

Remember to reserve your rights as composer

Are you negotiating a contract on commissioned music for an audiovisual production, a TV series or a feature film? To protect your performance rights and future payments, Koda/NCB recommends that all composers before signing insert the following wording in the contract:

“In accordance with this agreement the producer holds all necessary rights to synchronize, produce and sell productions to broadcasters, VOD services and other distributors. However, notwithstanding and superseding any possible terms to the contrary in the agreement, Composer retains the public performance right, communication to the public right and making available right (including mechanical rights related to the performance) related to any public performance of the Music works contained in the Productions/Series/Feature Film and the associated performance fees (including mechanical fees related to the performance) to be collected and distributed by the relevant Collective Management Organizations.”

Guidance to the elements in the wording of the reservation

<p>“...notwithstanding and superseding any possible terms to the contrary in the agreement,...”</p>	<p>A precedence clause that is important to ensure that the reservation is not overruled by other clauses in the contract.</p>
<p>“...Composer retains the public performance right, communication to the public right and making available right (including mechanical rights related to the performance) related to any public performance of the Music works contained in the Productions/Series/Feature Film and the associated performance fees (including mechanical fees related to the performance)...”</p>	<p>When the composer is ensured the right to payments for the future public performances this also safeguards the Producer against eventual contractual adjustments based on Article 20 of the Copyright in the DSM-Directive ((EU) 2019/790). Article 20 states that authors have a prescriptive right to contract adjustment “<i>when the remuneration originally agreed turns out to be disproportionately low compared to all the subsequent relevant revenues derived from the exploitation of the works or performances.</i>”</p> <p>The composer retains the right itself – not only the right to remuneration through Koda/NCB – to the public performance, communication to the public etc. By retaining the right itself – and not “just” the remuneration right – the composer is ensured the right to resist unforeseeable usages, e.g. through new technologies that are not licensed today.</p>
<p>“...to be collected and distributed by the relevant Collective Management Organizations.”</p>	<p>This clarifies that the payments shall be handled by the usual collective rights management-system that is handled by Koda and similar organizations around the world. If the Producer does not perform the usage in question, e.g. the broadcasting or the streaming service provision, it will not be the Producer but the broadcaster or streaming service provider who is liable for the payments.</p>