

Business of IP Asia Forum – Legal Issues in Buying/Selling Film Copyright

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3 KEY QUESTIONS:

1. What rights are being Bought/Sold?
2. Does the Seller have those rights?
3. How does the Buyer protect itself?

WHAT RIGHTS ARE BEING BOUGHT/SOLD?

- Film protected by copyright
 - Can be divided into small parts to exploit:
 - ❖ Territory
 - ❖ Type of rights
 - Media
 - » Cinematic
 - » TV – Free, pay, on-demand
 - » Video-DVD, VCD
 - » Internet

WHAT RIGHTS ARE BEING BOUGHT/SOLD?

- Ancillary rights
 - » Airline, ship, hotel
 - » Remake
 - » Video games
 - » Sequel, prequel
 - » Merchandizing
- New unknown rights?
- ❖ Language
- ❖ Term (length of exploitation)

WHAT RIGHTS ARE BEING BOUGHT/SOLD?

- Assignment or license?
 - Assignment
 - permanent, irrevocable
 - License
 - ❖ Revocable/revert after specified term
 - ❖ Exclusive/ Non-exclusive

MUST STATE CLEARLY IN AGREEMENT:

WHAT EXACTLY ARE THE RIGHTS BOUGHT/SOLD

DOES THE SELLER HAVE THOSE RIGHTS?

- What does copyright protect in a Film?
 - Script – literary work
 - Film
 - Music – musical work
 - Costume – artistic work
 - Sound track – sound recording

➔ SO, WHO OWNS THE COPYRIGHT?

- Producer(s)?
- Financier(s)?
- Director(s)?
- Actor(s)?

■ **Who owns the copyright (HK)?**

- Script – literary work - Writer
- Film – Producer and Principal Director (Joint-owner)
- Music – musical work - composer
- Costume – artistic work – author/costume designer
- Sound track – sound recording – producer

■ Just to make it harder:

- Joint Owner
 - only exploit with both owners' consent
- Presumption (HK)
 - ❖ Employee works owned by employer
 - ❖ Commissioned work owned by?
 - Whoever is the agreed owner in an agreement
 - Or, the author remains owner
 - » But commissioner exclusive right to exploit for “all purposes that could reasonably have been contemplated”
 - ❖ Unless otherwise agreed

- ❖ Different countries' laws may be different
 - US – “Work Made For Hire”

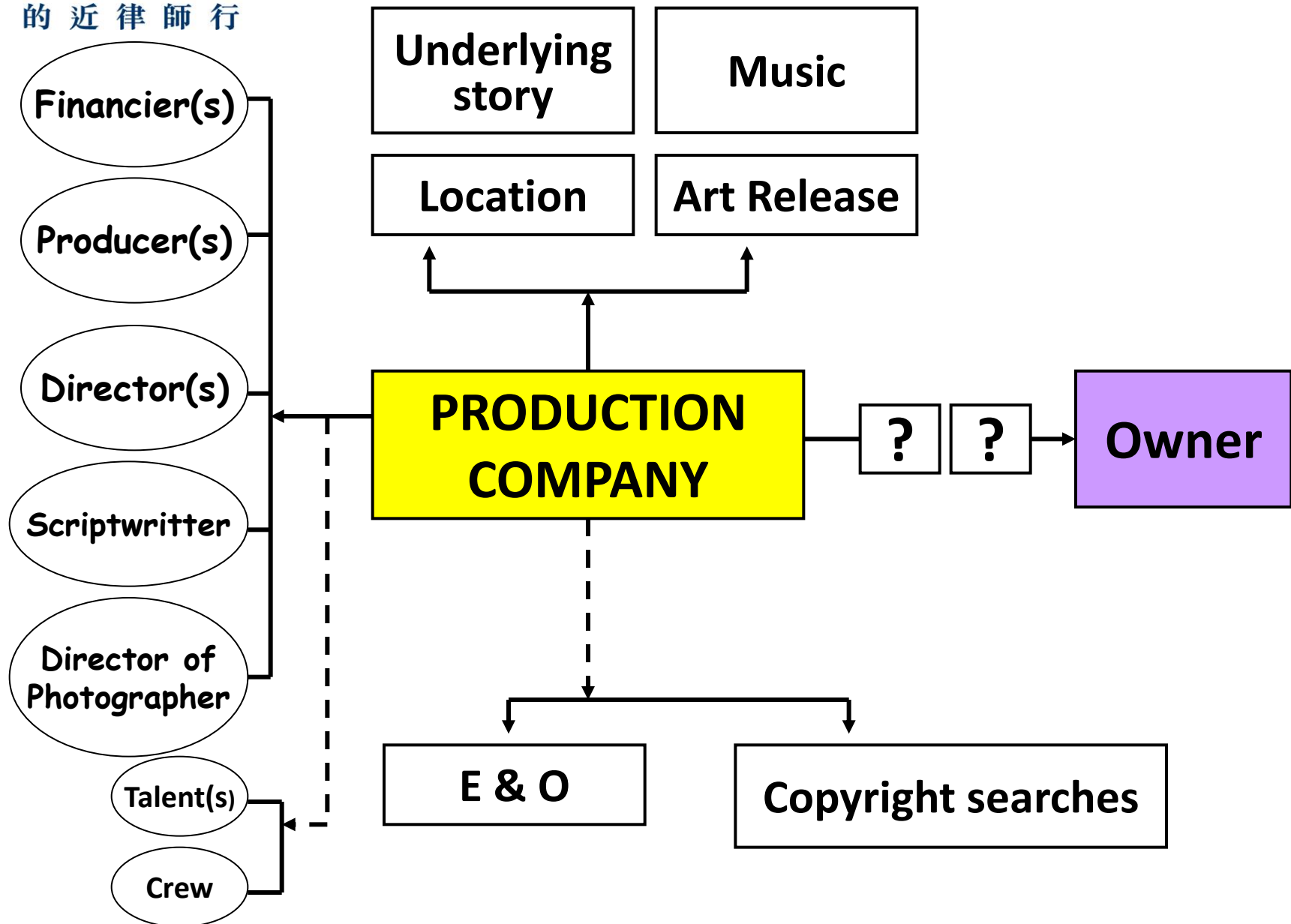
- ❖ More complications:
 - Adaptations from existing story eg. Books, comics
 - Life Story
 - Remake rights
 - Lab lien
 - Moral rights waiver

※ **IDEALLY** ※

All participants have signed clear copyright assignment

Need to check

CLEAN CHAIN OF TITLE



ANY REGISTER TO CHECK?

- Copyright arises automatically upon creation
- No mandatory copyright registrations worldwide
- Some countries have copyright registers:
 - US Copyright Office
 - PRC Copyright Office
 - HK MPIA Film Registration & Copyright Authentication System
 - Certificate of Royalty / Certificate of Distribution
- Other sources:
 - imdb.com
 - existing products/websites copyright notice

BEWARE: None are mandatory, guaranteed correct or have binding legal effect

HOW DOES THE BUYER PROTECT ITSELF?

- Make sure all rights being purchased are clearly identified in agreement
- Check and ensure “Clean” Chain of Title
 - Specifically for the rights to be assigned/licensed
- Ask for confirmatory assignments if in doubt
- Ask for Errors & Omissions (E&O) Insurance
- Check relevant Registers and Database

- Ask for warranties in agreement
 - Seller have all rights/title/interests to assign/grant rights
 - Exercise of rights granted do not infringe/ breach 3P rights
 - Have not had any claims
 - No pre-existing agreements/ limitations

- Ask for Indemnities

※ DUE DILIGENCE CRUCIAL ※

FOR BOTH SELLER AND BUYER!

Thank you for your participation

Any Questions?

