

Chain of Title – information sheet

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

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

What is Chain of Title?


Chain of Title is the term given collectively to all agreements that give you permission to use other people's material in, and contributions to, your film. The "chain" analogy is used to illustrate the line of ownership running from the individual contributors to the production company.

There is no "one-size-fits-all" when it comes to Chain of Title. Each film will have its own unique circumstances and there could be a range of agreements required in order to secure the necessary rights, such as, but not limited to:

- option and purchase agreements
- assignment and novation agreements
- writer and director agreements
- quit claims and release forms
- contributor agreements
- music rights agreements
- licence agreements

Why is Chain of Title important?

Before they will invest or lend to a production, funders and investors will want to see evidence that the production company has entered into all Chain of Title agreements required to secure the necessary rights to make and distribute the film. Similarly, before exhibitors, film festivals, sales agents and distributors will



show or represent a film, they will usually require Chain of Title 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 (that may prevent you from distributing and showing it) or result in a damages claim in court.

Who do you need to get rights from?

Anyone who contributes content to a film must assign or license 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 secured 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.

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 and/or assignments give you all the rights needed to make, distribute and show the film.

Whether you are using an existing underlying work (such as a novel) or all material is new and specific to your film, all rights granted or licensed should at a minimum:

- Be worldwide so you can distribute and show the film in all territories.
- Be granted in perpetuity so you can distribute and show the film forever and not just for a limited time.
- 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) to ensure that contributors cannot interfere with or prevent you from developing, producing, distributing, or showing the film; and


- Include a waiver of moral rights. To ensure you also have the ability to distribute and show the film without restrictions and authorise sales agents and distributors to do the same, anyone who has made a creative contribution to the film should contractually waive all their moral rights in their content. ‘Moral rights’ are personal rights that are held by creators. They include a creator’s right to receive or decline a credit for their work, to prevent their work from being altered, and to control how and in what way their work is distributed and/or shown).

When you are using existing underlying work

If you’re basing your film on an existing underlying work such as an existing book or play, in addition to the minimums listed above, make sure:

- The definition of the underlying work is clear. For example, if you’re creating a film based on a book, your agreement with the book owner 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. The owner of the work may want to 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 work and the film; and
- The author waives any moral rights that they may have in the film. Though they may retain or assert their moral rights in their underlying work.

If you have entered into an option and purchase agreement for an underlying work, the option must be able to be exercised within a period of at least 18



months from the date NZFC funding is approved so make you have enough time in the option period left to account for this restriction.

Warranties from contributors

Any contributor providing content (either existing or new) to a film will need to give certain warranties, including that:

- The contributor is authorised and entitled to enter into the agreement and grant the rights.
- The contributor is the sole and exclusive legal owner, with full title, and guarantees all rights in the content throughout the world.
- The content is or will be original, and nothing in the content, nor any exercise of the rights being transferred, will infringe on the rights (including copyright) of any other person.
- The content does not and will not contain any defamatory material.

In addition, if you are using an existing underlying work, the owner of that work should warrant that:

- The underlying 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 underlying work is under copyright and is not in the public domain; and
- There is no present or prospective claim or litigation to arise in respect of the underlying work.

The owner of the underlying work should also indemnify the producer against all claims or litigation against the work, including legal costs, except for claims in relation to any material supplied or requested for incorporation into the work by the producer.



Some other bits and pieces to cover off...

Make sure your agreements contain some consideration for the transfer. That is, a form of payment or other exchange of value for the property being transferred. This can be a nominal amount (such as \$1), a fee or a share of profits that is due later. If there's no exchange of value (that is, there's 'nothing in it' for one party), the agreement will need to be in a different form called a deed that has more stringent and specific legal requirements to make it binding on the parties.

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

If the project is a documentary, everyone who is likely to appear in the finished project will need to sign a release form (this should permit the use of their recorded performance and should give the producer 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 and/or 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 it does not cover everything. Each project will have its own unique circumstances. Before acting on this information we recommend you seek professional and legal advice.

You are welcome to call us to discuss any Chain of Title queries you may have but please be aware that NZFC staff are not able to provide you with legal advice on Chain of Title for your specific film.

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