

# **COPYRIGHTS AND CONTRACTS**

## **(2) CONTRACTS**



Aalto-yliopisto  
Taiteiden ja suunnittelun  
korkeakoulu

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# CONTRACT LAW



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# KEY LEGAL REGULATION ON CONTRACTS

- **Contracts (in general)**
  - Laki varallisuusosoikeudellisista oikeustoimista / Contracts Act (228/1929)
- **Employment contracts**
  - Key regulation in Finland:
    - Työsopimuslaki / Employment Contracts Act (55/2001)
    - Työaikalaki / Working Time Act (872/2019)
    - Vuosilomalaki / Annual Holidays Act (162/2005)
  - <https://tyosuojelu.fi/en/employment-relationship/employment-contract>
  - <https://tyosuojelu.fi/tyosuhde/tyosopimus>
- No specific regulation regarding audiovisual industry contracts.



# BINDING CONTRACT

- **Freedom of contract**

- Freedom of contract is used to contract. Once a contract is made, it binds the contracting parties. The free will has been bound by the contract.
- Freedom to choose contracting parties and define contractual terms as long as the contractual obligations are not against mandatory legislation.

- **Offer and acceptance**

- An offer to conclude a contract and the acceptance of such an offer shall bind the offeror.
- Traditionally, the contract has been considered as having a clear starting point which is the acceptance of an offer.
- A revised acceptance is always a counter-offer. If the counter-offer is accepted, a contract is concluded.

- **Mandatory legislation**

- Mandatory legislation must be complied with when contracting. Any contractual term contrary to the mandatory norms is void and the legislation is applied instead.
- For example, employment legislation in Finland strongly protects employees and includes a lot of mandatory norms.



# CONCLUDING A CONTRACT

- **Intention / Expression of will**

- (a) In writing
- (b) Verbal
- (c) Tacit acceptance / hiljainen hyväksyminen

- **Form of contract**

- (a) Contracting parties' expression of their wills.
- (b) Fixed-form contracts (only a few contracts are regulated by the Finnish law).

- **Negotiations**

- Contract negotiations are not regulated.
- Negotiation phase will continue as long as a contract is or is not concluded.



# HIERARCHY OF LEGAL NORMS AND INTERPRETATION

- **Hierarchy of legal norms:**

- (1) Mandatory legislation

- = Contracting parties must comply with the mandatory norms.

- (2) Contractual terms between the contracting parties

- (3) Dispositive legislation

- = Contracting parties may differ from the dispositive norms of law.

- **Interpretation**

- In case of unclarity, communication and contract-related documents and materials between the contracting parties may help to interpret the purpose of the contract.
  - Do not sign a contract if the content is unclear or not as jointly agreed.



# KEY CONTENT OF CONTRACTS



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# KEY CONTENT OF CONTRACTS

- **Essential content of contracts / key contractual terms:**

- Contracting parties / Sopijapuolet
- Subject matter / Sopimuksen kohde
- Contracting parties' commitments, contributions, rights (not just copyrights) and responsibilities / Sopijapuolten sitoumukset, suoritukset, oikeudet ja vastuut
- Term of the contract / Sopimuksen voimassaolo
- Termination of the contract / Sopimuksen päättäminen (irtisanominen vs. purkaminen)
- Transfer of the contract / Sopimuksen siirtäminen
- Applicable law and legal venue / Sovellettava laki ja oikeuspaikka
- Date and signatures / Päiväys ja allekirjoitukset

- **In audiovisual industry contracts also:**

- Confidentiality / Salassapito
- Copyrights / Tekijänoikeudet





# CONTRACTING PARTIES

- **Contracting party**
  - A natural person / Legal entity
- **Specifications:**
  - Name
  - Identification number - persons or legal entities
  - Contact information
  - Contact person in case of legal entity
- **Business information system / Yritys- ja yhteisötietojärjestelmä: <http://www.ytj.fi>**
  - The site can be used to search basic details of companies, organizations and associations.
  - Official information - company name, business ID, company form, address, etc.



# SUBJECT MATTER AND COMMITMENTS

- **Subject matter**
  - Definition of the object of the contract as appropriate and as clear as possible.
  - Why are the contracting parties contracting?
  - Some background information may also be relevant.
  - For example, specific services/engagement in a specific audiovisual project.
  
- **Contracting parties' commitments, contributions, rights and responsibilities**
  - Description on case-by-case basis, as detailed as relevant and possible.
  - What? When? Where? How? To whom?
  - All kinds of rights, for example, decision rights, not only copyrights.
  - Money contributions - any specific remarks, such as taxes included/excluded, gross/net, etc.?
  - Challenges of contracts often relate to the unclear definition of agreed commitments.



# TERM/VALIDITY AND TERMINATION

- **Fixed-term contract / Määräaikainen sopimus**
  - Specific term, valid until the end of the contract period.
  - For example, used in projects.
  - Contract cannot be terminated during the term unless otherwise agreed.
  - Employment contracts – justifiable cause required.
  
- **Ongoing contract / Toistaiseksi voimassa oleva sopimus**
  - No specific term, valid until further notice.
  - Contract can usually be terminated at any time, a period of notice (irtisanomisaika) to be agreed.
  - Employment contracts – applicable mandatory legislation.
  
- **Termination of a contract with immediate effect / Sopimuksen purkaminen**
  - Contract is terminated with immediate effect.
  - Rarely possible, highly exceptional, an ultimate option to terminate a contract.
  - General principle: A significant material breach of a contract required.
  
- In case of no mandatory norms, the contracting parties may jointly agree to terminate their contract when they wish.



# TRANSFER OF CONTRACT

- **Transfer of contract – in its entirety**

- If a contract is transferred to a third party, it means that the contracting party is changed.
- Recommendation: The contracting parties agree in their contract if they have a right to transfer the contract further to a third party or e.g. if an approval is needed.

- **Transfer of contract - partly**

- For example, an assignment of the exploitation rights of an audiovisual work by a producer.
- Usually such assignment/transfer is agreed in connection with the purpose, i.e. the producer has the right to transfer its rights further to a third party.



# APPLICABLE LAW AND LEGAL VENUE

- **Choice of applicable law**

- Contracting parties can quite freely choose the national law which is applied to the contract in resolution of legal disputes.
- Recommendation: Choose the national law which you know best.
- Critical in international contracts – In case of no choice, applicable law will be determined in accordance with the international treaties.

- **Legal venue**

- (a) Litigation / National courts**

- Litigation unless otherwise agreed.
    - National courts are determined in accordance with the applicable law if not specifically agreed.

- (b) Arbitration**

- One or three arbitrators.
    - Arbitration can be quite costly, but more rapid process than litigation.
    - The Arbitration Institute of the Finland Chamber of Commerce, <https://arbitration.fi/en/>

- Settlement of any disputes between the contracting parties is always recommended.



# DATE AND SIGNATURES

- **Date**
  - The date when a contract is executed/signed.
  - A written contract may confirm the terms and conditions which the contracting parties have already agreed at an earlier stage.
- **Authorization**
  - In case of legal entity, a contract must be signed by a person who has the right to sign contracts on behalf of the legal entity.
  - Contact person and authorized signatory may be different persons.
- **Signatures**
  - Physical contract counterparts and signatures (for all contracting parties).
  - Digital signatures.



# CONFIDENTIALITY

- **Agreement on confidentiality:**

- (a) a separate agreement ("Non-Disclosure Agreement, NDA") or
- (b) a contractual term in any contract.

- **Essential issues:**

- Binding agreement between the contracting parties that prevents sensitive information from being shared with others.
- Definition of the confidential information.
- Term of the agreement.
- Possible penalty clause for a breach of agreement, e.g. a fixed/minimum amount as a penalty.



# MODIFICATION OF A CONTRACT

- **A contract can be modified as freely as it was formed, but only if all the contracting parties agree.**
- **How to modify a contract?**
  - The original contract is modified (all counterparts) with a date and signatures.
  - Appendix to the original contract.
  - A new contract and the former contract is terminated.





# LETTER OF INTENT vs. DEAL MEMO

- **Letter of Intent / Aiesopimus**

- Letters of Intent are intentionally formed to avoid the legally binding effect.
- Not a binding contract, only an intent.

- **Preliminary contract / Deal Memo / Esisopimus**

- A binding contract which includes a preliminary agreement.
- A deal memo is often used as a commitment to start a collaboration and to enter into a main/proper contract.
- Challenges: uncertainties, circumstances may change, etc.
- Exit clause recommendable – For example, termination of a deal memo will be terminated automatically in case the contracting parties have not entered into a long-term agreement by a specific date.

