

CONTRACTUAL RELATIONS IN THE AUDIOVISUAL SECTOR'S CHANGING OPERATING ENVIRONMENT

Technological development has had a significant impact on contracts in the Finnish audiovisual sector. Movies, TV shows and videos are increasingly watched online and business models in the industry are changing. Copyright contracts must take into account new ways of using and publishing creative content. With the increase in distribution channels, content distributors want more extensive rights to works from authors. However, the remunerations received by the authors have not increased accordingly.



Film or television production typically involves a wide range of professionals from various creative fields.

- Authors of a work acquire copyright to the work and the rights of performing artists are protected by related rights¹.
- When a work has several authors and performers, the copyright belongs to them all jointly, and the use of the work is not possible without permission from them all.
- Industry organisations and trade unions monitor the professional and legal interests of their members. Trade unions also negotiate collective agreements with employer organisations or individual employers.

The budgets for Finnish film and television drama have grown and the number of international productions has increased.

The production company is responsible for the operational activities of the production and the sales of the work's distribution and performance rights.

- In addition to the producer's related rights (Section 46 a of the Finnish Copyright Act), the production company acquires the necessary rights to the works from the creative workers and pays them a salary, reward or other remuneration.
- There is a lot of financial uncertainty associated with the production of audiovisual content, as there is no guarantee that the final product will be successful.

Right holders can authorise a collective management organisation to grant licenses for the use of their works and to collect copyright remuneration from the users.

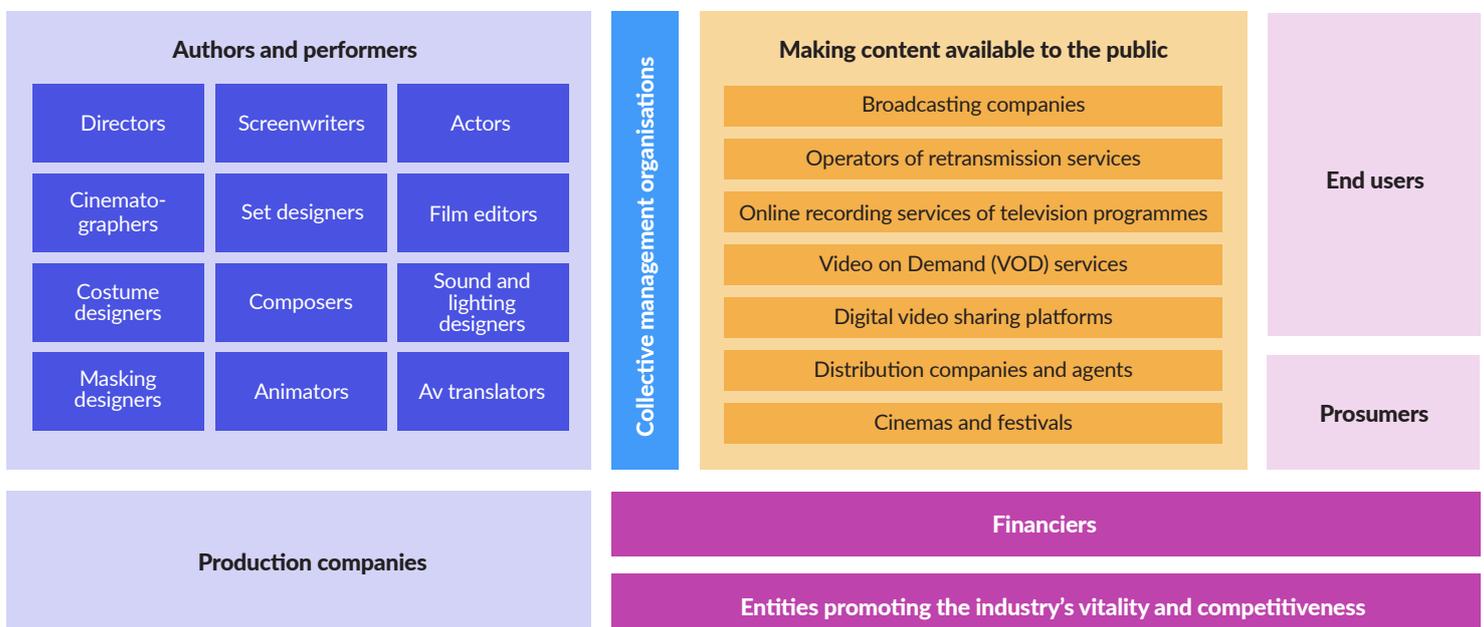
- In Finland, collective management organisations representing right holders in the audiovisual field are Audiovisual Producers Finland – APFI, Avate, Gramex, Kopioisto, Kuvasto, Sanasto and Teosto.

An increasing amount of audiovisual content is consumed online, and the usage volumes have increased. The use of television companies' online services and the consumption of audiovisual content from video-on-demand services and digital platforms have grown over the past decade.² According to Cupore's research³, 92 percent of Finns under the age of 45 had watched movies, TV series or videos on internet streaming services.

The turnover of the production and post-production of films, videos and television programmes in Finland totalled 440.6 million euros in 2021⁴.

Internationalisation and the increase in distribution and financing channels contribute to the growth of the audiovisual industry. Key challenges for the sales of Finnish productions have traditionally been the small sizes of the Finnish market and production budgets. Public funding is particularly important for Finnish film productions⁵.

KEY STAKEHOLDERS IN THE AUDIOVISUAL SECTOR⁶



<p>54 % of creative workers felt that they had been offered unreasonable contract terms for the transfer of their copyrights or the use of their works.</p>	<p>61 % of the production companies felt that they had been offered unreasonable contract terms for the transfer of their rights, or the rights to use their production.</p>
<p>81 % of creative workers believed that questioning the contract terms offered to them can cause problems in the future, such as difficulties in getting job offers.</p>	<p>27 % of the production companies felt that their negotiating position was not at all equal with other parties when negotiating contracts on the transfer of their rights or the rights to use their productions.</p>
<p>The creative workers felt that the main reasons for the unreasonable contract terms were the differences in the negotiating positions of the different parties, knowledge of their rights and negotiation skills.</p>	<p>More than half of the production companies believed that technological development had reduced their chances of receiving appropriate remuneration for the rights to use productions.</p>

Results from a survey⁶, targeted at creative workers in the audiovisual sector (n=143) and audiovisual production companies (n=33).

New types of distribution channels and the market entry of international streaming services have affected the order volumes and contract terms in the audiovisual industry.

- The number of potential distributors and financiers has increased.
- Through international content services, productions can be distributed more widely than before. On the other hand, the bargaining power of big international companies in relation to the Finnish production companies is significant, and they typically negotiate long-term contracts with extensive rights.
- Competition between content distributors, such as television companies and streaming services, has intensified. This has also changed the contracts offered by domestic television companies to production companies.
- Potential market concentration may lead to one-sided supply, and many productions aimed at a small language area may become unprofitable as competition intensifies.

Based on Cupore's research⁶, the increase in different distribution channels has so far had more negative than positive effects on the fairness of contract terms in the industry.

According to both the authors and the production companies, the contracts concern wider rights than before, without the remunerations having increased accordingly.

- Particularly **small production companies** with less legal expertise at their disposal may feel that their negotiating position is weak in relation to distributors.
- Contracts with distributors on the transfer of rights directly affect the contracts between production companies and **creative workers**, as well as the remuneration paid for creative work.
- Creative workers often feel that they are the weaker party when negotiating contracts with production companies. Among them are many **freelancers**, whose employment relationships are typically short-term, income irregular, and unemployment security weaker than that of wage earners.

The increase in demand does not seem to have led to better contract terms in the audiovisual sector.

Development proposals to promote the fairness of contract terms in the audiovisual sector

In 2022–2023, Cupore carried out a research project on copyright issues in the audiovisual field. The study focused on the structural changes in the industry and the perceived fairness of contract terms in the production phase. The research data was collected by carrying out surveys, focus group discussions and expert interviews.

The research highlighted the following solutions to support the equality of negotiating positions and the operation of the markets⁶:

- Exploring the possibilities to agree on the transfer of copyrights in collective agreements.
- Exploring the possibilities for further developing collective management of copyright.
- Increasing the availability of copyright information and expert support regarding contract negotiations.
- Creating common recommendations and guidelines to support contract negotiations.
- Strengthening the industry's joint discussion to identify good practices.
- Developing solutions related to financial instruments.
- Enhancing reporting of the use of works by developing common practices for sharing data.
- Assessing the effects of changes to the Copyright Act.
- Developing the copyright system to respond to technological development and the changes in the industry's business models.

Sources:

- ¹ The Finnish Copyright Act (404/1961).
- ² Official Statistics of Finland – OSF. *Use of information and communications technology by individuals [online publication]*. Helsinki: Statistics Finland. (Referenced: 21.8.2023).
- ³ Kautio T., Oksanen-Särelä K. & Kurlin Niiniho A. (2020). *Suomalaisten näkemykset tekijänoikeusjärjestelmästä*. Cupore webpublications 61.
- ⁴ Official Statistics of Finland – OSF. *Structural business and financial statement statistics [online publication]*. Helsinki: Statistics Finland. (Referenced: 21.8.2023).
- ⁵ Finnish Film Foundation (2023). *Elokuvavuosi – Facts & Figures 2022*.
- ⁶ Kautio, T. & Lefever, N. (2023). *Sopimussuhteet muutoksessa – Audiovisuaalisen alan tekijänoikeudellisia kysymyksiä*. Cupore webpublications 74.