

CASE FILE #15: THE DREAM JOB

LEARNING AIMS

- Understand what contracts are, and their role in creative productions
- Be able to explain why screenwriters and other authors would benefit from the introduction of an unwaivable right to remuneration

KEY QUESTIONS

The following key questions should be discussed to address the learning aims:

- What is the role of contracts in creative productions like films?
- What is the difference between assigning rights and waving them?

Students will be expected to use Case File information to analyse ideas, to give opinions, and to justify opinions. Other questions posed within the Case File can be used to generate further discussion.

WHAT IS THE ROLE OF CONTRACTS IN CREATIVE PRODUCTIONS LIKE FILMS?

- See **TEXT BOX #2**
- Contracts are voluntary agreements between two (or more) parties in which one party makes an offer which the other party formally accepts.
- In film and other creative productions, contracts are used for all sorts of things, from insurance to renting studios, hiring camera operators and other members of the crew, distribution arrangements, etc.
- From a copyright perspective, one of the main roles of contracts in film productions is to set out ownership and conditions of use of the various creative contributions included in the film. For example, when a film production company commissions a screenwriter like Mary to write a script for a film, they need to sign a contract with her in order to be able to use the script lawfully. This is because – as the author of the script – the screenwriter would automatically own copyright in the script she produces. There are two main types of contract that authorise production companies to use scripts and other creative contributions:
 - Assignment of rights: which transfers ownership of copyright from the author to the assignee (in this case the film production company)
 - Licence: which authorises the licensee (again, the film production company) to use the work in certain ways but does not transfer ownership of copyright (which stays with the author)

For more information about licences and assignments, see [Case File #12](#).

- In addition to setting out ownership and permissions, contracts can also address deadlines for delivery, conditions of payment, and future obligations, among many other things.

- One of the most important things to understand about the relationship between copyright law and contracts is that, while copyright law automatically gives authors certain economic and moral rights on the work they create, these rights can be transferred, licensed or waived through contracts.

This means, for example, that even if the law says that the authors (and owners) of a film are the producer and the principal director, in practice copyright ownership of a film will often be decided through contracts.

WHAT IS THE DIFFERENCE BETWEEN ASSIGNING RIGHTS AND WAVING THEM?

- See **TEXT BOX #3, #4, #5 and #6**
- If an author either assigns or waives her rights, in both cases she will no longer be the copyright owner of the work she created.

However, while an assignment would transfer the ownership of copyright from the author to someone else (e.g. a film production company), a waiver is just a way for authors to give up their rights. That is, if an author waives her rights, these will not belong to anyone.

- In the UK, moral rights (see **TEXT BOX #6** and [Case File #11](#)) can't be assigned but they can be waived. Think of a publishing contract with a ghost writer to write the biography of a celebrity: if the ghost writer did not waive her moral rights, it would not be possible to credit the celebrity as the author.
- Moral rights waivers are often included in contracts of employment too. This is usually because the employer wants complete freedom to exploit the work created by her employees, without having to worry about moral rights. What do the students think? Is this a fair practice?

SUGGESTED ACTIVITIES

After reading the Case File and discussing the **KEY QUESTIONS** above, you might ask the students to divide into groups of two. Each small group will consist of a 'film producer' and a 'screenwriter'. You can ask each group to negotiate and agree a contract – drafted as a list of bullet points – on the use of the script in the film. Assignments of rights are usually paid more than licences (see [Case File #12](#)), so this may be reflected in the outcomes of the exercise.

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1. INTRODUCTION

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.

2. 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.

3. 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.

4. 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/Where-We-Stand/C-R-E-A-T-O-R-Campaign-for-Fair-Contracts>

5. 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.

6. FOR DISCUSSION: WAVING 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?

7. 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