



Madrid - Alcalá de Henares - Galicia - León - Zaragoza - Alicante - Murcia.

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# CO - PRODUCTIONS LEGAL ADVISORING





## **2020: The year that changed everything**

2020 will be remembered as the year that stopped everything, and the Cultural sector was one of the most affected. The Audiovisual Industry suffered financial cuts, filming stopped and several projects were canceled.

## **2021: A cultural renaissance year**

This year requires action to restructure and accelerate the economic situation of the Cinema and Audiovisual Industry. It is a year for solutions, strategies and looking for opportunities beyond our frontiers. This is why co-productions will take a principal role

in this chaotic scenario. Technology has proved that there is no distance and that many projects may be executed cross border reducing practically any physical distance. Co-productions will be a solution to obtain funds, international repercussion, and the setting up of technical, cultural and aesthetic synergies.

## **International Co-productions**

As the International regulation states, cinematographic co-productions are considered any work as that work carried out in any medium, format and duration, in which two or more producers from two or more countries participate and that said co-production is carried out within the framework of a co-production contract between the co-production companies. That contract must be registered with the competent authorities of each country.

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**Cinematographics co-productions** not only contribute to the creativity of the project, but also to the access to public aids offered by the States where the parties of the co-production are from, once the project receives the nationality of these States.

## Why co-produce with Spain?

The reason is pretty simple, co-productions are ruled by international treaties, and once the project receives the Spanish nationality, the producers will be allowed to access to public aids offered by the *Instituto de Cine y Artes Visuales* (hereinafter, “ICA”). Additionally, they will have access to attractive tax deductions.



This is an unique opportunity to obtain extra funds and to be able to plan 2021, 2022 and the following years' co-productions. Furthermore, it is easier to record at extraordinary locations and get access to outstanding technical and human capital.

## Which are the requirements to co-produce with Spain?

Firstly, it is mandatory that the co-production receives the nationality of all the parties involved in the project. This way the producers will be able to receive public funds from all these countries. This means that if an audiovisual production is co-produce there will exist more financial opportunities.



Secondly, the work must be produced by human capital, both creative and technical, and companies from one (at least) of the co-producers country, being allowed exceptionally a 10% of human capital from a third country not involved in the co-production. Finally, it is necessary that the participation of the parties of the project fluctuates between 20 to 80 percent of the movie budget. Multiparty projects will allow participations no less than 10% and no more of the 70% of the movie budget.

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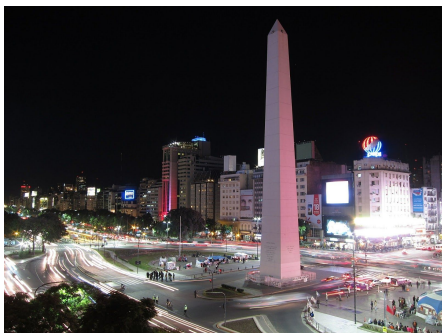
## Regulation

Co-production regulations in which Spanish producers are involved is based on:

- Law 55/2007 (Cinema Act).
- 1084/2015 Decree.
- Order ECD/2796/2015.

Internationally:

- Adhesion treaty of Spain to the Latin-American Agreement on Cinematographic Co-production, Caracas November 11, 1989.
- Amendment protocol to the Latin-American Agreement on Cinematographic Co-production.
- Reglamento del Acuerdo Latinoamericano de Coproducción Cinematográfica.
- Instrument of ratification of the agreement on Iberoamerican cinematographic integration. Caracas: 11-11-89.



- Instrument of ratification of the European Convention on Cinematographic Co-production. Strasbourg 2-10-92.

Also, if there is a Bilateral Treaty signed by the States' parties of the co-production, it will be applied (e.g. the ones signed by [Argentina](#) or [México](#))

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## Approval of the Co-production

It is mandatory that the ICAA endorse the project. Due to this reason, the co-production will be examined by this institution. The Spanish producer must submit an application form digitally or presential.

Alongside the application form, the producer must file the following documents:

- The script and the filming plan.
- Budget.
- Nominal list of creative and technical staff, expressing their nationality.
- **Co-production contract.**

if the applicant is not registered in the *Registro Administrativo de Empresas Cinematográficas y Audiovisuales*, it will be necessary to file additionally:

Si la productora solicitante no consta como inscrita en el, se aportará lo siguiente:

- Authorization for the ICAA to obtain the Proof of registration in the Census of Employers, Professionals and Retainers.
- Alternatively , a proof of this document.
- Accreditation of the commercial name or brand registration.
- An Tax ID copy.
- Memorandum of incorporation copy. Alternatively, a certificate of it.
- Documentation accrediting the representation and capacity with which its legal representative acts.
- In case the applicant is a **natural person**:
  - Authorization for his or hers personal data to be consulted by the examining body through the Identity Data Verification System.
  - In case of not granting express authorization: copy of the National Identity Document or the document proving the identity of foreigners residing in Spain or equivalent card.

Once the application is filed alongside the rest of documents, the ICAA General Management will render a decision in a period of 2 months.

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## Co-production contract

An audiovisual work will be considered as a co-production if it is executed under the stipulations of a contract.

The contract must include the following aspects:

- Participation of each producer.
- Staff members, and their nationalities.
- Money transfers of each producer.
- Market distribution.
- Profits



Additionally it must be detailed which decisions will be made by each party, obligations of each producer and the way the producers and rest of the staff (creative and technical) would appear in the movie credits.

Furthermore, it is highly important to type in the contract everything related to copyrights (propriety, cession, licenses), bank accounts, warranties, insurances, the commercialization of the film or visual work, distribution and production details. In addition, if the producers want to receive public aids from the ICAA, they must detail in the contract their obligations related to the staff.

Due to the existence of foreign elements in this kind of contract, the law applied to the contract as well as the determination of the jurisdiction and competitiveness that the parties would submit in case of controversy must be studied.

## Public Aids

As we mentioned priorly, one of the reasons that makes Spain a great place for co-producing is the existence of several public aids offered by the ICAA to hispanic-foreign co-productions.

These aids are destined to the production and promotion of audiovisual works, and they may be film or a short film. There are many kind of aids, but they would only be granted unless the project meets the following conditions:

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- The Spanish producer has a residency or permanent establishment in Spain.
  - Producers hold ownership rights of the audiovisual work.
  - **Accreditation of the fulfillment of obligations with the personnel and with the technical industries.**
  - Be up to date in the fulfilling of the tax duties and of the Social Security obligations.
  - Do not apply for being declared bankrupt.
  - Do not be punished due to an unfulfillment in a matter of inequality between genders.
  - Do not have fiscal residence in a country considered as a tax shelter.

**If you meet all these requirements and want to make a co-production, this is your chance!**

## Tax Incentives

There are a lot of attractive tax incentives for co-productions. Once the visual work passes the ICAA exam and receives the Spanish nationality, the following tax regime will be applied to it:

- These tax incentives are ruled by the article 36.1. of the Corporate Income Tax Act.
- The producer could deduct a 30% of the first EUR million that make up the deduction base.
- The rest quantity that makes up the deduction base could be deducted up to 25% (max. EUR 10 millions).
- These deductions may be higher in other regions of Spain (*e.g.* in the Canary Islands the deductions may be deducted up to 50%).
- In addition, not only a certificate of the Spanish nationality is required, but also a cultural certificate and the deposit of the movie or visual work at the Spanish Film Library.
- The Corporate Income Tax's reduction base is based on the total expenses of the movie (plus copies, publicity and promotion, all financed by the producer, max. 40% of the production expenses).
- It is mandatory that 50% of expenses are made in Spain.



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- The total deduction is limited in a 50% of all expenses of the production (rest of the aids included). This limit may be higher depending on the concrete case.

At **CINEMALAW®** of **LETRADOX® Lawyers** we study case by case and determine the concrete tax situation of each co-production or audiovisual project and we provide a global vision of all expenses related to the project.

## We help you!

On the one hand, if you are an **Spanish producer** and wish to make a co-production with a foreign company, we help with all legal and administrative formalities.

Otherwise, if you are a **foreign producer** and want to co-produce in Spain, we detail the legal framework applied to your project and all the possible scenarios that you might face. Furthermore, we advise about all kinds of legal, administrative and tax issues.

We study each case to offer an integral and efficient legal service.





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## CINEMALAW® of LETRADOX® Abogados

**CINEMALAW®** of **LETRADOX® Abogados** is an initiative created on January 2020 destined to protect legally the Arts and the Cinema sector. Our motto is this: **Supporting the Art and its freedom of expression and artistically.**

We focus our services in the protection and defense of IP rights of all kinds of artistic work, as well as the management and regularization of authors' legal situation.



The sanitary crisis generated due to COVID-19 has damaged incredibly the audiovisual arts and the Culture in all its expressions. More than ever, it is highly necessary that Arts and Law join forces to face these critical moments, and look for strategies and solutions to fulfil this duty.

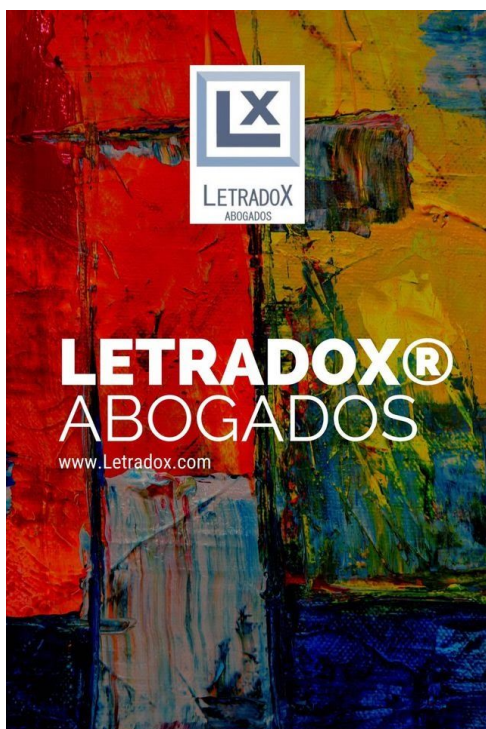
If you want to know more about **CINEMALAW®** you can check the following articles published on our Blog:

- [CINEMALAW® de Letradox® Abogados protegemos a los creadores](#)
  - [Principales leyes que regulan el Derecho del cine y el sector del arte. Letradox® Abogados](#)
  - [La Propiedad Intelectual y lo que un músico debe saber. Letradox® Abogados](#)
  - [Quiebra de la cultura por el coronavirus. CINEMALAW® Abogados](#)
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## CINEMALAW®/LETRADOX® Lawyers: Our Services

At **CINEMA LAW® /LETRADOX® Abogados** we are conscious about the current situation of the Audiovisual Industry. For that reason, we want to help producers and content creators to fulfill their dreams and projects offering the most excellent legal services. Concretely:



- **Previous legal advising** of the beginning of the co-production: we study the legal framework applied to the project and draft a complete report that includes the legal formalities and risks of the operation.
- We help you cope with all formalities before the ICAA, preparing all the documents required, giving constant feedback to our clients about the status of their application.
- Drafting of the **co-production contract** and the analysis of the different clauses that may be included in it.
- Legal negotiation with the counterpart from the beginning to the closing of the operation.
- **Tax analysis** of the co-production.

- **Prejudicial and judicial assistance** before the Courts to resolve any issue or controversy related to the co-production.
- Intellectual Property advising related to co-production.
- Drafting of all kinds of contracts of the co-production in connection with creative, artistic and technical staff, and also with technical industries.



- **Formalities before public and private institutions** for the sake of obtaining all the documents required to pass the ICAA exam.
- **Advising, accompaniment and collaboration** for the sake of obtaining the ICAA aids.
- We sign Non Disclosure Agreements with our clients to protect the confidentiality of their projects.

### *It may interest you...*

If you want to externalise your IP issues, count on us! We created **CINEMA LAW**® to strengthen our IP department.

If you want to be an entrepreneur and set up a production company, our lawyers are highly competent in Corporate Law .

If you are the owner of a production company and wants to expand your business or restructure it, we offer legal advising related to corporate and M&A operations. You can check them [HERE](#)

If you are looking for brand new alternatives to finance your company, we advise you about which one would be the best option for your situation. You can check it [HERE](#)



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Schedule: Monday - Friday from 10:00 to 14:00 and from 16:00 to 20:00. (Required prior appointment).



*LETRADOX® is an international partner of the Arab law firm Khairallah Advocates with offices in Dubai and Abu Dhabi, extending our services in these locations for the business of our international clients.*

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