

Legal Perspective On The Rights Clearance in Audiovisual Projects

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17.1.2024



3rd Party Rights in Audiovisual Projects

The "Why"?

- The producer is responsible for obtaining all necessary rights in and to the audiovisual project in order to be able to grant rights to the project to broadcaster, streamer or other entity utilizing the production.
- The producer shall be able to prove to broadcasters/ distributors/ financiers that the producer has cleared all rights to the project (chain of title).
- Chain of title includes all rights of the cast and crew, as well as rights to 3rd party materials, such as music, artwork, photo and video clips, etc.

3rd Party Rights in Audiovisual Projects

The “What”?

- What 3rd party material may be protected by copyright or trademark rights:
 - Artwork - paintings, drawings, sculptures, etc.
 - Literary works - books, poems, song lyrics, scripts, etc.
 - Audiovisual works – films, tv series, videos, radio, podcast, etc.
 - Also tv and radio signal
 - Photos
 - Either protected by copyright or as “regular” photo
 - Logos, user interfaces (Facebook, Instagram), emojis
 - Music

3rd Party Rights in Audiovisual Projects

The "What"?

- Names
 - Names are usually not protected by copyright.
 - When naming characters in a film, good practise to check (e.g. from Väestörekisteri) that the used name is not extremely rare in Finland.
 - When naming your production, check (at minimum, Google) that there are no other films with the same name.

3rd Party Rights in Audiovisual Projects

The “What”?

- Brands
 - Brand logos / trademarks might be protected with a copyright but most often logos are not individual enough to be protected with copyright.
 - Trademark legislation protects the logo / trademark if “used in the course of trade for goods and services”. If trademark/logo is used in a film or tv series, it is not clear whether or not such use is considered “trademark use”.
 - Never show trademarks / logos in marketing/advertising (trailers, puffs etc.)! This might be considered “trademark use” and/or unauthorized exploitation of the reputation and notoriety of another company.

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The "What"?

- It is not advisable to reference brands in a negative light (e.g. a rough scene where someone is being murdered or raped). The brand can argue that it hurts their brand/marks.
- Always consider very carefully if there is a content-related reason to show any brand in the audiovisual production
 - Advisable to either hide the brand, or use a fictive brand / use a brand that cannot be recognized
 - It would be recommendable to do this evaluation already in the screenwriting phase.

3rd Party Rights in Audiovisual Projects

The “What”?

- Music
 - Rights shall in each case be cleared (Teosto/NCB, Gramex, catalogue music etc.)
 - Altering song (e.g. composition or lyrics) always requires permission from the music rights holder.
 - Example: Case “Joutsenlaulu”
 - Markkinaoikeus 10.12.2019: Sanoma Media Finland – Jussi Hakulinen
 - Sanoma infringed Hakulinen’s copyright by altering the “Joutsenlaulu” song in “Vain Elämää” tv series without Hakulinen’s permission. The song was cut/shortened and especially altering the lyrics without permission infringed copyright.

3rd Party Rights in Audiovisual Projects

The "What"?

- Pictures and material banks
 - Offer materials either for free or in exchange for a license payment. May have different license types for commercial use, such as film / tv-series
 - Services like Unsplash, Shutterstock etc.
 - Some content is limited for editorial/ editorial purposes only / editorial use only → cannot be used in commercial audiovisual productions
 - Read the terms of use carefully and remember to credit in accordance with the applicable terms of use.
 - Be aware that any individuals appearing in the pictures shall approve the use of their picture in a commercial content (if they can be recognized).

3rd Party Rights in Audiovisual Projects

The "How"?

- Rule of thumb is that no works / material protected by copyrights should be used without the permission of the right holder.
 - Always ask the permission in writing.
 - Asking for a permission, and getting an answer, can sometimes be difficult and take time. Reserve enough time!
 - Be prepared of getting "no" for an answer. If you ask for a permission and do not get an answer / permission, you are not allowed to use such material.
 - Especially large brands / companies might be reluctant of giving their permission as they would have to supervise the use of their material in the production.
 - Even if the brand would give their permission, make sure that their control in production is not overwhelming

3rd Party Rights in Audiovisual Projects

The "How"?

- Rights clearance report
 - an official report signed by an experienced lawyer or a company specialized in rights clearance reports
 - Currently there are no companies specialized in rights clearance reports on Finnish language content
 - Usually required by
 - International streamers/ broadcasters and distributors
 - Insurance companies for Errors & Omissions insurance

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The "How"?

- Exceptions to rights clearance:
 - Quotation right (Sitaattioikeus, Copyright Act 22§)
 - Similar legal exceptions such as US fair use regulation
- Use 3rd party works based on quotation right carefully / with extra thought as legal rules vary between different countries
- In the Rights Clearance Report you shall be able to justify that you have the right to use 3rd party content based on exception and that it does not create risk of any claims

3rd Party Rights in Audiovisual Projects

The "How"?

- Permission or fictive brand?
 - Acquiring permission from large, international companies is difficult and many times impossible. If you ask for permission, and do not get a reply, you should not use the material!
 - Advice to create a fictive brand to avoid (potential) consequences.
 - Example: You can create fictive social media platform instead of utilizing the user interface, logo or trademark of Instagram, Facebook, Tinder, etc.

3rd Party Rights in Audiovisual Projects

The "How"?

- Product placement and sponsorship
 - Make sure that you are entitled to include product placement / sponsorship in the audiovisual project
 - A commercial broadcaster may reserve the right to do product placement / sponsorship
 - Public broadcasters (e.g. YLE) do not allow product placement / sponsorship
 - Product placement and sponsorship are subject to mandatory legislation (local laws and directive) – make sure you know how

3rd Party Rights in Audiovisual Projects

The "When"?

Screenwriting

Pay attention to:

- Literary works references
- Lyrics, song references
- Artwork references
- Character names
- Brands and trademarks

(Rights clearance report to be conducted based on the script)

Production

Pay attention to:

- Brands and trademarks in set design / set dressing and costume design
- Artwork in set design
- Impro/ alterations to the script

Post-production

Pay attention to:

- Music clearance
- Photo/ audiovisual works clearance
- Final chance to clear the rights and make sure that everything is cleared

(Rights clearance report may be altered or to be conducted based on the offline content)