

Chain of Title – information sheet

Important note about this Chain of Title guidance

This information sheet provides you with guidance about the New Zealand Film Commission (NZFC) requirements in relation to Chain of Title.

It will help you provide the Chain of Title information we require for any form of NZFC funding. It is not intended to be legal advice nor is it intended to be comprehensive.

You are welcome to call us to discuss any Chain of Title queries you may have. Before acting on this information, we recommend you seek other professional and legal advice.

What is Chain of Title?

Chain of Title is a timeline of transfers of title (ownership) in the rights to a project. The 'chain' analogy is used to illustrate the line of ownership running from the current owner back to the original owner of the property.


Chain of Title means, collectively, all of the agreements that give you permission to use other people's material in, and contributions to, your film.

Why is Chain of Title important?

In the film and television industry, it is very important to be able to have written agreements showing that the producer owns or controls the rights in the film.

Before they will invest or lend to a production, funders and investors will want to see evidence that the production company has the right to make and distribute the film. And before they'll represent or show a film, exhibitors, film festivals, sales agents and distributors will usually require documentation to verify the producer's rights in the film.

Not having documentation evidencing the Chain of Title in your film may jeopardise your ability to get finance or distribution deals for the film, and may even have legal consequences such as an injunction against your film (preventing you from exploiting it) or a damages claim in court.



Who needs to assign rights?

Anyone who contributes content to a film/project must assign their rights in that content to the production company. This includes writers (screenplays, treatments, storyboards) directors (ideas, design), actors, script consultants and producers.

You also need to make sure you have documented rights to use any music, lyrics, images or footage included in the film.

If you have a musician composing music for the film, they'll need to assign or licence their rights to that music for you to use it in the film. If you use an existing work from a musician (for example a publicly released single), the owner of the copyright (probably usually either the musician or their record label) will need to grant you a license to use that work.

What do these assignments and licences need to cover?

Once you've established who you need to have a licence or assignment of rights from, you need to then make sure that the terms of those licenses or assignments give you all the rights needed to make and exploit the film.

Extent of assignment/licence

Whether you are using an underlying work or all material is new and specific to the particular film project, all rights granted or licensed should:

- be worldwide – so you can exploit the film in all territories; and
- be granted in perpetuity – so you can exploit the film forever and not just for a limited time; and
- not be subject to injunctive relief. The right to seek injunctive relief needs to be specifically excluded (with contributors only having the right to seek damages). This is to ensure that they cannot interfere with or prevent you from developing, producing or exploiting the film; and
- include a waiver of moral rights. To ensure you also have the ability to exploit the film without restrictions, and authorise sales agents and distributors to do so, anyone who has made a creative contribution should contractually waive all their moral rights in their content. ('Moral rights' include a creator's right to receive or decline a credit for their work, to prevent the work from being altered, and to control how and in what way the work is exploited.)





When you're using existing underlying material

In addition, if you're granted a licence to base your film on, or include in your film, any existing underlying material, make sure:



- the definition of that underlying material is clear. For example, if you're being licensed to create a film based on a book, you should include the title, author, date of publication and any other relevant details that help identify exactly which book you are referring to;
- any ancillary material or content is included – for example all versions, characters, themes and plots that fall within the work;
- the assignment or licence includes ALL rights you want to use, including copyright. They may reserve some rights (for example remake rights), but the rights granted must be wide enough to include all possible uses you may want to make of the underlying content and the film; and
- the author waives any moral rights in the film and ancillary products you may create (though they may retain or assert their moral rights in their underlying material – for example their book or script, which is a separate copyright work from the resulting film).


Warranties from contributors

Anyone providing content (either existing or new) will need to give certain warranties, including that:

- the owner is authorised and entitled to enter into the agreement and grant the rights;
- the owner is the sole and exclusive legal owner, with full title, and guarantees all rights in the work throughout the world;
- the work is/will be original, and nothing in the work, nor any exercise of the rights being transferred, will infringe on the rights (including copyright) of any other person;
- there is/will be no defamatory material in the work.

In addition, anyone providing a licence or assignment to use existing material should warrant that:

- the work is not encumbered by any other rights, and the owner has not authorised any dealings with the work (that is, they haven't already granted rights to someone else);
 - the work is under copyright and is not in the public domain;
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- there is no present or prospective claim or litigation to arise in respect of the work;
 - the owner indemnifies the producer against all claims or litigation against the work including legal costs etc. except for claims in relation to any material supplied or requested for incorporation into the work by the producer.

Some other legal bits and pieces to cover off...

Make sure the agreement contains some consideration for the transfer – that is, some form of payment or quid pro quo for the property being transferred. This can be a nominal amount or fee or share of profits that is due at a later date. If there's no exchange of value (that is, there's 'nothing in it' for one party), the agreement will need to be executed as a deed – which has more stringent and specific legal requirements to make it binding on the parties.

Make sure the agreement is signed by all parties and dated, and if it's a deed, that it has been properly executed (note specific legal requirements apply).

If the project is a documentary, check that everyone who is likely to appear in the finished project has signed a release form (this should permit the use of their recorded performance and should give the producer life rights over their appearance in the footage).

It is useful to make sure that the rights can be assigned by the producer (even if you specify that they can only be assigned to a related company) in case you need to assign the rights to a special purpose company for financing/production purposes.

Be clear about any taxes that must be paid, what currency any dollar value will be in, when payment will be made, and which country's law governs the agreement (which should be New Zealand law except in exceptional circumstances).

Please remember this is only a guide, and can't cover everything. If in doubt, ask questions and get help from an expert. Each project will have its own unique circumstances, so it is important to seek legal advice for your particular project.

For further information about Chain of Title, contact our Business Affairs Team.
Email businessaffairs@nzfilm.co.nz. Phone 0800 659 754.

