

Contract negotiations – performing artist’s copyright

1) Key points

→If German copyright applies, the moral rights cannot be assigned – only individual exploitation rights can be granted.

→Under German copyright law, the artist has the right to reasonable compensation. The fee for the activity performed by the artist and the compensation for the exploitation rights should be included in the contract.

→Although oral agreements are possible, it is always better to have a written contract.

2) The contract should specify

→ the specific types of use of the work that are being transferred; flat rate amounts result in legal uncertainty – in cases of doubt the artist has the right to additional compensation

→whether the use is limited in respect of territory, time or content

→the law of contract applicable (in the case of international contracts)

3) When things don’t turn out as expected...

A type of use was not mentioned in the contract

If there is no mention in the contract of a particular type of use, the courts assume, based on the purpose-of-grant rule, that in cases of doubt no grant of rights exists. The artist must first grant the rights and can then undertake fresh compensation negotiations.

As yet unknown types of use

Anticipatory rights can be granted for as yet unknown types of use. If this was not done, the contract can be revoked and renegotiated in order to achieve a higher price for the use.

A production was unexpectedly successful

The artist has the right to assert a claim for additional compensation. The right to reasonable compensation applies.