of the call, a minimum of four hours shall be paid to Cinematographer at the day's prevailing rate. If the notice of cancellation is less than eight hours, the Cinematographer shall be paid for eight hours at the day's prevailing rate.

4.- Transport

Travel to base and transport from base to location

Agreement as to compensation for travelling time to production location or base. Producer has responsibility for transport, etc.

When working outside the base or studio zone, transportation time from the unit base to a location and from such location back to the unit base should be paid as part of the workday and subject to all premiums, penalties, and turnaround and overtime payments

Subsistence allowances

Payment of per diems and accommodation during travel

On distant locations Cinematographer shall be paid in advance

Mileage allowance

Private transport

Whenever the Producer does not provide transportation and Cinematographers use personal vehicle to transport themselves to any type of location, Producer shall provide secure or supervised parking or reimburse Cinematographer for parking fees on the same day that the fees are incurred

Travel insurance

Check if Producer shall provide an Accidental Death and Injury Insurance when you are required to travel at the request of Producer

5. – Accommodation and subsistence allowances

Payment of food when not supplied and accommodation expenses to an agreed standard when not provided

6. – Illness

Takes into consideration the legitimate interests of the Producer and Cinematographer

I.e.: substitute Cinematographer, termination of contract, length of illness, practical and financial consideration, etc.

(Check national legislation)

7. – Maternity/paternity leave

(Check national legislation)

8. – Spokesman scheme

Election of Spokesperson at initial crew meeting. The appointed Spokesperson represents the crew and liaises with the Producer and identifies areas of potential problems such as the basic working conditions i.e. overtime (especially when required at short notice), safety, transport etc. This is important for the running of an efficient production: Disputes and misunderstanding can be avoided by monitoring potential problems "up front." This voluntary role of Spokesman is advantageous for the Producer

9.- Size of crew

The size of crew should be determined after discussion with the Head of Departments. Health and Safety should be of paramount importance. Consideration of the programmed demands and equipment to be used should be given when deciding the complement of assistants, electricians and grips.

10.- Termination of contract

See authorship contract section

V.- Jurisdiction, Arbitration

- Normally the jurisdiction corresponds to the country of establishment of the Producer, but parties are free to choice
- The contract has to specify if the parties will settle the disputes by arbitration or ordinary Tribunals

(For labour conflicts, arbitration will probably only function legally for Cinematographers whose contract is based on a Collective Agreement, since all labour conflicts will be dealt with within jurisdiction of a Court of Arbitration)

Signature and Date and location of signing of contract