

Case File #15: THE DREAM JOB



Mary accepts a commission to write 'an original script' for 'a film about a missing boy,' not just for the 'intriguing premise' but also because 'for once the contract terms were great; a dream job that would pay the bills for many years.'

Contracts play a crucial role in relation to copyright and the way creative works are exploited commercially and authors remunerated. This Case File #15 explores various issues of importance for screenwriters and other authors when negotiating and signing contracts relating to the use of their work.

CONTRACTS

A contract is formed when a voluntary arrangement is made between two (or more) parties in which one party makes an offer which the other party formally accepts. The contract protects the interests of each party by setting out clearly the specific terms governing the agreement and the various rights and obligations of each party.

When a screenwriter signs a contract with a film production company she might assign the rights in her work to the company or license the use of the work under certain conditions (see Case File #12). But in addition to setting out who owns or can make use of the copyright in the work, contracts can also address a number of other issues. For example, a contract between a writer and a film company might contain details about the deadline for delivery of a script, or what type of remuneration is to be paid for the use of the work and when, or it might contain an agreement about the creation of derivative works and future obligations (such as who will be involved in producing sequels or adaptations in other formats like a book, video game or television).



Contracts can also include terms that forbid certain types of activity. For example, a screenwriter might sign a contract with a famous production company to turn her script into a film. That contract might include a term that prevents the company from selling on its right to make the film to another less well-known film production company without her permission. This gives the author a degree of control over who produces her script should the famous film production company decide not to make the film for some reason.

Whatever terms it contains, it is important to remember that contracts are legal documents: they are legally binding and can be enforced in a court of law. Failure to perform a contract could result in legal liability. As such, parties should always make sure they understand the full implications of a contract before signing.

RIGHT TO REMUNERATION

The right to remuneration is the right to receive payment in exchange for work or services performed. The scope of the payment is defined by the contract.

For example, a screenwriter might decide to accept a 'buy out' for her work. Essentially, this means that she accepts a one-time payment for her script and waives the right to any remuneration from the future exploitation of her work. Should the film become a blockbuster, the screenwriter might seriously regret her decision.

By contrast, the contract might entitle the writer to payment for delivery of the script as well as additional payments for future exploitation, for example, through DVD sales, online distribution of the film, and so on. This type of arrangement protects the author's economic interests in other types of use and exploitation of the work.

PROTECTING THE RIGHT TO REMUNERATION: THE C.R.E.A.T.O.R. CAMPAIGN

Screenwriters are not always in a position to negotiate favourable contract terms when dealing with an influential or well-established film production company. For example, an inexperienced or unknown writer might feel compelled to accept less favourable terms in order to get her script produced by the company. In this type of situation, it is said the two parties do not have 'equal bargaining power'.

The Society of Authors is an organisation that protects the rights and campaigns for the interests of all types of authors. In July 2015, they launched the C.R.E.A.T.O.R. Campaign for Fair Contracts to help ensure that the contracts offered to authors are reasonable and balanced. One of the key principles of the C.R.E.A.T.O.R. campaign concerns fair remuneration for authors. That is, writers should enjoy fair remuneration for all forms of exploitation of the work that they create, not just one-off upfront payments. Put another way, creators should be fairly paid at all stages of a work's development and commercial exploitation.

In addition to the right of remuneration, the C.R.E.A.T.O.R. campaign provides guidance on a number of other issues of particular importance to authors. These include:

- Clear contract terms that set out the exact scope of the rights granted under the contract
- Reasonableness in all contractual provisions
- Unwaivable economic and moral rights for authors

You can find out more about the C.R.E.A.T.O.R. Campaign for Fair Contracts here:

<http://www.societyofauthors.org/creator-campaign-fair-contracts>

WAIVABLE AND UNWAIVABLE RIGHTS

During contract negotiations, an author may decide to waive certain of her rights for various reasons. For example, an author may waive any right to royalties during the future exploitation of the work in favour of receiving a larger upfront payment. Alternatively, they might have been offered the contract on a take-it-or-leave-it-basis and don't feel in a position to negotiate better contract terms.

It has often been argued there are certain rights, whether economic or moral, that should always remain with the author, and that the author should not be able to contract them away. When a right cannot be contracted away it is said to be 'unwaivable,' meaning it always remains with the creator of the work and cannot be exercised by anyone else.

The C.R.E.A.T.O.R. campaign advocates that an author's right to future remuneration for all forms of exploitation of their work should be unwaivable under the law.

The Society of Audiovisual Authors (the SAA), an organisation that was established in 2010 to represent the interests of screenwriters and directors, believe that authors should be financially rewarded in line with the successful exploitation of their works. Similar to the C.R.E.A.T.O.R. campaign, the SAA argue that authors should enjoy an unwaivable right to remuneration, based on revenues generated from the online distribution and use of their work.

There is a strong argument for making certain economic rights unwaivable. For one thing, it would help improve an author's negotiating position when dealing with large multinational publishers or film production companies. If certain rights are deemed unwaivable by law, they are unable to be contracted away and will remain with the creator.

FOR DISCUSSION: WAIVING RIGHTS GOODBYE?

In addition to the right to remuneration, the C.R.E.A.T.O.R. principles also suggest that an author's moral rights should be unwaivable. In the UK, moral rights (or non-economic rights) include the right to be identified as the author of the work (the right of attribution) and the right not to have your work subjected to 'derogatory treatment' (the right of integrity). In many countries, these moral rights are already unwaivable, but not in the UK. For further information about moral rights, see Case File #11.

Why do you think a publisher or a film producer would want an author to waive her moral rights of attribution or integrity?

If you had to choose between making either economic rights or moral rights legally unwaivable, which would you choose and why?

USEFUL REFERENCES:

For further information about the C.R.E.A.T.O.R. Campaign for Fair Contracts, see here:
<http://www.societyofauthors.org/creator-campaign-fair-contracts>

For further information about the Society of Audiovisual Authors (SAA), see here:
<http://www.saa-authors.eu>

If you are interested in screenwriting, the Writers' Guild of Great Britain produce a helpful guide to the role that writers play in the film making process, as well as the principles and terminology of traditional contracts for screenwriters. Writing Film: A Good Practice Guide is available here:

https://writersguild.org.uk/wp-content/uploads/2015/02/WG_film_Oct09_LR.pdf