
Aide-memoire – Arrangements

Legal basis

According to Swiss Federal Copyright Law, the author decides ‘if, when and how his/her work will be used’. This means that the author of a so-called pre-existing work has control over adaptations, which the law refers to as ‘derived works’.

This control is first and foremost **economic**: negotiation of a lump sum to grant the exclusivity for the adaptation or [for] the very fact of authorising it, participation in the revenues generated by the exploitation of the derived work.

The control can also be **artistic** and cover the genre of the derived work, the writing methods – adaptation by the pre-existing author himself/herself, co-writing, review or veto rights – through to the selection of the film or stage directors and main performers.

All this can be settled by agreements.

However, **moral rights** remain inseparable from the author, independent of the agreements. They aim to protect his/her personality by respecting the integrity of the work and the attribution of authorship. They can be invoked and thus block a project, even if the adaptation rights have been granted. In the event of a dispute, the judges will have to find a balance between the wishes expressed in the adaptation agreements and the moral rights principles.

We must remember that all the components of copyright can be exercised by the heirs for up to 70 years after the death of the author. The editing of multiple texts into one new work constitutes a particular form of adaptation, and ‘inspiration’ should not be confused with ‘adaptation’.

Publishing agreements

Publishing agreements in the areas of literature and cartoons can provide for adaptation rights. Adaptation rights are typically covered in a section of the publishing agreements called ‘secondary rights’ – but economically they are not secondary at all. **We recommend the greatest care in relation to these provisions, [as they are] often patchy and not favourable to the author.** The author is not bound to transfer these rights to his/her publisher, but if he/she does so, he/she will allow revenues generated from the adaptation to be shared between the publisher and the author. The author can also offer such a sharing *in place* of an assignment of the adaptation rights.

If the publisher has the authority to negotiate adaptation agreements pursuant to the publishing agreement he has signed with the author, he/she generally cannot issue an authorisation for an adaptation without the express and personal project specific approval from the author.

Literary works can give rise to numerous exploitations other than book sales, in the format of literary works (public or radio readings, inclusion in an audio-visual documentary) or implementation into another form of expression (adaptation in a stage play, a film, a series, etc.).

You would like to make an adaptation – how to proceed?



SSA strongly recommends that you request the adaptation rights at the earliest stage of a derived work project.

For **theatrical adaptations**, SSA will take over the research, all you need to do is to send a complete authorisation request well in advance alongside, if possible, a letter of intent and a CV of the director.

For **audio-visual projects**:

- Pre-existing works from a 'Latin' country (French-speaking world, Italy, Spain, South America, Portugal): SSA can quickly provide you with information on the availability of the adaptation rights and put you in touch with the rights holders.
- Works from other origins: we can support you in your research. If the pre-existing work has been published, start your research by contacting the publisher.

An adaptation project can be subject to an option agreement: this enables the producer – or the person adapting the work – to reserve the rights of a work for a short period of time, for example in order to get the project financed.

Based on our experience, it is not unusual that an agreement in principle is made on the basis of a statement of intent, but that the adaptation rights are only granted once the final text of the latter has been approved by the adapted author or by his/her assignee.

Adaptation rights can be held by the author or by an assignee such as the publisher or the producer. In cases where one deals with such an assignee, it is important to get a guarantee that he/she indeed holds the necessary rights in order to grant the requested authorisation. If this is not the case, your derived work project will be at risk, as the real holder of the adaptation rights can oppose any third party. Thus, it is a sensible precaution to check the entire contractual chain, especially if the financing required for the project is important.

SSA at your service

Audio-visual adaptation as well as option model contracts are made available to you by SSA. ([www.ssa.ch / Documents / Model contracts](http://www.ssa.ch/Documents/Model%20contracts)).

Our legal team is at your disposal for any advice, to develop models specific to your project and to help you with your project.

Regarding the management of rights, SSA follows the principles of the French-speaking territories. As such, the author of a pre-existing work receives a part of the royalties collected for the usage of the derived work, alongside the adaptors, screenwriters and producers. The distribution rules, supplemented by individual work declarations, are the basis for the allocation split applied by SSA during its distributions.

Finally...

The principles outlined here apply for all derived works, whatever the nature of the pre-existing work. If the specific case is to adapt a literary work for screen or stage, all transposed forms of artistic expression are possible. This is even the case within an art form: a *remake* is just a derived work of a pre-existing film. Thus, a derived work can give rise to another derived work.

Swiss law differs little from other European law in points relevant to adaptations.