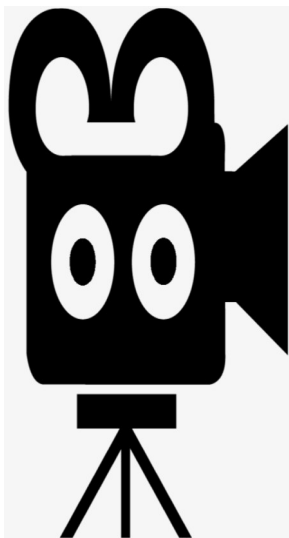




GUIDELINES TO AUDIOVISUAL CONTRACTS



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**ARIPO Office
Harare, Zimbabwe
2020**

Guidelines to Audiovisual Contracts

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TABLE OF CONTENTS

PREFACE	6
1. INTRODUCTION	7
2. REASONS FOR THE NEED TO DEVELOP GUIDELINES TO CONTRACTS	8
3. OBJECTIVES FOR DEVELOPING GUIDELINES TO CONTRACTS	8
4. CLAUSES OF A CONTRACT	9
5. AUDIOVISUAL WORKS CONTRACTS	9
5.1 AUDIOVISUAL WORKS	13
5.2 PRODUCTION	19
5.3 PERFORMERS	21
6. SAMPLE CONTRACTS	23
6.1 DEVELOPMENT STAGE	23
6.1.1 Option Agreement	24
6.1.2 Purchase Agreement	24
6.1.3 Producer Contract	25
6.1.4 Director Contract	25
6.2 PRE-PRODUCTION STAGE	25
6.3 PRODUCTION STAGE	26
6.4 POST-PRODUCTION STAGE	26
6.5 DISTRIBUTION STAGE	27
ANNEXES—SAMPLE CONTRACTS	29

PREFACE

The African Regional Intellectual Property Organization (ARIPO) has taken the prerogative to assist its Member States in developing guidelines for different copyright genres to support and help in capacity building of right holders by reinforcing and educating them to have basic knowledge and understanding on the essence of the utilization of written contracts in commercializing their works.

Building the aptitude and capacity of the creative sector, through negotiation and entrance into written contracts. This will guide the right holders to have good understanding of the elements involved in the contracts while commercializing their works to have consensus and satisfaction by all parties to a win-win contract.

The previous publications addressed the literary works and musical genre whilst this current publication will offer suggestive guidelines for the audiovisual works in the creative industry. The guidelines emphasize on film production. Special thanks to AISGE for their technical expertise.

We hope the *Guidelines to Audiovisual Contracts* will be a tool that will enhance positive development on the right holders as it will capacitate them to be in-line with what they are expected to do and they do it well for their benefit, development of the creative industries and the country's economy at large. The guidelines are not to be taken strictly; one has to comply with the laws in their jurisdiction.

In most cases behind every successful business relationship there is a contract with mutually acceptable and agreed terms.

Fernando dos Santos
Director General

1. INTRODUCTION

Intellectual Property (IP) affects our daily life ranging from all creativity and innovation that we see. Being a private right; there is need to manage it in a systematic way that benefits the creators and all those who play a role in coming up with the creative and innovative works. Therefore written contracts are very important in building a good business relationship for successful commercialization of one's creativity.

A contract is an agreement between two or more persons where there is meeting of the minds (*consensus ad idem*). There must be an offer and intention between the parties to create binding legal relationship, consideration, capacity to contract and legal subject matter of the contract. Consideration is important as it separates gifts from bargains. A gift is where one party gives value and gets nothing in return. Gifts and contracts have different legal rules in the respective jurisdictions.

A contractual relationship is a good thing in any business. It clearly shows what each party is expected to do and the benefits to be accrued by each. Written contracts are the best in exploiting one's work though some parties end up having implied contracts in their business relationships which is more casual at times. ARIPO by publishing these guidelines would like to sensitize and emphasize on the importance of written contracts by the right holders in the Member States and Africa at large. Furthermore, the right holders will have a guiding document to refer to in coming up with written contracts in the course of commercializing their works in their respective jurisdictions. The guidelines will also raise awareness and make the right holders good managers of their works.

Some of the advantages of a written contract include; setting standards for an efficient and effective process for both parties, reducing risks as it minimizes liabilities, there is clarity, on privity to contract benefits, and one gets what was agreed on. In the event of a dispute the parties can refer to the contracts to settle any ambiguity.

2. REASONS FOR THE NEED TO DEVELOP GUIDELINES TO CONTRACTS

Most of the right holders in ARIPO Member States face difficulties in coming up with legal instruments when they want to commercialize their works and end up doing business in a casual manner than a serious business relationship. This kind of approach has cost many right holders as they fail to reap from their creative endeavours. They end up losing and crying foul. If right holders living in urban areas are seriously affected and succumb to such circumstances, what more about the ones in the rural areas? Amongst the challenges that most right holder's face is that they tend to see contracts as a disadvantage because it costs them to stay in it for a specific period and it also requires money to draw up a written contract. This brings litigious atmosphere as to what should be adhered to within it and only those privy to contract can benefit.

3. OBJECTIVES FOR DEVELOPING GUIDELINES TO CONTRACTS

The main objective for developing these guidelines is to emphasize that, 'Creativity has Value'. When you value something you will do all that is in your powers to protect it. Therefore, we need written contracts to explicitly show that creativity is valued in all transactions.

A contract is two-fold and it has value. All parties in it have to carry out their agreed obligations in order for it to be successful. A contract helps right holders to exploit intellectual property rights as economic assets, and to avoid infringing on the rights of others. The creators will have written and

Guidelines to Audiovisual Contracts

signed contracts with all those who make contributions in their works so as to avoid disputes as to ownership of the works. It will safeguard all parties against misappropriation.

4. CLAUSES OF A CONTRACT

During negotiations, parties should consider incorporating important basic clauses. These include: full contact details of parties to the agreement; definition of terms to enable the parties to have a consensus of what they are contracting on; representations, which are statements of existing facts that are the underlying reason for entering into contract; warranties in which a party guarantees to reciprocate in a certain way; terms of payment; the duration; consideration of the contract; terms and conditions for both parties; the governing law; termination of the contract; territory; confidentiality; indemnification; intellectual property; amendments and addendums ethics; and signatures of both parties and their witnesses attested by the commissioner for oaths.

5. AUDIOVISUAL WORKS CONTRACTS

In the audio-visual industry there are different players who take part to ensure that the film business meet not only viewer's expectation, but market expectations. Audio-visual works comprise of the author's right, performer's rights, producer's and director's rights. In this regard, this publication shall address some of the important parties within the audio-visual works. An audiovisual work according to the ARIPO Model law is "a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds". Also, cinematographic works mean any visual recording on any medium produced through a process from which a moving image may be produced by any

Guidelines to Audiovisual Contracts

means and includes a sound recording accompanying such visual recording and 'Cinematograph' shall be constructed as including any work produced by any process analogous to cinematograph including video films.

“performers” means singers, actors, musicians, dancers, variety and circus artists and other persons who sing, deliver, declaim, play, interpret or otherwise perform literary and artistic works or traditional cultural expressions/expressions of folklore; or perform a literary or artistic work that is created or first fixed in the course of a performance;

“producer of an audio-visual work” means the natural person or legal entity that undertakes the initiative and responsibility for making the first fixation of the audio-visual work;

“producer of a sound recording” means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds.

In commercializing one's work, it has to be noted that the owner has a right to prohibit or authorize particular acts. The acts may result in a non-monetary or monetary value, which then calls for the option of monetizing the works to the benefit of the right holder. This could be done by licensing or assigning. Licensing or assigning can be in an exclusive or non-exclusive form and depending on the market strength and what the right holder seeks to achieve, a number of options are available. For example, in the case of exclusive license, the parties agree that no other person/legal entity can exploit the relevant right holder's rights except the licensee. On the other hand, non-exclusive license grants to the licensee the right to use the right holder's rights, but on a non-exclusive basis. It is essential to note the nature of the contracting parties, that is, whether they are legal or natural. In a case where

Guidelines to Audiovisual Contracts

a natural person is contracting with a legal entity, then the legal entity should ensure the proper signatories are present to sign the contract and not just any employee in the legal entity. Performers, producers, composers and lyricist are encouraged to seek more information from the parties with whom they want to enter into contracts. This is to avoid the contract later on being rendered a nullity from the beginning (*void ab initio*). It is also important to seek information and guidance from legal practitioners in the respective jurisdictions to ensure the necessary laws and procedures are adhered to.

In audio-visual works the collaborative effort of actors, musicians, composers, lyricists, dancers, scriptwriters, directors and producers, makes it very complex for right holders to know if they are getting a fair deal and what exactly should the performer and all others involved in the audiovisual work expect from the contract. An actor or performer or right holder of an audiovisual work has the discretion to either engage an agent who will ensure that the contract provides a chance of maximizing income from the work or handle the contractual issues. Alternatively, the author or performer or right holder of an audiovisual work can decide to engage the relevant Collective Management Organization that has mandate on audiovisual works, Reproduction Rights Organization and/or Copyright Offices to assist in checking the production and broadcasting agreements. Moreover, there are legal practitioners specializing in performers' contracts whilst, for those who prefer to do it on their own, there are some books and web based links which are useful on this subject. For instance, WIPO Collective Management Tool Kits provide three different legal regimes with regards to the ownership of cinematographic works. These are as follows:

Guidelines to Audiovisual Contracts

- i. The film copyright system is that where the maker of the film (other than the producer, director etc.) is assumed as the first owner of copyright in the film. Whereas the right in respect of standalone works that contributed to the making of the film such as; scripts, music, scenarios, etc., remain completely with the authors of such works. Therefore, the filmmaker must acquire the rights (either express or implied) in a contract.
- ii. A system where the film is considered to be a work of joint-authorship between the various persons who contributed artistically in the making of the film, from whom the film maker must acquire assignment to use the film; and
- iii. The legal assignment system, where the cinematographic work treated as a work of joint authorship but where national law presumes the existence of a contract with the filmmaker assigning a rights to exploit the work.

The capacity for authorship of an audio-visual work varies depending on the country. Therefore, in undertaking audiovisual contracts, it is very important to refer to national legislation in order to determine who those persons are, who benefit from this capacity in each country. If there are no specific legal provisions pertaining to audio-visual works in the legislation of a given country, legal provisions governing joint or collaborative works, i.e., works created together by several authors for whom the individual contribution of each is identifiable, should be referred to or as per mutually agreed terms. Alongside those persons who benefit from the capacity of the film, there are right holders who are not authors, but who benefit from similar rights as those of the authors for the performances they give. The audiovisual agreement should also indicate who has been given the broadcasting right of the audiovisual work and performances and the duration thereto.

There are other key issues that should be addressed in performers' contracts. These include issues such as upfront

compensation, residual compensation, credits, reuse rights and duration of engagement. It is advisable that both sides agree on issues ranging from ownership of rights to compensation before production commences. The reason being that protection ensures that the expectations of both sides can be satisfactorily met.

5.1 AUDIOVISUAL WORKS

The original rights holders in cinematographic works and audiovisual works include; the authors of the film, the performing artist and actors and the film producers. The fact that audiovisual works are created through cooperation between creators and producers, it is assumed that the producer of an audiovisual work has an exclusive right to use such work. However, it is prudent to undertake a formal agreement to create or use an existing audiovisual work, which will grant specific rights to all parties involved.

The Berne Convention for the protection of literary and artistic works of 1886 provides that parties involved in audiovisual contract shall also consider the main exclusive rights provided for under the Convention and having relevance to audiovisual works, which are: Article 9, 11, 11 bis and 12.

- i. The right of reproduction provided for in article (9).
- ii. The right of public performance provided for in article (11).
- iii. The right of broadcasting provided for in article 11bis; the right of communication to the public provided for in article (11) and article (11bis)
- iv. The right of adaptation provided for in article (12).

However, rental rights and private copy are not exclusive, but exist in the form of remuneration rights.

There are other relevant international copyright and related rights instruments to be considered. These are the Rome Convention, the Beijing Treaty and the WIPO Performances and Phonograms Treaty 1996 (WPPT).

Guidelines to Audiovisual Contracts

The Rome Convention recognises the rights of producers, performers and broadcasters. It also requires that phonogram producers, performers and broadcasters be granted certain substantive rights. Such rights, including the protection against certain acts to which they have not consented, such as: “the broadcasting and communication to the public of a live performance; the fixation of the live performance; the reproduction of the fixation if the original fixation was made without the performer's consent or if the reproduction was made for purposes different from those for which consent was given”. In the Rome Convention the provisions of performer's rights ceases once he has consented to the incorporation of his performance in a visual or audiovisual fixation, this gap was filled by the Beijing Treaty on Audiovisual Performance 2012.

The Beijing Treaty on Audiovisual Performances (2012); is an international treaty administered by WIPO, this treaty confers rights primarily upon actors. Article 7 of the Beijing Treaty provides for reproduction right: “Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in audiovisual fixations, in any manner or form.” This Article is identical to Article 7 WIPO Performances and Phonogram Treaty 1996 (WPPT), the only difference is the “reproduction of performances fixed in phonograms”.

Article 8 (1) of the Beijing Treaty is distribution right: “Performers shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their performances fixed in audiovisual fixations through sale or other transfer of ownership.” This Article is identical to Article 8 (1) WPPT the only difference is “performances fixed in audiovisual” and “performances fixed in phonograms”.

The WIPO Performances and Phonograms Treaty 1996 (WPPT) specifically contain provisions for the rights of performers and phonogram producers and not to those broadcasters. The WPPT is an upgrade for performers whose performances are embodied on phonograms.

Guidelines to Audiovisual Contracts

The considerations of the above treaties by the parties undertaking contractual agreement on audiovisual works, will enable fair benefit sharing, clarity on agreed terms and condition to effectively regulate the relationship between performers, producers and other parties involved in the contracts.

ARIPO in its pursuit to exercise the objectives under Article III (a)-(j) in the Lusaka Agreement, which provide that:

“The objectives of the Organization shall be:

- (a) to promote the harmonization and development of the intellectual property laws, and matters related thereto, appropriate to the needs of its members and of the region as a whole;
- (b) to foster the establishment of a close relationship between its members in matters relating to intellectual property;
- (c) to establish such common services or organs as may be necessary or desirable for the coordination, harmonization and development of the intellectual property activities affecting its member states;
- (d) to establish schemes for the training of staff in the administration of intellectual property laws;
- (e) to organize conferences, seminars and other meetings on intellectual property matters;
- (f) to promote the exchange of ideas and experience, research and studies relating to intellectual property matters;
- (g) to promote and evolve a common view and approach of its members on intellectual property matters;
- (h) to assist its members, as appropriate, in the acquisition and development of technology relating to intellectual property matters;
- (i) to promote, in its members, the development of copyright and related rights and ensure that copyright and related

Guidelines to Audiovisual Contracts

rights contribute to the economic, social and cultural development of members and of the region as a whole; and

- (j) to do all such other things as may be necessary or desirable for the achievement of these objectives”,

the Organization developed the ARIPO Model Law on Copyright and Related Rights 2019 (hereinafter ARIPO Model Law of 2019).

The ARIPO Model Law of 2019 under Section 12 (1) (a) to (f) states that:

“Performers shall enjoy the exclusive right to authorize any of the following acts as regards their performances including audiovisual performances:

- (a) the broadcasting or other communication to the public of the performance, except where the broadcasting or other communication:
 - (i) is made from a fixation of the performance which the performer has authorized to be made, or
 - (ii) is a rebroadcasting made or authorized by the organization initially broadcasting the performance;
- (b) the fixation of his or her unfixed performance;
- (c) the direct or indirect reproduction of a fixation of his or her performance, in any manner or form;
- (d) the distribution of a fixation of his or her performance, or of copies thereof, to the public;
- (e) the rental to the public of a fixation of his or her performance, or copies thereof;
- (f) the making available to the public of his or her fixed performance, by wire or wireless means, in such a way that members of the public may access it from a place or at a time individually chosen by them.”

Guidelines to Audiovisual Contracts

Section 12(2) ARIPO Model Law 2019 states that:

“Once the performer has authorized the incorporation of the performance in sound recording or an audiovisual fixation, the performer shall, in the absence of contractual provisions to the contrary, be deemed to have assigned the exclusive economic rights with respect to that fixation to its producer.

(3) The right of distribution under item (d) of subsection (1) does not apply to a copy of a fixation of the performance that has already been subject to a sale or other transfer of ownership [in this country] [anywhere in the world] authorized by the performer.

(4) Nothing in this section shall be construed to deprive performers of the right to agree by contracts on terms and conditions that are more favourable for them in respect of their performances;”

The above sections provide flexibilities and value to the performers. Section 13(1) of the ARIPO Model Law 2019 stipulates that:

Section 13(1). Independently of a performer’s economic rights, and even after the transfer of those rights, the performer shall, as regards his live performances or performances fixed in phonograms or audiovisual fixations, have the right to claim to be identified as the performer of the performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

Section 13(1) emphasizes the moral rights principle of the performer and his works. This should be taken into consideration in the contracts.

Guidelines to Audiovisual Contracts

Furthermore, Section 13(4) of the ARIPO Model Law underscores the director's moral rights. This too should be considered in contracts.

Section 13(4). Independently of a director's economic rights, and even after the transfer of those rights, the director shall, as regards to audiovisual fixations, have the right to claim to be identified as the director of the audiovisual fixation, except where omission is dictated by the manner of the use of the fixation, and to object to any distortion, mutilation or other modification of their work that would be prejudicial to his reputation.

When we look at the remuneration of the performers and the producers of sound recording, Section 15 of the ARIPO Model Law 2019 has made provisions for equitable remuneration with flexibilities. This is advantageous to both the performer and the producer of sound recording.

Section 15. Equitable Remuneration for Performers and Producers of Sound Recordings

(1) Where a sound recording is published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user to the producer.

(2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer or performers.

(3) The right to an equitable remuneration under this Section shall subsist from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication, provided that the phonogram is still protected under the Act.

(4) For the purposes of this Section, phonograms that have been available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they have been published for commercial purposes.

The above are among the key issues to be addressed in performers' contracts. Other important issues include upfront compensation, residual compensation, credits, reuse rights and duration of engagement. It is advisable that both sides agree on issues ranging from ownership of rights to compensation before production commences. The reason being that protection ensures that the expectations of both sides can be satisfactorily met.

5.2 PRODUCTION

Negotiations of audiovisual contracts tend to vary depending on the parties involved in the work. In such negotiation process the contracts undertaken by audiovisual performers tend to differ depending on what kind of production is actually taking place. Film production varies widely, because many countries do not have a sustainable film industry and producers may come and go, making it very difficult for collective negotiations to be undertaken by performers or their representatives as the case may be. For instance, some audiovisual performers like dumb artist and musicians may not even be engaged by the producer or production entity, but by third party entity or union. In such situations, awarded contract standards may not be the same as those negotiated collectively. In some countries, there are guild and unions that supply performers as they negotiate collectively on their behalf.

The rapid changes in audiovisual production industry can be attributed to the rapid development of technology in the last two decades. This unprecedented speed has been aided

Guidelines to Audiovisual Contracts

by the Internet and online media. The technological evolution is posing serious threats such as the rapid growth of online piracy, which threatens traditional business models and business of audiovisual production itself. However, the sustainable growth of neighbouring rights in many countries have sent an important signature that producers and performers need to be able to protect themselves.

Section 17 of the ARIPO Model Law of 2019 provides for Equitable Remuneration for Performers of Audiovisual Works

(1) Independent of the transfer of rights described in subsection 12(2) the performer has the unwaivable and untransferable rights to receive equitable remuneration or royalties in respect of any broadcast, communication to the public, rental or making available to the public of his performance fixed in an audiovisual fixation.

(2) The right to equitable remuneration shall be made effective by the corresponding collective management organisation who, under the provisions of this Act must collect the remuneration from the persons carrying out any of such uses as regards performances fixed in audiovisual fixation, and distribute it accordingly to the concerned performer.

In addition to what is provided under Section 17 above, a contract can have “Quit Clause” as follows:

“Where in respect of performances contracted in accordance with this Agreement the Artist is entitled by law to receive from domestic or foreign collecting society’s equitable remuneration or other forms of income additional to that arising under this Agreement nothing in this Agreement shall prevent the Artist from laying claim thereto. The Artist shall not be obliged to account to the Producer for any such income to which the Artist is entitled”.

Such income includes but is not limited to equitable remuneration in respect of the off air recording right, the cable retransmission right, private copy levies or machine levies the lending right and rental right and any other right from time to time provided for by the law of any jurisdiction.

The Producer will if requested take reasonable steps to assist the Artist or a relevant collecting society at the expense of the Artist or collecting society to lay claim to any income which it may be entitled or mandated to collect and administer in respect of the rights in question without the Producer being liable for any failure by the collecting society to claim the income or distribute it to the Artist or being liable for any cost associated with laying claim to or distributing such income.

The Producer is authorised to disclose all necessary information about the Artist to a relevant collecting society so as to assist such collecting society to identify those entitled to receive the money it collects.”

All these are flexibilities to the audiovisual contracts to be considered by the contracting parties.

5.3 PERFORMERS

A well-documented audiovisual performer’s contract regulates the relationship between the producer and the performer or other contributors to the making of a film, television programme or other audiovisual works. Contracts provide an essential tool in the effective management of certain exclusive rights, both by individual and through collectively negotiated standards and mechanisms. A performer’s right is unavoidably part of a combination of efforts. This notion of control is very limited and almost invariably restricted to the simple negotiation of remunerative terms for the exploitation of that performance.

Guidelines to Audiovisual Contracts

In an audiovisual work, the performer brings life to scripts and sounds. That is why the existence of neighbouring rights can be of great assistance in a contractual agreement development. We must note that rights are in some cases necessarily limited, whereas the advantage of IP rights is that they may be exercised against anyone regardless of whether or not they are in contractual agreement with the performer. This therefore helps in encouraging Member States to include in their copyright laws, sections relating to neighbouring or related rights and audiovisual works. They may be encouraged to also accede or ratify and domesticate into their national laws, regional and international instruments on Copyright and Related Rights.

6. SAMPLE CONTRACTS

This guideline will look at the 5 stages involved in film production. These are as follows; development, pre-production, production, post-production and the distribution stage. In all these stages, it is important to have a clause in the contracts that explicitly addresses what is to be done, terms and conditions, consideration and all necessary clauses mentioned in Section 4 above.

6.1 DEVELOPMENT STAGE

A script is the molecule of any audiovisual work. Once a script is finalized then the filming project may commence. In the development stage, this is the stage in which the film project is planned. Issues to do with financing, budget, principal crew and cast are engaged, script is provided for, together with the rights and the shooting locations discussed. This stage is crucial and can take years. The plan is being drawn as to what kind of a film it is going to be, whether we have acquired the rights connected to the script, who will be the perfect actor or director, where is the financing going to come from, what will be the budget, etc. If the stage is completed successfully it will be the green light to pre-production stage.

The important contracts in this stage are Option-Purchase Agreement, Producer contract, and Director's contract.

The Option-Purchase is the most crucial because;

- i. No investor will invest without proper documented chain of title,
- ii. A proper budget is drawn upon picturing what kind of movie it will be,
- iii. Directors, principal actors are contracted on the basis of the movie genre which is derived from the script, and

- iv. The film might fail to be distributed resulting into a loss due to copyright violations if proper chain of title is not acquired.

A script can be a novel, existing film, real life story or a magazine article, etc. Thus, the producer needs to acquire rights for the script from the right holder. This is done through option-purchase contracts. An author or copyright holder has the exclusive right *inter alia* to adapt, reproduce, translate, distribute, and to display in public. Thus, when a producer wants to use a script written by another in film making, he has to acquire the rights. If this is not the case, she/he risks copyright infringement.

An option purchase contract is not one contract but two distinct contracts that walk hand in hand. Option Agreement is when a copyright owner to the script gives the producer the option (right) to buy rights to the script which will be used in the film, within a certain limited period. Purchase Agreement is concerned with the whole actual purchase of the right to make the film. The producer is now exercising the option through this contract.

6.1.1 Option Agreement

Producers begin with option agreements because they need to ascertain the suitability of the script to the film and to the investors to see if it's acceptable and can be worked with. However, they cannot do this without acquiring the option agreement, which is basically forbidding the copyright holder from giving anyone else the copyrights in return for an agreed sum of money. Option agreements also help in preventing the purchasing of whole rights to the copyright before checking its suitability. An option period is normally 1 or 2 years.

6.1.2 Purchase Agreement

A purchase agreement now is the actual buying of the copyrights after suitability checks. Copyright owner is selling the rights to make the film.

6.1.3 Producer Contract

The production of a film can be funded through a financier, which could be an entity or an individual who acts as the financier. A contract should be undertaken between both parties to ensure clear guidance as to how the film will be produced successfully. In most cases the film producer can also be the director, which should also be clearly defined to avoid conflict of interest in the course of carrying her/his duties.

6.1.4 Director Contract

The director is the most important creative force in the making of a film. He or she brings the script to life with cinematic vision and dramatic insight, and orchestrating all contributions into an artistically cohesive whole. To do this, every director needs a producer as partner, exercising financial and administrative control. Effective collaboration between these two is essential in every production.

6.2 PRE-PRODUCTION STAGE

There is not much difference with the development stage concerning activities which take place. However, with pre-production, the focus is now placed on preparing for product finalisation and testing everything, thus a larger crew and cast is engaged, shooting locations are scouted, scripts amended, budgets adjusted, sets designed and built, costumes fitted.

The essential contracts in this stage are;

- i. Film performer contacts
- ii. Deal memos for crew
- iii. Standard extra agreement
- iv. Location contract

6.3 PRODUCTION STAGE

The principal photography commences and the actual shooting takes place. Essential contracts in the pre-production stage can also be done at this stage, as more actors can be hired, together with crew members, locations changed or added. Production is regarded as the shortest of all phases because most of the work was in planning and the plan is now being seen in action.

Other contracts which can be included at this stage are; Names and Likeness Agreements.

If the film is going to use someone's photograph, name, business they have to have permission for such use. One should be familiar with laws of each state as legislation varies.

Product Placement Agreements

Producers need to enter into contracts for use of branded goods in films, as the latter is protected under trademark. The agreement sets out the permission of use and specific obligations of each party. These agreements have been used by producers as a source of revenue, as the film will be advertising the branded goods and a positive image is created. Film clip and Photography Agreements also need to be considered. If a film is going to have scenes in which other copyrights such as photographs, clips from other films are going to appear, then a licence has to be acquired. The agreements specify duration and payment of royalties.

6.4 POST PRODUCTION STAGE

This stage is concerned with perfecting the footage from the production stage by editing. Thus, sounds are mixed, titles are introduced, sound tracks are composed and visual effects are also added.

Guidelines to Audiovisual Contracts

The main contracts in this stage are with the editor, composer and the sync contracts, which give right to the film in using other people's music. The following Contracts are also needed:

- i. Editors Contract
- ii. Composer Contract
- iii. Sync Contract

6.5 DISTRIBUTION STAGE

After the film has been made and edited the producers are now looking into having a return on the investment and further profits. Thus the distribution stage is essential so as to make sure the film covers a wide magnitude in marketing and prevent copyright infringement of the product. Distribution forms include through a television network like Netflix, DVD, streaming sites, and cinema distribution.

Contracts should be undertaken with various interested distribution partners to ensure the availability of the films through legal means to the public; it can either be a contract between the producer and production company with a distribution company, which in turn can engage or contract agents through license agreement.

Sample contracts are annexed hereto for guidance. However, one should also seek legal assistance from the legal practitioners to have a proper contract drafted as per the subject matter at hand and according to their jurisdiction.

ANNEXES I-II

SAMPLE CONTRACTS

SAMPLE CONTRACT ANNEX I

CONTRACT BETWEEN ACTOR AND PRODUCER

THIS AGREEMENT is made and entered into as of _____ by and between _____ (hereinafter "Producer"), and _____ (hereinafter "Actor").

A. Producer intends to produce a Feature Length Motion Picture Film based upon that certain script and screenplay tentatively entitled _____ (hereinafter the "Screenplay").

B. Producer wishes to utilize the services of Actor in connection with the Project upon the terms and conditions herein contained. ACCORDINGLY, IT IS AGREED AS FOLLOWS:

1. **ROLE:** Producer hereby engages Actor to render services as such in the role of "_____", in the motion picture _____.
2. **SALARY:** The salary of _____ per day is accepted. Actor accepts such engagement upon the terms herein specified.
3. **TERM:** The term of employment hereunder shall begin on or about _____ (the "Start Date") and continue until _____ (the "End Date").
4. **NAME AND LIKENESS:** Producer shall have the exclusive right to use and to license the use of Actor's name, photograph, likeness and/or voice by any means in and in connection with the film and the advertising, publicizing, exhibition, and/or other exploitation of the film. Actor grants to Producer the right to photograph his/her image and likeness and to record his/her voice, performances, poses, actions, plays and appearances and to use her picture, silhouette and any other reproductions of his/her physical likeness in connection with the motion picture entitled _____.

Guidelines to Audiovisual Contracts

5. The Actor Agrees to transfer to the Producer all necessary exclusive rights in perpetuity for the purpose of the commercial exploitation of the film in all media's and on all platforms.
6. Independent of a performer's exclusive rights, and even after the transfer of those rights, the performer shall, as regards his live performances or performances fixed in phonograms or audiovisual fixations, have the right to claim to be identified as the performer of the performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.
7. Where in respect of performances contracted in accordance with this Agreement the Artist is entitled by law to receive from domestic or foreign collecting society's equitable remuneration or other forms of income additional to that arising under this Agreement, nothing in this Agreement shall prevent the Artist from laying claim thereto. The Artist shall not be obliged to account to the Producer for any such income to which the Artist is entitled. Such income includes but is not limited to equitable remuneration in respect of the off air recording right, the cable retransmission right, private copy levies or machine levies the lending right and rental right and any other right from time to time provided for by the law of any jurisdiction.

The Producer is authorised to disclose all necessary information about the Artist to a relevant collecting society so as to assist such collecting society to identify those entitled to receive the money it collects.

8. **RULES OF PRODUCTION:** Actor agrees to the best of his/her ability to adhere to the schedule agreed to prior to beginning of his/her engagement. Additionally, the Actor agrees to the best of his/her ability to make themselves available, should it be necessary, to re-record his voice during post-production.

Guidelines to Audiovisual Contracts

9. HEALTH AND SAFETY: Producer will use its best efforts to ensure Actors health, safety and welfare during the Project.
10. EXHIBITION OF PROJECT: Actor agrees not to exhibit the Project in public without the written consent of Producer; provided, however, that Actor may use portions of the Project in which Actor appears for Actor's demo reel.
11. ENTIRE AGREEMENT: This agreement is the entire agreement of the parties. No other representations, written or verbal are relied upon by either party in entering into this Agreement.
12. SEVERABILITY: Should any provision of this Agreement be found to be unenforceable, it shall not render the remainder of this Agreement unenforceable.

DO NOT SIGN THIS AGREEMENT UNLESS YOU HAVE READ IT CAREFULLY AND UNDERSTAND EVERY PART OF IT. DO NOT SIGN THIS AGREEMENT UNLESS IT ACCURATELY DESCRIBES YOUR AGREEMENT AND UNLESS YOU ARE COMPLETELY SATISFIED WITH IT. THIS AGREEMENT WAIVED CERTAIN IMPORTANT RIGHTS AND ESTABLISHES CERTAIN IMPORTANT RIGHTS IN YOUR FAVOR. DO NOT SIGN THIS AGREEMENT IF YOU HAVE BEEN SUBJECTED TO DURESS. SIGN IT ONLY WITH YOUR OWN FREE WILL. IF YOU ARE ENTIRELY SATISFIED WITH THIS AGREEMENT, SIGNIFY YOUR FULL APPROVAL BY SIGNING YOUR NAME BELOW. IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written. AGREED TO AND ACCEPTED:

_____ "Actor" Actors address: _____

Actor's Phone number: _____ AGREED TO AND ACCEPTED:

"Producer" _____ Producer address: _____

SAMPLE ANNEX II

**IN THE MATTER OF
COPYRIGHT AND NEIGHBOURING RIGHTS ACT 2006
AND
COPYRIGHT AND NEIGHBOERING RIGHTS
REGULATIONS 2010**

PERFORMER FILM CONTRACT

I o f
Contact.....

Hereby authorize

(Producer/Film Producing company) to photograph me, record my voice, performances, poses, plays and appearances and to use my picture, photograph and other reproductions of my physical likeness in connection with the motion picture titled

I authorize, the successors, assigns and licenses the perpetual right to use, as may be desired, all the still and motion pictures and sound recordings which you may make of me and the right to use my name or likeness in connection with the exhibition, advertising, exploiting of the picture.

I further authorize you to reproduce in any manner whatsoever any recordings including all instrumental, musical or other sound effects produced by me in connection with the above film at a total cost of...../= and in words.....

Guidelines to Audiovisual Contracts

I agree to do the best of ability, to make myself available should it be necessary, to record my voice and record voice-over and otherwise perform my necessary sound work required after the end of filming. Should I not be able to perform such sound work, I understand that you will use any other person available.

I understand that I will do the best of my ability according to the schedule agreed prior to the beginning of my engagement.

I.....have read and understood the terms and conditions of this agreement, in my normal senses and not forced to sign.

Signed:.....Date:.....

Witnessed by:

Name:..... Sign:.....

Contact:.....

Date:.....

Name of the Producer:.....

Sign:.....

Contact:.....

Date:.....

