

IFTA® Model International Licensing Agreements 6th Edition (Version 2018)

The IFTA® Model International Licensing Agreements 6th Edition (Version 2018) has been reviewed and revised, what are the major changes and why have they been made?

The IFTA® Model International Licensing Agreements (MILA) is a long-established set of contractual forms (IFTA Forms) that assist in documenting international distribution deals. Periodically, the entire MILA including the [IFTA® International Multiple Rights Distribution Agreement \(Multiple Rights Agreement\)](#), which includes the IFTA® Deal Terms, Additional Terms, and Standard Terms, the IFTA® Deal Memo, the IFTA® Schedules of Definitions and [Territories](#), and other contractual templates like the Censorship Rider, Laboratory Access Letter and Financing Attachments are reviewed and revised to keep pace with the evolving worldwide film and television industry. The changes made to the MILA 6th Edition reflect current legal and industry licensing practices and standards.

The most transformative change to the MILA has been the adoption of streamlined licensing terminology for VOD, Streaming, and Downloading Rights. Since on demand rights had been defined as Demand View, a Pay Per View Right that excluded Streaming, the newer streaming and downloading rights were separately categorized as Internet and Closed Net Streaming and Downloading in the 4th and 5th Editions. In the MILA 6th Edition, the defined terms Demand View, ClosedNet and Internet Rights have been eliminated and redefined as VOD Rights (Streaming) and EST Rights (Downloading). Another change you will notice is that grants of Pay and Free TV Rights now include a 30-day Catch-Up period (that has become standard in many deals but which the Parties may adjust in the Deal Terms). There are also changes to the Standard Terms including the elimination of the Cancellation provision and the revision of the Termination, Breach, Default and Cure provisions. Notice periods in some cases including Audit Right have been adjusted.

Each substantive change to the IFTA® Multiple Rights Agreement, the Schedule of Definitions, and the Schedule of Territories from the prior MILA 5th Edition is indicated in the [Change Chart](#). The IFTA® Deal Memo has been revised to reflect the new Multiple Rights Agreement and has been reformatted for easier use. Please review with your legal counsel and business experts the new Multiple Rights Agreement and IFTA® Schedules, Change Chart, and these FAQs for more details on the MILA 6th Edition.

Of course, the marketplace will continue to evolve, new types of exploitation and uses, territories, or legal practices may emerge and the IFTA® MILA will evolve under the outstanding guidance of the IFTA Legal Committee, and the IFTA Membership at large through MyIFTA. If you have any questions regarding the new MILA 6th Edition or any other IFTA Form, please contact Susan Cleary scleary@ifta-online.org or Eric Cady ecady@ifta-online.org.

How has the IFTA® International Schedule of Definitions changed?

The most notable changes to the IFTA® International Schedule of Definitions have been re-naming of the ClosedNet and Internet Rights to VOD (Streaming) Rights and EST (Downloading) Rights. Other changes include a 30-day Catch-Up period that is now included in Pay and Free TV Rights; new subcategories for Basic and Premium Pay TV Rights, the elimination of the term

Commercial Video (previously under Video Rights) and merger into a slightly redefined NonTheatrical Right.

VOD Rights:

VOD Rights have been defined to mean making available a digital Motion Picture Copy by Internet Streaming. There are 4 defined types of VOD exploitation which reflect business models based on how the viewer can access the Motion Picture and on what basis Gross Receipts will be collected. The growing importance of these rights and the emergence of specific, well-understood business models made it clear that the grants of rights necessary for this exploitation required streamlining the definitions of rights formerly known as Demand View, ClosedNet Streaming, and Internet Streaming and the Authorized Uses such as IPTV Use. Those grants of rights are now redefined as four types of VOD (View on Demand) Rights:

AdVOD (or Advertiser Supported VOD) means making available a digital Motion Picture Copy by Internet Streaming to a user who is not required to pay a fee to view the Motion Picture Copy but where advertising, such as trailers or commercials, are included before, after, or within the continuity of the Motion Picture Copy, or where other advertising, such as banners, icons, hyper-text, meta-tags, or similar identifying information for a product or service or their supplier, is included the same Website as the Motion Picture Copy.

FVOD (or Free to the User VOD) means making available a digital Motion Picture Copy by Internet Streaming to a user who is not required to pay a fee to view the Motion Picture Copy and there is no advertising content embodied in or associated with the Motion Picture Copy.

SVOD (or Subscription VOD) means making available a digital Motion Picture Copy by Internet Streaming to a user who is required to pay a set fee for a specified period to view the Motion Picture Copy along with other Motion Pictures available on the licensed service making available such Motion Pictures.

TVOD (or Transactional VOD) means making available a digital Motion Picture Copy by Internet Streaming to a user who is required to pay a set fee for a specified period to view the Motion Picture.

EST Rights:

Internet and ClosedNet Downloading are re-labeled as EST (“Electronic Service Transfer” or “electronic sell thru”). EST is the exploitation of a Motion Picture by Downloading as distinct from VOD Rights which are exploitation by Streaming. EST Rights allow the user to use the Copy for a defined period as follows:

Single Use EST means providing access to a digital Motion Picture Copy for Internet Downloading by a user who is required to pay a separate fee for each act of downloading and who only retains possession of or access to the Motion Picture Copy for a limited period of time in close proximity to the act of downloading as needed to view the Motion Picture.

Limited Use EST means providing access to a digital Motion Picture Copy for Internet

Downloading by a user who is required to pay a single fee for a specified number or period of downloads (e.g. unlimited downloads for x days, or x downloads maximum, or x downloads within y days) and who only retains possession of or access to the Motion Picture Copy for a limited period of time in close proximity to the act of downloading as needed to view the Motion Picture for the authorized downloads.

Extended-Use EST means providing access to a digital Motion Picture Copy for Internet Downloading by a user who is required to pay a separate fee to obtain possession of a new digital copy of the Motion Picture Copy which may be viewed, but not further copied, without express limitations as to the number or duration of such viewings by the user.

Ancillary Licensed Rights:

Ancillary Rights now include new subcategories for exploitation on Vehicles and Trains within the Licensed Territory.

Cinematic Rights:

The subcategories of Cinematic Rights remain Theatrical, NonTheatrical, and Public Video. However, it is important to note that the exhibition of a Picture previously licensed under Commercial Video (Video Right) is now included in the definition of NonTheatrical. Additionally, “train” was removed as a potential viewing facility under NonTheatrical since it has now been separately defined as an Ancillary Right.

Video Rights (Commercial Video):

After reviewing the grant of rights previously defined as Commercial Video (grouped under Video Rights) and determining that the grant of rights was almost identical to Cinematic NonTheatrical, except that the Motion Picture Copy exhibited was by means of using a Videogram such as a DVD, the definition of Commercial Video was eliminated. The exact same type of exhibition can now be licensed as NonTheatrical Rights.

Free TV, Pay TV, Catch-Up Rights:

Free and Pay TV Rights have been defined to include a 30-day Catch-Up period. The Parties may agree to a different Catch-Up period in the Deal Terms.

Pay TV Rights:

Subcategories under Pay TV now include Basic and Premium Pay TV Rights to reflect that certain Pay TV channels like HBO may be considered a higher “tier” since subscribers pay an additional fee to access a ‘premium’ channel. These new subcategories allow the Parties to coordinate holdbacks and windows appropriate for Premium Pay TV.

Basic Pay TV means Pay TV exploitation of a Motion Picture by means of other than Premium Pay TV.

Premium Pay TV means Pay TV exploitation of a Motion Picture by means other than Basic Pay TV and when the viewer is charged a separate and recurring fee for access to a specific Authorized Channel which is only available to its Authorized Subscribers and does not include third-party advertising.

PayPerView Rights:

PayPerView no longer includes the subcategory Demand View which is now understood to be a VOD Right.

What are the changes or additions to the Additional Definitions?

See the [Change Chart](#) for the complete list of changes. Important revisions include: (i) *Guarantee* now means the Minimum Guarantee and the Additional Guarantee, if any, set forth in the Deal Terms, (ii) *Computer* now includes *Mobile Device*, SmartTV, tablet and any device that accepts, manipulates and stores digital information to allow for viewing of a Motion Picture, (iii) *VOD First Release* and *EST First Release* have been added, and (iv) updated definitions of Secondary Rights and Secondary Royalty Income are included. The definition of a *Closed Network* remains even though we've eliminated ClosedNet Rights: it refers to a closed system that is accessible only by authorized, authenticated subscribers so, for example, exploitation by means of a mobile network and mobile device would be considered a Closed Network.

If a defined term no longer appears in the Agreement, it has been removed from the Schedule of Definitions. Historical copies of each version of the Standard Terms may be obtained by contacting the IFTA Legal Department.

The IFTA MILA 6th Edition (Version 2018) has revised Deal Terms, Additional Terms, and Standard Terms. What are the major changes?

The entire Multiple Rights Agreement has been thoroughly reviewed to ensure that the widely adopted IFTA Standard Terms are balanced and reflect current industry practices. Each substantive change to the Terms of the Model Agreement has been noted on the [Change Chart](#) which outlines the changes made in the MILA 6th Edition (Version 2018) which differ from the MILA 5th Edition (Version 2010).

Cover Page, Deal Terms, Additional Terms

The Cover Page now includes an option for the Agreement to be signed by a "Sales Agent" on behalf of a Producer/Licenser. The Deal Terms that are negotiated by the Parties remain substantially the same; however, they have been updated to incorporate the new Licensed Rights Definitions, and Samples for Additional Terms section including provisions for: (i) declaring a cross default amongst distribution agreements, (ii) recovery of attorneys' fees in case of dispute, and (iii) compliance with the EU Portability Regulation within the EU and EEA areas.

Remember that when a Standard Term is contrary or conflicts with a Deal Term, the Deal Term prevails so special attention should be paid when adding Additional Terms.

Standard Terms

The Standard Terms have been reviewed and certain provisions have been updated to reflect current licensing practices. The IFTA[®] Standard Terms are incorporated by reference into the IFTA[®] Deal Terms and are available online at www.ifta-online.org/. Each change has been noted in the [Change Chart](#).

Some of the most substantive changes are that: (i) Reservation of Rights now includes an express reservation of all Secondary Rights and Secondary Royalty Income to the Licensor, (ii) Simulcasting only refers to the unedited, unaltered, and unabridged Authorized Telecast, (iii) Catch-Up TV exploitation for 30 days from the initial broadcast or transmission is included in the grant of Pay TV or Free TV Rights; (iv) Recoupable Costs now include costs of allowed editing in an amount reasonably pre-approved by Notice from Licensor, (v) Audit Right has been revised so that until three years after the Term and upon 30 days' prior Notice, Licensor may examine and copy the financial records of Distributor regarding the Picture. Previously, the Licensor could provide 15 days' Notice, unless during major film market, then 30 days. Distributor will also pay Licensor upon demand the reasonable costs of examination up to the amount of the underpayment; (vi) "Satellite Delivery" and "Electronic Delivery" have been consolidated under "Electronic Delivery"; (vii) The Quality Control Report provision has been consolidated into the Evaluation Process and any Delivery Materials that meet technical acceptance standards in the Quality Control Report will be deemed accepted; (viii) Distributor may declare Licensor in material default under Paragraph 16.4. for failing to make timely Delivery if Licensor fails to timely deliver satisfactory Delivery Materials after 3 attempts; (ix) The cross-default provision has been moved from the Standard Terms to the Additional Terms as agreed by the Parties; (x) The cancellation provision has been eliminated and Termination provisions have been revised to make clearer what happens at Termination; (xi) Arbitration provision now clarifies that the Parties submit to the jurisdiction of the courts in the Forum for interim relief, to compel arbitration and to confirm or challenge an arbitration award; (xii) Notice and its receipt are redefined so that proof of refusal of delivery by the recipient means that the Notice has been received, and that a text or instant message does not qualify as a Notice, and (xiii) A Severability provision has been added.

The IFTA[®] International Schedule of Territories Version 2018 has been updated. What are the major changes?

The [IFTA[®] International Schedule of Territories](#) has been updated to reflect the regulatory changes that have occurred in Europe, the new territorial demands that buyers are making, and to provide greater clarity with regard to the complexities encountered when licensing rights in the Caribbean. Additionally, the Schedule provides a more complete "Language Listing" section than has been previously available.

Regulatory Changes:

Portability - The regulatory changes that are occurring in the European Union have necessitated the inclusion of a definition for the EU in the new Schedule. One such regulation, which provides for the portability of online content, went into effect April 1, 2018. Because of

this, the EU definition needed to include not only the Member Countries in continental Europe but also certain of the overseas territories of France, Portugal and Spain, that are classed by the EU as “Outermost Regions.” These territories are subject to all EU regulations, including Portability. An important annex to the EU definition is a footnote that briefly describes “Portability” and directs the user to the regulation on the EU website for more information.

Brexit - The United Kingdom is schedule to withdraw from the European Union at the end of March 2019. However, negotiations between the EU and the UK concerning this exit are now in full swing. At this time, any potential outcome to these negotiations is unclear. An additional footnote to the EU definition informs readers of this situation. The fate of Gibraltar, the British Overseas Territory (BOT) most directly affected by EU regulations is also up-in-the-air. It has been reported that U.K. withdrawal most likely will trigger separate negotiations about Gibraltar’s continued status as a BOT. A note in the U.K. definition informs readers of this possibility.

Swiss Language Licensing - The “Linguistic Diversity” provisions of the Swiss Film Act, which were previously limited to a film’s first public showing in a cinema, have been extended to include “other uses.” As a result the Swiss government takes a dim view of the individual, language- specific licensing practices that sellers have been employing. The “Switzerland” definition reflects this by providing a footnote informing the user of this state of affairs and providing links to the Swiss government website for more information. The “French-speaking Europe,” “German-speaking Europe,” and “Italian-speaking Europe” definitions found in the “Language Listing,” rather than including “Switzerland” as before, all direct the user to the “Switzerland” entry in the Listing’s “Other” section for an explanation of the situation.

Macedonian Referendum – In the fall of 2018 the people of Macedonia will vote on a proposed change of their country’s name to “North Macedonia.” It is unclear at this point what the outcome will be. Under the “Eastern Europe” definition, we have added a note informing the reader of this situation.

New Buyer Territorial Demands:

It has been reported that two new territorial licensing demands are now being sought – “Worldwide Rights” and “Rights to the Universe.” Definitions for both are included in this new schedule to provide the user with guidance in granting these rights.

The Caribbean:

Licensing rights to the Caribbean is a difficult. This schedule of definitions provides the user with three new tools: a new definition for “English-speaking Caribbean;” a note added to the “Latin America,” “South America,” and “West Indies” definitions that reminds users that “Guyana” can be licensed with any of the three, depending upon the deal; a definition added in the “Other” section of the “Language Listing” that provides insight into licensing Caribbean territories by language.

New to the “Language Listing”:

The “Language Listing” section of this new definitions schedule includes three new entries: “Portuguese-Speaking Territories” and “Spanish-speaking Territories” which includes a definition for “Spanish-speaking South America.” All are intended to provide the reader with greater clarity with regard to language licensing.

Other New Listings:

A licensing definition that has been reported recently is “French P.O.M.,” an “unofficial” term that some use for “French Polynesia.” This is included in the new schedule as an “F.Y.I.”

The “Kingdom of the Netherlands” is the formal name for the sovereign country which includes The Netherlands (aka Holland), Aruba, Curacao, and Sint Maarten. The EU has ruled that only The Netherlands is part of the EU and thus subject to its regulations.

Is there a new IFTA® Deal Memo for 2018 and beyond?

Yes, a new IFTA® Deal Memo (Version 2018) which corresponds with the Deal Terms of the IFTA® International Multiple Rights Agreement Version 2018 is available. The Deal Memo incorporates by reference the IFTA® Standard Terms, IFTA® Schedule of Definitions, and IFTA® Schedule of Territories. The Front/Page 1 of the Deal Memo consists of the Deal Terms, IFTA Arbitration clause, and signatures of Parties, and the Back/Second Page of the Deal Memo consists of selected definitions from the IFTA® Schedule of Definitions. The new IFTA® Deal Memo is user friendly and available in Word format with minimal formatting so that it can be quickly tailored for each deal and printed for signature. The IFTA® Deal Memo will also be provided in a blank PDF form which can be pre-printed on two sides of a sheet of legal-size paper and completed by hand. IFTA also offers for sale at a member discount IFTA® Deal Memo multi-page tear off sheets (available at AFM).