



Maximising the Value of Intellectual Property in Film and Media

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Presented by

Tony Morris



Why is Intellectual Property important?

- IP is at the heart of all media productions
- Core asset of a media/production company
- Every production consists of works that are dependent on IP
- IP is an asset that has value, sometimes not perceived until too late
- Owning or controlling sufficient rights in IP is crucial for all those engaged in the creation, financing, management and exploitation of media productions



IP – Funder's considerations

- Security
 - IP
 - right to use IP
 - income derived from IP
- Who owns the IP? Who created it?
- Chain-of-title
- Contracts
 - assignment
 - licence



IP – Producer/Creators' considerations

- Cash to produce
- Integrity of the project/creative control
- Income
- Future projects
 - existing works
 - future/new works



Where Intellectual Property is to be found

- Audio visual productions
- Written content; scripts and other material
- Photographs
- Drawings and other iconography
- Diagrams
- Musical compositions
- Sound recordings
- Formats
- Websites
- Software
- Publicity and advertising material
- Training material
- Trade/service marks (registered and unregistered)
- Brochures



What is Intellectual Property?

- Copyright
- Moral rights
- Performers' rights
- Confidential information
- Trade marks
- Others



Species of intellectual property

Copyright

- Copyright – “...an original literary, dramatic, musical or artistic work ...” Section 1 Copyright, Designs and Patents Act 1988
- Literary work includes software programme
- Sound recordings, films, broadcasts and cable programmes
- No copyright in an idea – only in the expression of that idea in a permanent form
- No copyright in facts



Who is the first owner of copyright?

- Who is the first owner of copyright?
- The Author
- Works of joint authorship
- Works of an employee created in the course of employment belong to the employer
- Works made "for hire" (US concept)
- A copyright lasts for the life of author plus 70 years
- Sound recordings in EU now to be 70 years from date of first publication/communication to the public
- Copyright in a film or other audio visual programme expires 70 years after the death of the last of the 4 authors.



Who is the author of a film?

- Writer
- Director
- Writer of dialogue
- Composer of music first written for the film



Who owns the copyright in a film?

- Those making the arrangements for the production of the film/programme viz. the production company

Who owns a commissioned work?

- The author – unless or and until a formal assignment
- Ensure that the commissioner of a copyright is able to use works that it commissions by
 - Written assignment
 - Written licence
- Otherwise - Licence as of right – extent may be uncertain



Fair use

- Criticism or review: credit
- Incidental inclusion
- Reporting news and current events
- Research or study/educational purposes
- Parody
- First Amendment (US: free speech)



Benefits of ownership

- No challenge to use
- Ability to prevent infringing users
- Use of adaptations and derivative works



Moral Rights

- **Paternity** – the right to assert authorship
- **Integrity** – the right to prevent a derogatory treatment
- The continental approach – inalienable, irrevocable, perpetual
- The common law approach – a matter of contract



Performers' rights

- What is a performance?
- Anyone giving a performance has a right in that performance
- Provide the possibility to prevent (1) broadcasting and communication to the public (2) fixation and (3) the reproduction of a fixation of a performer's performance.
- When clearing a performer's consent it is crucial to ensure that the consent will extend to all media in which it is desired to exploit that performance
- Should be in writing, though maybe implied from the circumstances
- Incidental inclusion
- Moral rights in performances as in copyright works



Confidential information

- Information which is confidential to a business or an individual and not in the public domain
- No copyright in an idea
- Record the information in writing or other permanent form
- Protect the release of confidential information by contract
- Sign an NDA (Non Disclosure Agreement) or confidentiality undertaking BEFORE you release information about a project



Formats

- No copyright in a format - copyright in component parts. The more detail of the format that is provided, the more there is capable of protection.
- Description of format – a literary work
- Illustrations
- Diagrams
- Set designs
- Music
- Catch phrases
- Look and feel
- Use of non-disclosure agreements/confidentiality agreements to protect by contract
- Making a pilot will often be the most effective way of protecting a format



For Advice

Tony Morris

+44 (0)20 7209 2000

tony.morris@marriottharrison.co.uk

@TMOR_London