

# Theatre Forum Contracts update

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# Contracts update – why?

1. Multiple *ad hoc* changes made to template contracts since 2014
2. Migration of theatre onto online platforms
3. Review and consolidation required, with new clauses to address online use, fees payable and basis of payment
4. Confusion about calculation and distribution of box office receipts
5. Clarity required on Covid19 related suspension/termination/cancellation of a production run

# Contracts update – how?

- AM participation in Digital Forum, April 2021
- Executive and AM discussions of type of contracts requiring to be updated
- Decision made to focus on update and innovations in;
  - Performer and crew employee contract
  - Self-employed contractor contract e.g. director, dramaturg, choreographer
  - Venue / Production Company contract
  - Venue / Promoter contract

## Contracts review - process

- 2 drafts each of both performer / crew employment contract and Venue / Production Company contract – 3 reviews
- First review by Executive;
- Second review by Board Members representing s/e contractor creatives, and venues
- Third review by Executive
- Final drafts to be presented to the Board before end June

# Challenges

- New territory
- No industry norms
- This is *not* film / television – theatre is made differently
- How to be fair to both producers and creatives where Performer / crew not available for Covid19-related reasons or production run in cancelled / interrupted for Covid19- related reasons

# Proposals – fees for online usage of work

## **3 levels of usage online**

- Level 1 – live audience performance
- Level 2 – no live audience performance
- Level 3 – re-use of live performance recording online for different durations

# Level 1 – live audience performance plus filming / recording

- Live performance before an audience
- Livestream of performance - to *ticket holders* only
- Promo and publicity online (maximum 5')
- Archival and reporting use (e.g. reporting to Arts Council) – strictly non-commercial
  
- **Included in original fee**

## Level 2 – performance with no live audience present – filming / recording takes place

- Livestream to *ticket holders* only
- 7 day VOD (video on demand) catch up – for original *ticket holders* only
- Promo and publicity online use (5' maximum)
- Archival and reporting use (e.g. to Arts Council) – strictly non-commercial.
  
- **Included in original fee**



## Level 3 – VOD worldwide, with or without charge to audience / viewer

- 6 months – **additional fee of 50%** of original total fee (maximum 8 weeks' salary where employee)
- 5 years – **additional fee of 100%** of original total fee (maximum 12 weeks' salary where employee)
- 7 years – **additional fee of 140%** of original total fee (maximum 18 weeks' salary where employee)
- 10 years – **additional fee of 200%** of original total fee (maximum 24 weeks' salary where employee)
  
- Promo and publicity use – maximum 3' duration
- Archival and reporting use (e.g. reporting to Arts Council) – strictly non-commercial

# Sound designers, costume designers, set designers, lighting designers

- Similar approach could be taken – Levels 1, 2 and 3
- % by reference to existing norms
- Copyright will continue to remain with creator – subject to exclusive licence for production company to use *in theatre context only* for production company, and re-use entitlements in future production runs (whether online or live)

# Binding on everyone?

- No – everyone is free to negotiate their own terms
- Uncharted territory for most people – this is a suggested guide to how to approach negotiations

# Venue / Production Company agreements – box office receipts and shares

- Consultation revealed differing practices and some confusion about precise calculation of "gross box office receipts" and distribution of gross box office receipts
- Clarification required in template

# Venue / Production Company agreements – box office receipts and shares

- **Total box office:**
- Less credit / debit card charges = Gross Box Office Receipts (GBOR)
- First place deduction: Writer's percentage is % of GBOR – comes off the top of GBOR – *must be paid*
- Second place deduction: IMRO fees for music use – *unless* written evidence production by Pro Co to show music is cleared and paid Pro Co. IMRO fees are a legal liability of the Venue. Music cue sheets must be supplied.
- Third place deduction: Minimum Guarantee may be paid out of GBOR but should be paid even if insufficient funds available from GBOR to pay, unless stipulated otherwise by Venue – may depend e.g. on whether Arts Council or similar grant funding for performance or not.
- Balance will be split between Pro Co and Venue in agreed shares
- Parties may agree off-set / contra of additional venue costs against Pro Co share of GBOR. Consider and agree.
- Programme / merchandise receipts – total less venue commission. Separate from GBOR; separate accounting. Set-off / contra against net prog / merch receipts? Consider and agree.

# Creative collaborations

- Work-shopping material
- Joint authorship?
- Be clear about basis of work-shop participation and ownership of rights (commissioning theatre / producer – contracts should be in place with key personnel)

## Illness and injury - standard sick pay.

- Proposed compulsory sick pay legislation will not apply to contracts of less than 16 weeks' duration.
- Illness or injury – 3+ days' not available for work
- Pro Co encouraged but not obliged to continue to pay after Day 3 sick leave.
- If Pro Co pays during sick leave, employee obliged to apply for illness benefit (if applicable) and, if successful, to repay illness benefit to employer Pro Co.
- If illness / injury continues 3+ days, employer may suspend (no pay) or terminate.

# Covid19 related reasons for absence from work

- Employee may not be sick but may not be able to work because;
  - Showing symptoms of Covid19
  - Self isolating or restricting their movements because of Covid19 risk
  - Awaiting results of Covid19 test
  - Has returned from overseas travel from country not in EU Covid Safe Travel area
- Where non-availability continues for 3+ days, Pro Co employer may;
  - Treat as sick leave (see former slide – but illness benefit may not apply)
  - Suspend contract for up to one week – no obligation to pay employee during suspension but employer *may* pay
  - Terminate contract
  - Alternative arrangement negotiated and agreed by both parties
  - Pro Co may retain replacement person *in lieu* of employee n/a for Covid19 related reasons
- Employers should be as fair and reasonable as they can be – difficult situation for all concerned.



## *Force Majeure*

- Not the same as Covid19 related reasons – fire, flood, Act of God, civil unrest, labour relations strikes and lockouts.
- If *f.m.* continues 3+ days, then;
  - Pro Co may suspend contract for max. one week (no obligation to pay employee during suspension of contract)
  - Terminate with immediate effect
  - Suspend, then terminate
  - Alternative arrangement may be agreed between the parties. E.g. deferral and re-scheduling.

# Summary of review process

- Addresses expanded digital access to theatre works
- Provides template approach to negotiation of fees for digital use / re-use of theatre work for employees and self-employed contractors
- Clarifies calculation and distribution of Gross Box Office Receipts
- Presents alternative approaches and suggested language for commercial arrangements in Production Company / Venue contracts
- Sets out procedures for Covid19 related suspension / termination / cancellation