

# **WIPO Committee on Development and Intellectual Property**

**Drawing on Creativity**

**Copyright for Animation Industry Professionals: A Training  
Tool**

By Rob H. Aft

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## About the Author

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## Introduction

*“Animation offers a medium of storytelling and visual entertainment which can bring pleasure and information to people of all ages everywhere in the world.”*

- *Walt Disney*

When Walt Disney wrote those words, animation involved hundreds of his employees drawing thousands of pictures by hand, an army of mostly women inking them, painting them, laboriously recording dialogue, and often hiring full orchestras to play the music. Distribution meant showing a 35mm print in a cinema. It was hugely costly, and there were very few places the work could be done. Everyone from the screenwriters, character developers, artists, musicians, and voice-over talent were contracted to provide their creative services on a work-for-hire basis, retaining no control or financial interest in their work. Since then, the animation industry has progressed both technically and legally, allowing creators to retain more control of their work, but only if they adhere to the local laws of the 181 signatories to the Berne Convention for the Protection of Literary and Artistic Works. This training guide explores the best practices for doing just that.

The steep decline in the technical cost of creating animation has put the medium in the hands of anyone with a cell phone or computer. At the same time, the explosion of distribution opportunities has created a global market for locally produced material. However, the real creative work - character design, scriptwriting, music composition, and voice acting, has changed relatively little. The creative work was never the barrier to entry for most practitioners, it was the cost of production and lack of distribution opportunities.

Understanding ownership and licensing of the rights to those *original works of authorship (which may or may not need to be fixed in a medium depending on the jurisdiction)* is the first step in accessing markets whether in cinemas, on global streaming services, local broadcast TV or whatever technology arises in the future.

We will explore the basic structure of the animation industry including opportunities for creators; what copyrights are created by the producer of the work; how that copyright is recorded and licensed to third parties; and how value is created in not only the original work, but in derivative and ancillary works like merchandise, sequels, stage shows and anything else using the characters and storylines. We will also look at what rights need to be secured by the producer in order to claim ownership of the copyright including the script, characters, music, and voice/motion capture performances. Finally, we will explore the business of animation and how to avoid problems while building a sustainable intellectual property (IP) based business.

As costs have come down, many low to mid-income regions have entered the animation sector, often with training and infrastructure support from their local governments. Training animators and technicians are vital to creating a copyright-based animation industry, but to make the industry sustainable, business and legal training must be part of the picture. As demonstrated in the profile of Korea's NEON in Annex III, many studios create both consumer content and content for third parties. The same concepts apply, whether a company is creating a consumer product (a children's program or feature film for instance, also referred to as Business to Consumer or B to C) or offering commercial services such as industrials, training videos, animated logos, or visual effects, to other businesses (B to B) which are services usually supplied entirely as "work-for-hire", where copyright remains with the hiring company rather than the studio, artist or technician.

The term "animation" is quite broad and can include non-narrative forms such as animated logos, visual effects, video games, news/sports graphics, as well as any situation where animation is used to enhance or provide visual enhancement to a program or event. Those are rare cases that involve the creation of copyrighted material and are therefore not discussed in this training tool. They can, however, provide additional income streams for animation studios, artists, and technicians. We hope that this text will help encourage best practices for professionals in local animation industries.

## **The Role of WIPO in the Process**

Proper application of global copyright protocols not only protects the interests of all concerned, but also facilitates financing and distribution, and reduces the risk of legal problems and financial disputes. To build awareness about the importance of copyright in the production of animated content, WIPO collaborates with public and private partners and implements technical cooperation projects in the field of creative industries in coordination with other relevant entities.

The WIPO website ([www.wipo.int](http://www.wipo.int)) contains related content addressing some of the topics covered in this training tool as well as related sectors such as live-action production (*From Script to Screen* and *Rights, Camera, Action* [https://www.wipo.int/copyright/en/creative\\_industries/film.html](https://www.wipo.int/copyright/en/creative_industries/film.html), *Mastering the Game* [http://ipo.gov.tt/downloads/Relevant\\_Studies/wipo\\_pub\\_959.pdf](http://ipo.gov.tt/downloads/Relevant_Studies/wipo_pub_959.pdf)). The WIPO Academy programs as well as regional conferences organized in cooperation with local copyright and cultural authorities reinforce WIPO's educational mission around the world. Through the Academy and WIPO for Creators (<https://www.wipo.int/wipoforcreators/en/>) the organization focuses on education in low to mid-income territories, although experience has shown that

all audiovisual stakeholders, including those in most advanced production centers, will benefit from a deeper understanding of the material.

## **Professionalism**

Understanding and applying business concepts, ethics reliability are keys to being known as a professional in the world of animation. That includes adhering to local laws regarding the establishment of companies, taxes, employment, transfer of copyright, financial transactions and, perhaps most importantly, local customs regarding how respectable businesspeople conduct themselves. Such respectability includes keeping proper accounting, paying bills promptly, and helping to strengthen the animation community through education, government involvement the same techniques other industries use to gain respect as important players in the national economy.

Many animation studios begin as a loose collaboration of friends, possibly all graduates of an animation program or employees of a more established studio. There is a chronic problem in the animation industry of friends working together without any consideration of ownership or copyright. By the time they discover that they should have launched the studio on a solid basis of written agreements and professionalism related to record-keeping and the acquisition of copyrights, it can be too late to correct these fatal deficits.

Some countries rely heavily on lawyers and written agreements, while personal relationships and oral agreements are common in others, in which case lawyers are rarely used (in every country, though, all copyright transactions must be in written form to be valid). In some countries, there are rich subsidies and support from governments; in others, there is no assistance at all. Distribution, production budgets, export potential, and many other local factors must be considered when applying the lessons in this training tool.

## **Objectives**

This training tool will introduce the novice animation stakeholder to the production, legal and business-related issues needed to participate in what is now a well-structured global marketplace for animated films, TV programs, online, and educational content. Copyright is the essential basis for all of these issues. The emphasis is on the principles and standards surrounding copyright currently observed and practiced in the animation industry at the international level. Readers should consult local industry experts to gain a complete understanding of these issues in their respective countries.

This training tool does not attempt to offer legal advice. Readers are encouraged to seek legal counsel locally and to make sure that their counsel is well-versed in standard



international copyright agreements and applications. The inclusion of links or references to third-party resources does not constitute an endorsement of the included material or recommendations regarding any products or services.

# 1. Basic Copyright Issues in the Animation Industry

*“The law of copyright rests on a very clear principle: that anyone who by his or her own skill and labour creates an original work of whatever character shall, for a limited period, enjoy an exclusive right to copy that work. No one else may, for a season, reap what the copyright owner has sown.”*

- Lord Bingham of Cornhill in *Designers Guild Ltd v Russell Williams (Textiles) Ltd*, 2001

Copyright laws exist to protect not only authors or creators of original works of authorship but also all chain-of-title rightsholders, including distributors. The term “chain of title” refers to the documented collection of assignments to the producer, single-purpose production entity (SPE), distributor, or other entity that proves ownership of the copyright or distribution rights to an audiovisual creation.

## 1.1 Copyright Defined

***“Copyright exists the moment an original work of authorship is created.”***

Copyright law confers on creators of original material the right to prevent others from copying or otherwise exploiting their work without their permission or to authorize legitimate distribution. No formal registration is required, although in some jurisdictions it is advisable to register a work with the local copyright authority.

Ideas are not considered to be original works of authorship, but a synopsis of a story based on an idea is. The title of a work cannot be copyrighted; however, it may be governed by other intellectual property provisions such as trademark, or by local laws regarding the unfair association, which might confuse the marketplace. Rewarding copyright holders with exclusive rights encourages the creation of new works.

The following key principles form the foundation of copyright law around the world:

- *Exclusivity* – authors or rightsholders have the right to decide whether to authorize or prohibit certain use of a copyrighted work by a third party
- *No formalities for establishment* – ownership of copyright exists from the time of creation and does not require any formal registration
- *Contractual freedom* – authors or rightsholders can define the terms and conditions under which they will grant exploitation rights to their work

- *Remuneration* – the rationale behind copyright law is to stimulate artistic creation by providing equitable remuneration and acknowledging creators' efforts to produce literary, dramatic, musical and artistic works
- *Territoriality* – the author or rightsholder decides on the geographic scope of a license
- *Enforcement* – the author or rightsholder can enforce their rights against any unauthorized use of the work (including piracy)

## 1.2 Moral and Economic Rights

It is important to distinguish two aspects of copyright: moral rights and economic rights. The concept of moral rights exists nearly everywhere in the world but can vary depending primarily on whether those rights are considered inalienable (meaning that they cannot be assigned or waived). In many jurisdictions, including most of continental Europe, it is not possible for authors to assign or waive their moral rights. According to the Berne Convention, moral rights are independent of authors' economic rights and remain with the author even after the transfer of economic rights.

The principal **Moral Rights** are:

- *The right of attribution or paternity* – meaning that the work must always be identified as being the creation of the author
- *The right of integrity* – the right to object to any distortion or mutilation of the work that might be considered derogatory or that would denigrate the author or their reputation

**Economic Rights** encompass all rights from which revenues can be generated (though these rights are not dependent upon whether or not revenues are sought or secured). These rights include:

- The right to produce an audiovisual work based on copyrighted material.
  - The right to publicly perform the audiovisual work, which can include presentation of the work in cinemas, on broadcast, cable, satellite, or streaming platforms, in classrooms, dance halls, ships, planes, buses, or any other public venues whether or not the audience is required to pay). This is usually considered the primary use as opposed to derivative use.
  - The right to produce copies for sale or distribution to the public (DVDs for example)
- this is, of course, the origin of the term copyright – the right to copy.

- The right to derive revenues from music compositions contained in the audiovisual work, but only if those rights have been explicitly secured from the composers and performers. This is explained more fully in the section below related to music. If these rights are secured, the producer might only have the right to release a soundtrack of music from the work, or they might have the right to license the music to other productions, use it in derivative works, or to collect certain secondary rights payments, which can be quite significant for music rights, particularly in Europe.

- The right to authorize the production of derivative works based on the underlying copyrighted material including characters and plots. These can include sequels, remakes, publications such as novelizations and comic books, stage shows, or any other creative work. In these cases, copyright can become quite complex as new authors are usually involved and will share copyright in the derivative work. It is important for the original authors to maintain an ongoing interest in the copyright to these derivative works, though this can often prove challenging.

- The right to authorize the production of items incorporating the underlying copyrighted material, usually characters and character design, for the production of merchandise.

- The right to authorize the use of characters and plots for advertising or branding.

- The right to exploit the characters and plots in any other way now known or developed in the future. This might seem trivial, but it is a phrase that often appears in contracts related to the transfer of underlying rights and should not be granted lightly.

Generally, only composers/musicians and screenwriters create derivative rights, which may or may not be assigned or otherwise transferred or conveyed to the producer. For example, screenwriters create different sets of economic rights depending on whether they are creating original material or basing the screenplay on underlying material such as a novel (in which case they may still own sequel and remake rights, but only with authorization from the owner of the underlying agreement). If the screenplay is an original work, the screenwriter might convey to the production the economic right to make an animated work based on that screenplay and nothing else or they might convey all rights including sequel and remake rights – in which case the contract should provide for additional compensation should those derivative works be produced. In all cases, it is important to understand what copyrighted elements are being created, conveyed, and exploited and to ensure that the contracts are clear on those points.

### **1.3 Copyright Term**

The duration of copyright protection for an animated work differs from country to country. As a general rule, the duration of copyright is the life of the author plus not less than 50 years. In cases of joint authorship, the term can be calculated from the death of the last surviving author. For an animated work, there are often multiple authors (usually the screenwriter, character designers, director and anyone who composed music specifically for the animation). The copyright then expires 50 years from the death of the last author. In the United States and Europe, the copyright term is the life of the author or co-author plus 70 years. In the case of corporate authorship in the United States, the term is calculated from the time of first publication or release and is currently 95 years from the date of publication, or 120 years from the creation of the work whichever comes earlier.

### **1.4 Authorship and Ownership of Copyright**

It is important to distinguish between the meanings of “authorship” and “copyright ownership.” While authorship refers to the status of the person who created the work, copyright ownership defines the legal status of the person or entity that has acquired the exclusive right to exploit the work. In most countries, contractual agreements will clarify the specific circumstances of “ownership of copyright”. These circumstances include works created by an employee, commissioned works or works created collectively by several people.

### **1.5 The Special Purpose Entity as Copyright Holder**

Depending on the jurisdiction, the initial owner of an animated work may be the authors and co-authors or either the producer or a Single Purpose Entity (SPE) controlled by the producer. The latter is the norm in common-law jurisdictions such as the United States and the United Kingdom. In civil-law countries such as France, the author or co-authors are usually the initial owners of the copyright (subject to limited presumptions of assignment to the work’s producer or the employer), and the producer controls the copyright in the work through contracts with these authors.

Even if the same creator writes, animates, scores, voices and does all of the other creative work necessary for the production of an animated work, in order to license the work for distribution, the copyrights for those individual elements must be aggregated, and the owner(s) of the SPE can then negotiate and sign distribution and licensing agreements on behalf of all copyright creators involved, greatly simplifying the process. In most, if not all

cases, major distributors will not sign individual agreements with copyright creators, preferring to deal with a single rights-holding entity.

Distributors must know with certainty that the distribution rights they are licensing are free and clear of any potential claims, lawsuits or competing claims. The basic documents that potential distributors (as well as financiers, overseas partners and others) will want to see are consolidated in the Chain of Title or COT. Production and distribution contracts form the basis of this COT documentation.

## **1.6 Copyrighted Elements that Must Be Licensed**

In practical terms, the copyright owner of an animated work should confirm the following elements:

- That the creative effort of everyone who has contributed intellectual property to the project has been properly recognized (credited according to the terms of their agreements), that all have been compensated for their contributions (retain proof of payment), and that the rights they granted have been properly recorded (usually the written agreement is sufficient, but in some countries, other systems may exist for recording copyright transfers).
- That distributors and other interested parties can easily verify through COT documentation that the producer can legally transfer, assign, or license to them the right to generate revenues in the manner specified in the agreement.

At a minimum, the producer must license the right to use the screenplay, the music, the services of the director, voice-over talent, and artists creating original work (see below for a discussion of the difference between artists providing original work which needs to be licensed and technicians providing work based on the original works).

Other important rights that may need to be licensed are underlying rights to the story or characters and trademarks. It is always recommended to err on the side of caution. If it seems like it might be necessary to license the copyright, it probably is. If it is possible to avoid the use of copyrighted or trademarked material without harming the creative content of the work, it is probably wise to do so.

Just as the producer will want to license as many rights as possible from the creators, particularly the screenwriters and character creators, those creators should try to retain as many rights as possible. If possible, they should only license the minimum rights required for that specific project – for example, the right to make one movie and not sequels or derivative works, merchandise, or anything else using the story or characters. This is rarely possible, but that does not mean that the creators should easily part with their artistic output.

## 1.7 Copyright Registration

Distributors can check copyright ownership by consulting copyright registries where they exist. In most of the world (and in all Berne Convention signatory countries), there is no formal requirement to register copyright ownership. The copyright exists from the moment the original work of authorship is created, though in some jurisdictions, the work must be fixed in a medium.

Many countries have voluntary systems for registering copyright ownership, transfer, or assignment. One of the simplest to use is the United States government's system, which is open to works from around the world ([www.copyright.gov/forms/](http://www.copyright.gov/forms/)). A copyright holder can file a Form CO online, pay a small fee, and their ownership claim is registered. This is not a guarantee that the claim is valid or that it cannot be challenged, but it is a good place to start. Other governments have similar registration procedures, and most lawyers will recommend registering ownership in as many localities as possible. At the very least, distributors and producers should file in their home country and in the United States.

In France, a specific mandatory registration system exists for certain works - the public registry of film and broadcasting (RPCA) ([www.cnc-rca.fr](http://www.cnc-rca.fr)) – which is managed by the CNC (*Centre Nationale du Cinéma et de l'Image Animée*). This is not required for the copyright to exist; it exists in France from the time of its creation. The RPCA provides in-depth information regarding registered films and has spawned an original system of investment based on the assignment of future revenues. Like a mortgage registry, this public registry publishes acts, agreements, and rulings relating to production as well as distribution and representation information. Either the producer or the distributor can register the rights they have in the material.

The RPCA does not judge the validity of registrations but does allow registered contracts to have a binding effect upon third parties. In a dispute, priority is generally given to the earlier registration. Registration with non-governmental organizations and guilds (the Writers Guild

of America, WGA, provides a service for screenplay registration, as does the *Société des Auteurs et Compositeurs Dramatiques* (SACD) in Paris), producers' organizations or even private lawyers will also provide a measure of proof of the date of creation of a work if not proof of authorship.

Among the various registration initiatives, the International Standard Audiovisual Numbers (ISAN) and the Entertainment Identifier Registry Association (EIDR) provide an internationally recognized way of identifying a unique work. ISAN is a voluntary numbering system and metadata schema for the identification of any audiovisual work, while EIDR is a universal identifier system for movies and television, whether commercial or non-commercial. The International Documentation on Audiovisual works (IDA) was developed by the International Confederation of Societies of Authors and Composers (CISAC), and functions as a simplified identification system for works that integrate systems to improve cross-border information by local member CMOs.

These numbers are embedded in the work (in a non-visual manner, often called a "watermark") and make the work easier to identify in various language versions and under various titles.

## **1.8 The Work-for-Hire Doctrine as It Applies to Animation**

The nature of the animation sector is such that many aspects of what may be considered "creative work" is done on a work-for-hire basis, whether or not that is specifically stated in agreements. Though the concept is generally limited to United States law in live-action audiovisual agreements, in contracts for animation projects, these are essentially technical services agreements and have global application and relevance. The agreements do not confer any copyright ownership on the technicians or studios hired to do the work (even if the technicians are referred to as animation artists). It is simply the hiring of personnel for creation of a product based on the intellectual property of the employer. Lower costs and local incentives such as subsidies and training programs can affect the decision on where to produce, and out-source work is usually work-for-hire. This is typically the first step in developing an animation industry because studios outsourcing animation help train new studios to be good partners, giving technical guidance and supervision to ensure consistency and quality benefitting both parties. This was the growth path for studios in outsource countries such as South Korea, Colombia, the Philippines, Central and Eastern Europe, India, and Thailand.



In practice, a Primary Creation Studio will design what is often referred to as a “Bible” (in this case the word carries no religious meaning whatsoever, and is used purely in the informal sense of a text containing a complete set of information on a topic), which is a specification document with approved designs for characters, props, and locations, sometimes called Model Sheets. Experienced animators will design key poses to define the action along with X-Sheets (sometimes called Timing or Exposure Sheets) that indicate the number of frames between key poses. The key poses and the timing sheets provide a very specific and accurate guide as to what additional work needs to be completed by the work-for-hire studio. Since the work done by this studio involves technical rather than creative work, the technicians are not creating “original works of authorship”, and therefore no copyright is created. The concept is different from work-for-hire agreements in live-action audiovisual productions, which are not permitted in Europe and many other jurisdictions, and require the specific use of the phrase, “work-for-hire” as discussed in From Script to Screen.

Contracts engaging outsource studios or talent should specify that no copyright is being created or conferred, and will contain a clause such as:

“Client to own all work product: As an essential element of their employment under this agreement, it is acknowledged that the Animator is creating “work product” for the Client. This “work product” includes but is not limited to the finished product, any drafts, notes, materials, mock-ups, sketches, designs, code or anything else that the Animator designs, creates, develops or invents in performance of their work under this Agreement whether before or after the date of this contract. Provided that all provisions of this agreement have been completed by Client, including but not limited to all payment obligations, the Animator shall have no claim to their work product created for the project, including claims to any rights, title, or interest in the work, including intellectual property rights, and Client will be the sole and exclusive owner of the work product and shall enjoy free enjoyment thereof for any purpose whatsoever.”

Outsourced animation is almost always work-for-hire on TV shows, but when it comes to features, indie animation studios may trade equity or partial copyright ownership in a project for a discount from the studio performing the outsource work. In this way, new studios can develop their local industries while retaining a copyright interest in their work.

## **2. Production - Establishing Copyright Ownership**

Animation is as old as live-action filmmaking with short examples appearing as early as the late 1890s. However, because traditional animation techniques are labor-intensive and production took much longer than live-action filmmaking, it did not become a viable commercial medium until the early 1920s with the founding of several studios including Disney, which soon became the preeminent animation studio. They produced the first full-length feature sound animation, *Snow White and the Seven Dwarfs*, in 1937 beginning Disney's unchallenged supremacy in feature animation for the next 55 years.

In the early 1990s, computer graphics and digital production democratized the making of animated feature entertainment. Studio Ghibli in Japan, Don Bluth Studios in Ireland and Aardman Animations in England successfully challenged Disney's dominance, and within a decade, animated features and TV programs were being produced around the world. Today, if there is a thriving audiovisual sector in a country, there is almost always an animation component.

There is an established international audience of both children and adults for animated content, with a considerable appetite for new animated properties and innovation. This in turn has led to an ongoing need for new animation providing an opportunity for both original animation and work for hire contracts. As more countries develop animation industries, often with the support of local governments for the training of animation artisans and technical staff as well as the development of infrastructure, the art form has become an important economic and employment element of the creative sector. Strict adherence to best practices in the licensing of copyrighted elements is fundamental to the success and growth of both the local and export animation industries.

### **2.1 Sourcing and Developing Original Content**

One of an animation producer's main roles is finding and developing the creative elements upon which the animated program is built. Many animation studios are run or managed by animation directors or creators, while others license existing source material (comic books for instance) or commission writers and artists to develop original ideas or stories based on history, epics, and folk tales. No matter how the content is developed, each step along the way requires contracts with anyone contributing original work to the project. Collectively, those contracts are known as the Chain of Title (COT).

A situation that often leads to conflict occurs when an artist develops a story for a producer in stages – often referred to as a “step deal”. The step deal requires completing increasingly detailed story descriptions for a studio in order to trigger the next stage of development and compensation. However, the step deal can be stopped at any time. At that point, the rights usually revert to the artist, however, if there have been creative notes from the producer, there may be some claim by the studio that the developed story is a collaboration. The rights returned to the artist may not include the work contributed to the development process. Therefore, it’s incumbent on both parties to document the development process.

Those contracts for original work are substantially the same for animation as for live-action productions. They can be complex, and it is usually best to involve an experienced intellectual property lawyer to avoid future problems. The WIPO publication, From Script to Screen contains a very detailed explanation of rights acquisition agreements as well as a sample contract.

Below is a chart indicating when various rights are acquired in the production process and whether those are copyrights that are incorporated into the production or if they are work-for-hire arrangements with third party technicians or studios.



## 2.2 Chain of Title

The chain of documents that confer ownership of the animation’s copyright to a person or corporate entity is called the chain of title (COT). The COT is essentially a passport that allows a work to earn money for the copyright holder and distributors. If copyright ownership cannot be proven, confirmed, and in many cases, insured through what is called Errors and Omissions (E&O) Insurance, it can make it impossible to generate revenues from distribution and ancillary sources. All intellectual property contained in a work must be licensed before

an investor will invest before a banker will loan production funding and before a distributor will take the risk of putting the work in front of an audience.

### **2.3 Production of Original Works**

While work-for-hire animation services are a good way for new studios to ease into the animation market without the risk of a movie with poor box office returns or a television show that fails to capture a loyal audience, most studios hope to create original works at some point. This has the benefit of producing far greater financial rewards and the prestige of advancing an art that reflects the culture that produced it to a global audience.

Source material for animation tends to favor stories suitable for children or at least appealing to both adult and young audiences typically called the Family Audience. Myths, legends, and folk tales are common sources of animation storylines. In general, if the creators adhere to traditional characters and storylines for these works, no derivative rights such as character, sequel, and remake are created. However, changes made to the traditional narrative or characters do create protected new material that is exclusive to the copyright holder. For instance, Disney used a well-known character and story which appeared in a collection from the Brothers Grimm in 1812, and was therefore in the public domain, for their feature *Snow White and the Seven Dwarfs*. In the original story, there were no seven dwarfs, and they were not the beloved characters created by Disney. Those are subject to copyright protection, so a new version of the story, such as the 2012 live-action feature, *Snow White and the Huntsman*, does not violate copyright, but it cannot include Disney's seven dwarfs.

It can be riskier to develop new characters and narratives that are not already familiar to audiences, but the producers then own not only the production, but all the rights to the characters and stories. For instance, the global success of *Dora the Explorer*, a 2D animated series launched in 2000 has spawned a live-action feature (with another announced), multiple stage shows, a full line of merchandise, and has been translated into fifty languages. All of those required licensing the copyright to elements owned by the producers. A popular Indian animated series, *Deepa & Anoop*, has recently begun streaming worldwide on Netflix. If the producers retained character rights, and the series is successful, they can expect significant future revenues from feature films, merchandising, stage shows, and maybe even live-action feature films.

The license of a copyright contained in original works, including the script based on those elements, usually takes the form of an option agreement, since at that point in the production cycle, there is often still a strong chance that the work will not be produced. The option agreement will state that the owner of the copyright in the underlying work agrees to grant to

the producer for a limited period of time the right to develop a work and the option to acquire that work and move forward with production within that time period (this is referred to as “exercising the option”). The option agreement will specify the amount paid for just the option, and a separate amount to be paid including royalty terms for future payments from revenues when the production is actually started.

Some of the basic terms in these and other rights acquisition agreements have been standardized by writers’ guilds such as the WGA in the U.S. and the SACD in France.

## **2.4 Copyright for the Development of Original Animation Content**

Every great work starts with an idea, which cannot be copyrighted, it must be an original work of authorship – usually, that is the initial screenplay but may also be a shorter work that is then optioned or purchased with a screenwriter hired to write the script. Some of the contracts for animation differ from live action, essentially because artists develop characters based on the screenplay, and those characters along with the screenplay form the basis for the copyright. Creators need to keep this in mind when developing a script or the characters. Both might go through many versions before the production starts, and every person who provides creative input might have a claim to be an author of the work. Their contributions must be documented, and their creative work licensed. Those contracts are discussed below, but as with all contracts, it is important that all parties understand the terms, that they are signed, and that the terms of the contract, particularly payment terms, are fulfilled and documented.

Unless the main story elements are already successfully published in some form (a novel, comic book), the creator of the story will almost always be required to license all rights to their original story property. If the story is already successful, the creator may have more leverage to retain certain rights by carving out territories or platforms. This often occurs if the story property is an ongoing series of some kind, for example, a young adult books series like *The Hunger Games* (cite) or a comic book series. In this case, the creator may license all but the publishing rights. This can also be the case if a book or character is very popular in its country of origin, and the creator can retain certain rights for that country or region.

When creating original content, it is crucial that all grants of rights explicitly state that the rights are being granted on an **EXCLUSIVE** basis, which means that the producer is the only one authorized to exploit the rights to the production and, more importantly, the derivative rights including the rights to the characters. Non-exclusive rights will not create the same kind of value, particularly where it concerns the creation of value in ancillary or derivative rights.

## **Screenplay**

The screenplay can be licensed directly from the screenwriter or from an entity that previously licensed it from the writer (links in the construction of the “chain”). Examples of license agreements can be found through local writer’s guilds/unions or on-line resources. In some countries, the writer has a right to the integrity of their work, while in others, the work can simply be “for hire,” where they cede all control of the work to the licensor in exchange for payment. To the extent that the screenplay creates new characters, it is a good practice to license the right to use those characters in future works.

## **Director**

An Animation Director plans, organizes, and evaluates the work of their team, including assuring in coordination with the producer that all copyrighted elements are properly licensed. They are responsible for all aspects of the animation process, often including developing characters, storylines, and artwork. They assure that the quality of the production adheres to the required standards and that all deadlines are met.

The director may be simply a work-for-hire technician, or they could be a copyright creator, depending on the level of creative involvement. Contracts will reflect this, with creators usually maintaining a copyright interest as well as ongoing financial interest in the project and characters. The director often also functions as the screenwriter and producer.

A recent ad seeking an in-house director listed the following responsibilities – though on most projects, these duties are split between a producer and the director. As you can see, many if not most of these duties involve knowing the copyright status of the various elements being created, whether it is the screenplay, music, or character design:

- Review shots, approve shots, assign revisions, troubleshoot shots.
- Ensure that the work follows the quality standards, artistic direction and set deadlines.
- Motivate and develop the team and act as a mentor in terms of technical/artistic aspects.
- Work with departments to create stylized design and performance.
- Work with animators to develop animation cycles and expression sheets, while building a library of animation poses and cycles per character.
- Work with the storyboard/animatic/layout and create feature-level, key-framed animation.

- Create visually powerful shots that depict mood, motivation, and tendencies of characters within the established storyworld.

## **Voice and Movement Talent**

Voice talent is typically engaged on a work-for-hire basis and has no right to a share of the copyright. Their contribution, however, can be crucial to the success of a character or project. In rare cases, the importance of that contribution can rise to the level of importance that the voice actor might be considered an author and recognized as such in their contract. In many countries, including France and Spain, voice actors are members of unions that negotiate on their behalf for minimum salaries and other benefits.

On most productions, there are two types of voice talent - temporary voice artists (their work does not appear in the final film), and “star” talent whose voices are in the final program. Temporary talent records a “scratch track” that is necessary for the animators to use during the design phase. This work is discarded when production is completed. They are usually work-for-hire players, and their contracts are often “buy-outs,” meaning the artist surrenders all rights to their work in all media in perpetuity. There may be individual exceptions, but these are rare.

Voice talent is usually chosen by the director of the project, who will work with them to develop the required voices for the characters. They rarely develop the character voices on their own and therefore have no claim to the copyright for the character, however, their performance is subject to copyright and must be licensed.

Typical voice talent agreements for artists who are in the final version of the project may be buy-outs, but not when the artist is represented by a union or talent guild. Union contracts often provide for a wide range of compensation requirements depending on details of the program’s distribution and revenues. Union contracts will usually specify a “floor” or the lowest acceptable payment formula and schedule that must be used, but compensation can go up from there. Since these are highly conditional agreements, it is best to employ the services of experienced attorneys in the area.

Contracts for movement or motion capture performers such as dancers and mimes used as a reference for an animated character’s performance are constantly changing. Their performances are almost always work-for-hire, but if their involvement in the creation of the character is extensive, they might demand performance-based compensation (residuals) or even a share of the copyright. In rare cases, like Andy Serkis’s role as Gollum, a computer-

animated character, in the Lord of the Rings films, the actor's voice and movement performances are so integral to the production that they are accorded treatment similar to the live-action stars of the film.

Even when voice and movement talent do not belong to unions or guilds, there is still an accepted standard that their performances must receive "equitable remuneration" as defined in the Beijing Treaty on Audiovisual Performances. This is usually in the form of an initial payment for the first use of a voice actor's recorded performance followed by payments based on the financial performance of the project, either based on clear metrics such as the number of runs, or financial information provided by the distributor. The best practice is to always provide equitable remuneration to all talent to avoid problems and assure future successful collaborations.

### **Production Design/Artists**

Although Production Designers and Design Artists create original works based on a screenplay or other copyrighted material, they are rarely considered authors or accorded any share of the copyright. They are usually work-for-hire technicians who work under the director. If they work on the development of characters or the story itself, then it should be clear in their contracts that they are authors and will share in the copyright and potential future revenues.

## **2.5 Licensing Underlying Material**

### **Literary works**

Animated works can be based on completely original material but are often based on underlying material such as novels, comic books, news stories, short fiction, and even songs that are the work of previous authors. Literary works by authors like the Brothers Grimm, whose fairy tales have given us *Snow White*, *Little Red Riding Hood*, and many other classic animated characters, comic books like Goscinny's *Astérix & Obélix*, and *Strange Stories from a Chinese Studio* by Pu Song-ling, often called the Brothers Grimm of China – or are the Brothers Grimm the Pu-Song-ling of Germany? - all existed as published works long before they appeared in animated form.

Any other copyrighted material appearing in a previously published work, from video games to motion pictures, can be included in a new animation production provided that the appropriate clearances have been obtained. That starts with determining who can grant those rights, contacting them to present a clear idea of how their IP will be used, and



negotiating a deal to use the IP and making payment. This is true of all material, from the most obscure work to box-office hits.

### **Character Licenses**

These agreements are very similar to licenses for scripts and underlying property. However, these usually only confer very limited usage rights and rarely include rights for sequels or merchandising for instance. The problems with these agreements often begin with determining the actual ownership of the characters and whether or not the purported owners have the right to grant the right to use the characters in alternative media – an animated work for instance. Some characters were just licensed for comic books, live-action films, or video games, and the publishers of those do not have the right to make an animated work using the character. In addition, over the years, certain characters may have changed, and each change may have produced a new trademark claim and/or copyrighted work. This is an ongoing problem for both the Batman and Superman franchises. Most people avoid using characters that they did not create in their work.

### **Trademark Clearance**

It is a good idea to avoid showing products with a recognizable trademarked logo. There are many reasons for this. Some are based in law (particularly if the product shown is disparaged in any way or used improperly – murdering someone with toothpaste for instance – which may invite legal action) while others are more commercial. For instance, broadcasters are sensitive to the fact that Pepsi might not want to advertise during the broadcast of an animated work that prominently features people drinking Coke. If a producer does use a recognizable logo, then it is usually best to clear that use with the owner beforehand. If the product is featured in a positive light, then it is often possible to secure compensation in the form of payments for product placement. In exchange, the producer agrees to feature a product and must make sure that they adhere to their obligations or face a possible dispute. Usually, the agreements will be very specific about each side's obligations, and buried in the agreement will be permission to use the logo or packaging associated with the brand.

### **Name, Life Story, and Likeness – Rights of Privacy and Publicity**

In theory, anything that happens in public or that is reported as news (facts) can be used without a specific license. However, if someone, even a public figure, portrayed is defamed in the work, then the distributor, as well as the producer, can run afoul of the law. If the animated work uses someone's name, phone number, image (even animated), or other

personal details, it is always better to get that person's permission. This falls under the concept of "right of privacy" and "right of publicity", the notion that someone has the right to keep their private life out of the public eye. Licensing "life story rights" from someone usually means that they waive these rights. Generally, the right to privacy means that a person should expect that personal details cannot be used by someone without their permission. The right of publicity means that a person's name and likeness cannot be used commercially to promote a product (including an animated production). Public figures portrayed accurately do not usually have a claim to a right of privacy (at least for their public behavior), although they do have a right of publicity. These rights and their enforcement vary significantly between jurisdictions.

**Using third-party animation assets** – It has become common practice to use generic elements that have been previously created to lower costs and production time. These are available in a wide range of formats such as 2D, 3D, backgrounds, and even virtual worlds. This is similar in many ways to licensing pre-recorded music or pre-coded portions of computer programs. If using such assets, it is important to confirm you are licensing them from a reliable entity, obtaining all of the licenses you need for exploitation, and properly crediting the source in the final program.

## 2.6 Music Licensing

Music clearance and licensing is a complex business. If at all possible, these issues should be handled by specialized professionals such as music supervisors or lawyers with experience in the area. Every piece of music in a work must be cleared and licensed both for synchronization rights (the right to use the composition itself – usually this is obtained from the music publisher) and for master use rights (the right to use the recording of the music by the performers).

Music blaring from a car stereo as it drives through a scene, the music on a TV program playing in the background or a bit of a song that a character sings are all examples of music that must be licensed besides the obvious soundtrack and theme song. This can be one of the biggest problems faced by producers (and consequently distributors) around the world. Music licensing is therefore one of the first issues that distributors address when considering licensing a work. Distributors know that their clients, especially broadcasters, will ask for confirmation of music clearance for specific usage. Changing music can be very expensive. Moreover, given the very public nature of distribution and the sophistication of companies that control music rights, the probability of getting a claim for failing to clear music is nearly 100%. Distributors and broadcasters will request a "music cue sheet" (sometimes referred to

as “needle drops”) listing every piece of music, how long it is used and who the owner is. They will also want to see the license agreements for each piece of music as well as proof of payment. These agreements can be very specific regarding the rights granted and will state for how long (down to the second) the music can be used, whether it can be used as a theme song, and whether it can be included in a soundtrack album or the trailer.

Two separate rights must be licensed in order to use music in an audio-visual work – “synchronization rights” (the right to use the composition itself, usually obtained from the music publisher) and “master use rights” (the right to use the recording of the music). In principle, producers and distributors do not have to obtain public performance rights, as these are usually licensed by performing rights societies such as ASCAP and BMI to end users including cinemas, broadcasters, and other public outlets. In those cases, it would not be practical for the rightsholders to manage each relationship where their rights are being exploited, so those rights are managed collectively on their behalf and the revenues are distributed to the rightsholders through CMOs in each territory.

The synchronization and master use rights may be held by the original writers, composers (in the case of synchronization rights) or the performers, producers of the music or record companies (in the case of master use rights) but are more likely held by a specialized music publisher (such as Warner Music or Sony BMG) or even a service specialized in providing pre-recorded music, such as Associated Production Music ([www.apmmusic.com](http://www.apmmusic.com)).

### **Music Licenses and Clearances for Commissioned Work**

If the producer commissions music especially for the work (the score) then things become much simpler. It is even easier if the composer arranges for the recording and delivery of the music. In that case, it is important to confirm that the composer has secured all proper licenses from the performers.

### **Music Licenses and Clearances for Preexisting Music**

If a producer is using music that has already been recorded, many of the contractual terms are the same. However, synchronization rights must be obtained from both the owner of the copyright in the composition, usually referred to as the publishing right and often held by a music publisher, and master use rights from the owner of the copyright in the sound recording itself, which usually but not always includes the rights of the performers. That may or may not be held by a separate entity, often a record company or specialized company offering pre-recorded music for audiovisual works, such as Associated Production Music.

If a production licenses preexisting music, the composer of that music is not considered to be a co-author. Fees for pre-recorded music are usually calculated based on time of use. There may be additional costs if the music is used as the theme music during the opening credits, in a trailer, in a soundtrack, or if the rights include derivative rights, such as the use of the music in video games or on websites. While it is best to get all rights everywhere in perpetuity or for as long as possible, licenses for pre-recorded music are usually much more limited (for example, they may not include the right to use the music on a soundtrack album or to license clips containing the music).

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## Music Rights Licensing

There are extensive texts devoted to the topic and as noted, the rules can change from country to country. Producers should, wherever possible, use the services of an experienced music supervisor and a lawyer with experience in the area. If producers encounter problems later, they can at least demonstrate that they made an effort to comply with what everyone acknowledges is a complicated process.

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## 2.7 Public Domain, Fair Use, and Fair Dealing

The concept of **Public Domain** (PD) applies to established facts and historical events, some works created by public employees in the course of their employment, and works for which the term of copyright protection has expired. All of these are available for use in new creative works without the consent of the original authors. Once copyright protection expires, the work passes into the public domain and can be exploited by anyone for any purpose without any authorization. The concept of public domain stimulates the creation of new work and provides an excellent source of material to future generations. For example, animated works and characters from the earliest age of animation are now available for the creation of new works including sequels, remakes, TV shows, animated versions or anything new creators can imagine. It is important, however, to continue to respect the author's moral rights, which do not expire, including the right of attribution, for the original creator to be recognized.

For the most part, historical events, folklore, traditional religious stories, and epics all exist in the public domain, and can therefore be used as the source material for animated works. However, you must be careful not to use elements created recently and subject to copyright protection, even if those have become accepted as part of the PD work. Disney's *Snow White and the Seven Dwarfs* is an excellent example. The character of Snow White is folklore and in the public domain, but the PD story does not specify the number of dwarves

or their names, so using those elements would violate the copyright created by the authors in 1937. Similarly, the character of Sun Wukong, also known as The Monkey King, is famous throughout Asia and has been portrayed in hundreds of animated and live-action works. Determining how to portray the character, what powers/attributes he wields, and what adventures he has, involves a complicated process of unlearning elements contained in recent works and going back to the original sources like the Hindu epic, *The Ramayana*, to determine what is in the public domain.

If there is the slightest doubt about whether or not a work is protected, one should first obtain a copyright report and then review the report with a lawyer specialized in the area.

**Fair Use** and **Fair Dealing** both refer to the use of a copyrighted work where a license from the copyright holder is not required. The terms are interchangeable, with Fair Use prominent in the US, and Fair Dealing used in the UK (and, for that matter, *patas na paggamit* in Tagalog). The concept is the same in both civil law systems (such as in France, where it is known as *utilization equitable*).

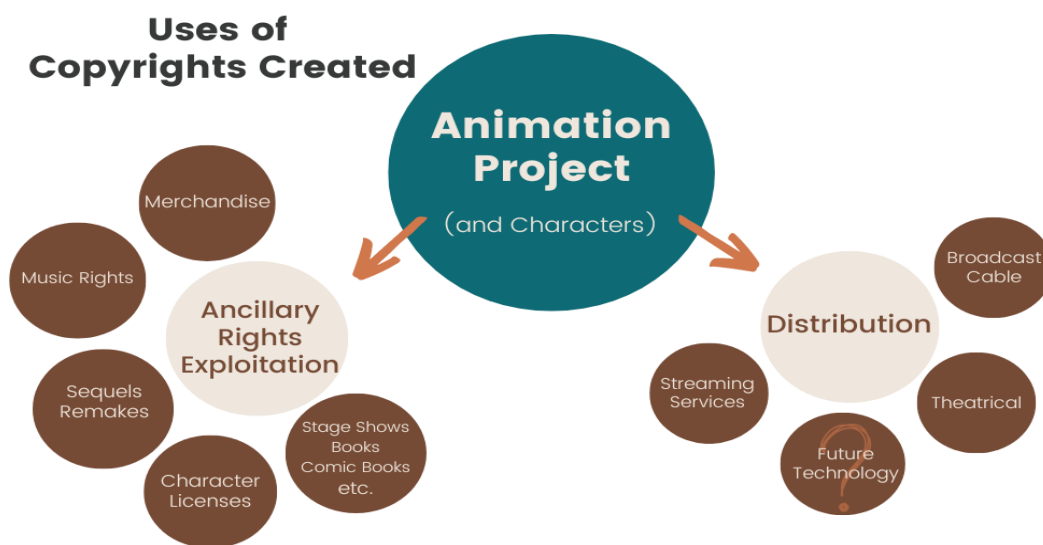
Local copyright rules (based on the terms of the Berne Convention) provide the statutory framework for determining whether a use is “fair”. Among those can be criticism, parody, journalism, education, scholarship, and research. However, each of these is subject to interpretation and the aggressiveness of the copyright owner’s lawyers. You can have the best arguments possible for your fair use of material and still be taken to court or blocked from distribution by the copyright owner. Therefore, it is always better to license the copyright for the production where possible. If not, it is important to get an outside opinion in writing from a recognized authority, usually a copyright attorney.

One misconception about fair use is that if the use is not commercial – if the audiovisual work is freely distributed – then it is okay to use a limited amount of copyrighted material without licensing it. This is not true. Even in the case of fan fiction, the use of characters is restricted by the owners. However, George Lucas (Star Wars) and Gene Roddenberry’s estate (Star Trek) have traditionally given their fans free access to characters for non-commercial use, even in live-action and animated audiovisual works. Disney’s purchase of Lucas Film in 2012, sent shockwaves through the vast Star Wars fan fiction community, but a decade later, it is clear that Disney continues to welcome the creativity of fans provided that they are not using the characters for commercial purposes.

## 2.8 Copyrights Created During the Animated Production Process

Assuming all necessary copyrights have been licensed, the producer, through the SPE, then owns a variety of copyrights that can be exploited:

- Distribution Rights in Various Media, Geographic Regions, Time
- Derivative Rights – Sequels, Remakes, Film or TV Versions, Stage Plays, Books, Merchandise, etc.
- Ownership of Music and Artwork Created for the Production
- Character Rights for Non-Derivative Works



## 2.9 Retaining Ownership of Rights Created

Though the topic is covered multiple times in this training tool, it deserves its own section. Whether is it Dora the Explorer, Cchota Bheem, Shrek or the Seven Dwarves, the value of the characters can greatly exceed the value of any individual production. That value might be in the sequel, remake, live-action, or other derivative audiovisual productions, merchandise, advertising, even NFTs (Non-Fungible Tokens).

Investors and Distributors also understand the value of these rights and will almost always make them part of their deal. In some cases, such as with major studios, they have entire departments devoted to the exploitation of characters, music, or other rights, and they will acquire all of those rights when they acquire the script for development or production. It is important to understand how the creators will be compensated for the exploitation of those

rights. Those details should be clear in the agreements and understood by all parties. Never hesitate to include a financial model or example in agreements if anything is unclear.

### **3. The Structure of the Animation Industry**

In most cases, the economic rights contained in an animated work can be transferred from the creator to a third party, usually a distributor, but in some cases through the sale of a corporate entity that owns those rights. Exceptions, including the concept of moral rights, will be discussed in another chapter. It is important to note that copyright only transfers through WRITTEN agreement. That agreement must contain specific language referencing the rights transferred and the compensation given in exchange. For such a contract to be binding it must:

- be in writing
- clearly indicate that there has been an offer by one party and acceptance by the other party
- be clear overall – there must be the certainty that the parties have the same understanding of the agreement
- indicate consideration – meaning that something of value is given in exchange for the rights, usually money; and
- clearly indicate that both parties intend to enter into a legal relationship

One other important point is that the terms of the contract must be fulfilled. The agreement must be signed by both parties and payment of any consideration must be made and documented.

#### **3.1 Territorial Distribution**

Generally, an audiovisual work's "primary" and most economically important territory is its country of origin. An animated work produced in France will always find its biggest audience in France and an Indian animated film will find its biggest audience in India. In each case, however, their primary export markets will be different. Indian works are quite popular in Africa and many former British colonies, where there are significant ethnically Indian populations, whereas French works are usually considered "art house" and might be more popular in Japan than they are in other European countries. Most animated works that are not produced in the United States or the United Kingdom struggle to find distribution in the United States. However, the streaming revolution is changing that.

The producer is often the territorial distributor in their home country. When producers make deals with sales agents or global distributors, they should be sure to reserve for themselves any rights that they have either already licensed to other parties or that they plan to exploit



themselves. This usually means retaining local or regional rights, and sales agents expect this. The rights of foreign co-producers must also be respected.

### **3.2 Theatrical Distribution**

The theatrical animation market is quite limited, dominated by major studio productions such as Shrek and Toy Story, or by locally produced genres such as Anime in Japan. The cost of producing at the level necessary for theatrical distribution can be prohibitive for most producers. However, there are opportunities with animated short films that appear mostly in festivals such as the Annecy International Animation Film Festival in France, Animafest Zagreb in Croatia, and Anima Mundi in Brazil. Many festivals offer a mix of live-action and animated content.

### **3.3 DVD Distribution**

Although children's animated material is one of the holdouts in the DVD world, it too is quickly losing popularity in most of the world. Given the levels of both hard goods and online piracy, it is very unlikely that DVD will provide any significant revenues in the future to producers of animated programs.

### **3.4 Broadcast TV Distribution**

Local broadcast television offers one of the best options for locally produced animated material. In some territories, broadcasters are required to invest a certain amount of their profits in the production and acquisition of local content. TV tends to be very relationship-driven, and those relationships take years to develop, but research on what is currently selling locally is as easy as turning on the television.

Obviously, local TV markets vary greatly from place to place. To the extent that the markets are advertising supported (as opposed to publicly funded or educational channels), funding is usually dependent on the health of the local economy. Generally, low-cost educational content offers the best opportunities in low to middle-income economies.

It is important to understand exactly what rights are being granted and for how long. The right to broadcast the program during a fixed term (usually three years or less) in exchange for payment is the traditional deal. Producers need to make sure that they do not include character rights in these deals, and that the rights revert to them with no restrictions at the end of the contract term. It is also important to understand the minimum delivery requirements for local broadcast systems including master element formats, encoding requirements for all uses, split tracks containing dialogue, effects, and music, promotional

materials, trailers, promos, and anything else the buyer demands. In some cases, delivery can cost as much as the production itself.

### **3.5 Video-on-Demand (VOD or Streaming)**

There are three principal revenue models for Streaming distribution:

- (i) transactional or TVOD (including Pay-Per-View – PPV and Download to Own, where payment is made for a specific work either for a limited time or in perpetuity);
- (ii) subscription streaming or SVOD, where a flat monthly fee is paid for unlimited viewing of a library of material; and
- (iii) ad-supported streaming or AVOD, where the viewer must watch advertisements as “payment” for watching the program.

Most territorial distributors and sales agents will demand that licensors include all digital rights – including Internet and all forms of VOD, encompassing download, streaming and OTT exhibition, which is Internet distribution without a subscription to a cable or satellite TV provider. They will probably require that the licensor give them rights to all delivery technologies “currently in use or developed at any point in the future”.

The most important issues to address in terms of new media and Internet distribution are exclusivity, geo-filtering, and digital rights management (DRM). In most cases, the rights are locally held by the all-rights territorial distributor and then licensed to the various Streaming platforms and outlets on a non-exclusive basis, meaning that multiple services and platforms can offer downloads, AVOD, or SVOD of the same material concurrently. However, in some territories, the distributors attempt to negotiate specific exploitation windows for each of these rights to maximize revenues.

Geo-filtering allows rights to be offered only to a limited territory, as has always been the case with traditional territorial licensing. This has been a major topic of dispute from the time audiovisual material was available on the Internet in the 1990s. Contracts must clearly specify the territory and the distributor must guarantee that the integrity of the territory will be respected through geo-filtering. That leads to the third issue: Digital Rights Management, or DRM. The quality and effectiveness of DRM systems vary but all contracts containing new media rights should specify that the signal must contain some form of DRM information to make usage easy to monitor and territoriality and other terms easier to enforce.

**TVOD** – This model has become increasingly rare outside the United States, and particularly rare for animated material. In this model, the consumer pays a price per program, usually for

a limited period of time, though download-to-own distribution still exists. It should be clear in TVOD contracts how revenues will be shared and who will pay marketing and distribution expenses. Usually, these agreements are non-exclusive, and producers prefer to have their programs available on multiple platforms.

**SVOD** – Streaming is currently the dominant form of VOD in the world with major streamers like Netflix and Amazon Prime offering content in nearly 200 countries and more than 60 languages. Despite the challenges, there are an increasing number of territorial or regional Streaming services. Major players in Europe such as Canal+ (with Canal+ Series), BBC (iPlayer), BSkyB (Now TV and Sky Ticket), and RTL (TV Now in Germany and Videoland in the Netherlands) are managing to gain audience share. In Southeast Asia, iFlix had 25 million subscribers across the region at the end of 2020. According to Digital TV Research, Televisa's *Blim* and Grupo Globo's *Globoplay* are the largest local players in Latin America, each with tens of millions of subscribers, Netflix still accounted for about 70% of the SVOD market there at the end of 2021. In Africa, though Showmax from South African media giant MultiChoice Group and Nigeria-based IrokoTV have had significant success, Netflix still dominates on the continent.

Local and regional streamers are major consumers of animated content. This has also become an extremely complex market for distributors who might be offered a global deal from Netflix and local deals from regional providers. Trends indicate that local outlets will continue to increase local production and gain market share in coming years according to Entertainment Partners in an October 2022 article.

**AVOD** - Creators can also post their work on myriad ad-supported sites that offer such services, like YouTube. Revenue from these sites can be quite limited, but there may be recognition that could lead either to revenue from other sources or to being acknowledged as an animator whose work and career warrant attention. The same copyright rules apply – all creative elements must be licensed, otherwise, the material could be taken down by the service. Contracts with these organizations are usually straightforward and non-negotiable. The producer must warrant that they have the right to license the program and the platform is obligated to pay either a flat fee (rare) or a percentage of advertising revenues based on an incomprehensible formula. These are usually non-exclusive agreements and do not require aggregators or agents. Producers can post the work on as many platforms as they wish directly – provided they have secured the necessary copyrights in advance.

### **A Note about Aggregators**

Audiovisual industry “aggregators” organize large amounts of content including animated material, confirm COT, format the master elements, and meta-tag the files for delivery. Any company claiming to be an aggregator must have a clear arrangement with one or more of the major media outlets in a given territory to supply a steady stream of content to them. Anyone doing business with an aggregator should confirm its claims to be able to place material with these distribution outlets. Many aggregators are companies that have come from the DVD distribution and TV licensing business, such as Warner Bros. (by far the largest aggregator in the United States), Fremantle, and Brainstorm Media in the United States. Belgacom TV and VOO in Belgium, OD Media in the Netherlands, Orange and Glowria in France are among the best-known European aggregators. This is an evolving business model, and it is unclear whether aggregators will be the content pipeline for Streaming services in other regions.

### **3.6 The Major Studios**

The major studios (Sony, Warner Bros., Disney/Fox, Paramount, MGM, and Universal) are almost inevitably part of global media conglomerates such as Time/Warner (Warner Bros., which includes animation powerhouses, Nickelodeon and Cartoon Network, as well as HBO and Discovery Networks), Disney (which also owns Pixar Animation, Fox Studios, and Marvel), and Viacom (which owns American TV giant, CBS, and Paramount Studios). Most of these have a significant TV distribution business that can include global cable brands like Fox Family, Disney Channel, Nickelodeon; and even substantial ownership of TV distribution outlets in other countries – usually cable and satellite rather than broadcast, which is subject to greater ownership restrictions. Increasingly, these studios are partnering with local companies around the world to create content, including animation.

Studios are also potential financiers and distributors of animated material produced wherever they operate, and some will acquire distribution rights for both United States and select non-United States markets. Of course, they are more likely to buy through their television outlets, and these are the groups that are more likely to finance a local animation project. When they do so, Studios will expect that all COT protocols are strictly respected – in many cases, that can include granting them the rights to the character for remakes, prequels, sequels, or spin-offs.

### 3.7 The Independent Distributors

These are essentially everyone else from the smallest local broadcaster to the dominant theatrical distributor in each country. There is a gray area in the streaming world, with some global streamers owned by the conglomerate that owns the studio, but for simplicity, we will assume that all global streaming companies behave like Major Studios rather than independents.

### 3.8 Animation and TV Festivals and Markets

For animated works not destined for theatrical distribution, international animation and TV festivals and markets are the best places to find potential licensees outside their home territories. Markets such as the Marché International du Film in Cannes, the American Film Market in Los Angeles, or the European Media Market are opportunities for territorial distributors and sales agents to meet and license territorial, and, in some cases, global, distribution rights. TV markets, including two in Cannes (the *Marché International des Programmes de Télévision* (MIPTV), and the *Marché International des Programmes de Communication* (MIPCOM)), offer the widest range of animated material from around the world. Of course, licensing activities happen year-round and are not limited to these events. Markets can be challenging for independent producers as most of the business goes through an established group of international sales agents.

Animation festivals, on the other hand, offer opportunities for creators to present their works in a friendlier atmosphere where potential licensees expect to interact directly with the rightsholders. They occur on a year-round basis and getting into the right festival can be a key factor in securing distribution. A producer might think that premiering at the Annecy Animation Festival in France will be their ticket to success, but there might be better festivals for the particular work with a better chance for strong commercial distribution. Annecy attracts distributors from around the world who are specifically seeking animated programming, but the Kinoko International Film Festival in Japan might offer producers of educational animation a more receptive audience.

**The Role of Sales Agents** – Territorial distributors will usually not meet with producers on individual projects. A sales agent has those relationships and knows how to negotiate the best agreements, prepare delivery materials, ship materials, collect monies, follow up for royalties, and perhaps most importantly, how to resolve disputes properly and effectively when they inevitably arise. It is highly unlikely that a producer will be able to prepare agreements and make delivery to

the satisfaction of the distributor, which could lead to the cancellation of the agreement and no revenue to the production. There are a wide variety of sales agents throughout the world, and it is important that all participants learn as much as possible about everyone they are working with. Ask about the other works they have distributed and speak with producers of those works to find out if they have been treated fairly.

### **3.9 Dubbing Considerations**

As most animation is made for a younger demographic, sub-titling is rare, but, fortunately, it is much easier to synch local languages with the often-vague mouth movements of animated characters. The quality of dubbing can vary greatly, international distribution will require the creation of a dialogue/continuity list in English to facilitate dubbing in multiple languages. It is important, however, for the global integrity of the character, that the producer has some influence regarding the voices used for their characters.

### **3.10 Piracy**

Copyright infringement in the animation industry ranges from cases involving the producer not clearing rights for the use of a specific copyrighted work to unlawful distribution by third parties. The unlawful internet distribution of copyrighted works is a global problem with no current and sustainable solution. Both industry groups and governments around the world are trying to find the most appropriate responses to these challenges. Some are meeting with limited success, while others are overwhelmed by the phenomenon.

Since most illegal distribution occurs online, systems exist for monitoring Internet downloads of works. Armed with the knowledge of infractions and the contact information of the infringers, rightsholders have a range of actions they can take from simple cease and desist letters to lawsuits against the offending parties or even the Internet Service Providers (ISPs), depending on the jurisdiction.

### **3.11 Economic Contributions: GDP, Employment, Tax Revenues and Tourism**

Because of the necessary investments and a large number of participants in animation production and distribution, legislation in many countries promotes these activities through direct subsidies, tax incentives, or other means. These programs make outsource services more competitive in the marketplace, attracting work-for-hire business as well as supporting locally produced content. They are a significant element in budgeting decisions made by producers outsourcing production work, local producers, and co-production arrangements.

Support may be available for all stages of a project - development, pre-production, production, and post-production. In some cases, mandatory funding is provided by local television outlets in the form of paid distribution licenses. Some jurisdictions provide support for training and infrastructure. In all cases, these programs must be reliably funded, transparent, and easy to access. In exchange, the governments expect producers receiving this support to behave professionally, fulfilling the terms of all agreements and properly licensing all copyrighted elements to avoid legal challenges that could embarrass or imperil these programs.

It is generally acknowledged that the benefits of audiovisual production to a local community include:

*Job Creation* – Some communities rely heavily on audiovisual production to provide jobs and training for technical workers, thus encouraging additional indigenous and visiting production work as animators and associated technicians and services become more skilled and available. Attracting outsourced animation work does not create copyrights for local creators but can lead to investment in infrastructure and training that will lay the foundation for a sustainable local creative industry. If job creation is an important factor, the community must provide significant training and incentives for producers to train and hire locally.

*Tourism Promotion* – Whereas *Lion King* and *Madagascar* might not be accurate representations of Africa any more than Tarzan films were, they undoubtedly led to an increase in interest in tourism on the continent. Local productions can showcase the natural beauty and activities of a community and attract tourism spending. If Wakanda were a real country, it would be impossible to book a hotel there following the success of *Black Panther*, which started as a comic book, became a film and is now the subject of an animated series.

*Promotion of Local Culture* – Animation is also a means of showcasing and promoting local culture, telling a community's stories, and introducing the culture to the world, all of which can provide political, social or even economic benefits. China, India, Thailand, and Vietnam have all discovered that their people can tell their own stories in their own words and images and have incentive programs to encourage the local animation industry. Animation is clearly a more cost-effective way to tell historical, mythological, and epic stories than live-action productions which require the physical construction of sets and elaborate costumes.

### **3.12 Government Support of the Animation Industry**

**Direct Subsidies** pay producers to locate their productions in a particular community. This can come in the form of government grants or free use of government facilities or personnel.

It is important that these subsidy programs are clear and well administered and that anticipated benefits do not disappear before applications are satisfied. Governments should ensure that the rules and regulations are understood by local officials and that the information is effectively communicated to producers in a way that will allow them to access the subsidies without abuse or waste.

**Co-Production Treaties and Co-Finance Arrangements** are arrangements made between countries that encourage production by offering incentives for producers from more than one country to work together. These arrangements can take the form of treaties or regulatory frameworks that usually offer tax incentives to parties in both countries. Sometimes these tax benefits are transferable to producers in third-party countries.

**Tax incentives** have become a major factor in producers' choice of where to base their animation work. Some countries provide significant financial incentives in the form of tax breaks to encourage investment in animation production. Some of these incentives have been extremely successful not only in attracting economic activity from outside the community but also in developing local production for cultural and economic reasons.

**Local Content and Production Requirements** can take the form of quotas, which are requirements that local distribution outlets, particularly TV, include a minimum percentage of locally produced material. They can also be framed as requirements to spend a certain portion of profits or gross revenues on local production. These are common in many countries including France and Korea and have been very effective in supporting those local animation industries.

Fiscal vigilance dictates that the economic and cultural impact of the program be monitored, and the programs adjusted to meet the community's goals. There are various methods for quantifying these effects and regular, independent audits performed by competent authorities. It is crucial that the incentives be transparent (with clear rules and no favoritism or corruption), easy to access (clear qualifying criteria, prompt decisions by the administering authority, and no cumbersome application process), and financially reliable (not subject to changes in local governments or reliant on frequent renewals or allocations).

Canada provides a good example of how to build a local animation industry. They began through the National Film Board of Canada (NFB) in the 1940s, training animators and underwriting experimental filmmaking and technology, primarily for short-form entertainment. The NFB felt that Canada did not have a large enough population to financially support animated feature films. Instead, they chose to become a services provider for Hollywood studios' animation departments. By the late 80s Canada's investment in computer graphics



paid off, and they became a reliable supplier of 2D and 3D animation services, often as part of a co-production arrangement that allowed them to participate in the creative process, thereby retaining a level of copyright ownership. By the 90s they were producing hundreds of hours of animation, including the popular BABAR and INSPECTOR GADGET series. This allowed Canada to become the leading computer animation software developer (an important ancillary copyrighted product).

### **3.13 Industry Groups and International Trade Promotion Organizations**

#### **International Animated Film Society (ASIFA – [www.asifa.net](http://www.asifa.net))**

A non-profit corporation focusing on the art and business of animation. There are local chapters around the world that host workshops, panels, networking events, and highly respected industry awards. Members are mainly professionals, but the organization also accepts animation students. ASIFA hosts workshops, networking, meetings and highly respected yearly awards.

#### **The Animation Guild ([www.animationguild.org](http://www.animationguild.org))**

TAG is a union representing animation professionals in North America, but their website provides excellent information regarding wages, benefits, and contracts.

#### **Society for Animation Studies ([www.animationstudies.org](http://www.animationstudies.org))**

An international organization focusing on the art and history of animation. SAS holds a yearly conference where recent research is shared. The website and blog present mainly academic discussions of all things animation.

#### **Women in Animation ([www.womeninanimation.org](http://www.womeninanimation.org))**

WIA is dedicated to advancing women's equality in the animation industry. The organization is highly active and is a good resource for women to network and share ideas. The organization also has a mentoring program and yearly scholarships. Their site contains valuable information and resources.

#### **The Computer Graphics Society ([www.cgsociety.org](http://www.cgsociety.org))**

The CG Society is a networking platform focusing on a professional membership in the global computer graphics marketplace. Essentially an arts community with a strong technical underpinning, the CG Society focuses on employment opportunities, technical and artistic trends and sharing of information.

## **ACM SIGGRAPH ([www.siggraph.org](http://www.siggraph.org))**

Commonly known as SIGGRAPH, it is the single most important organization for computer graphics and interactive scientists, educators and artists. A global organization based in New York, the yearly North American SIGGRAPH and SIGGRAPH ASIA conferences are important clearing houses for the foundational science of computer graphics and a film festival showcases the most advanced techniques in the sector. When the first computer-generated (CG) animation and visual effects studios were established, SIGGRAPH evolved from a primarily scientific and academic organization into an important development and recruiting vehicle in this rapidly growing industry. They are currently the largest gathering place for CG and non-CG animators.

## 4. Finance and Distribution – The Business of Animation

### 4.1 The Production Process

#### Developing the Asset Package

All creative industries rely on authors – the creators of the underlying elements that can be copyrighted and exploited by the copyright holders. As discussed, confirming the transfer of the copyrighted elements to a single entity (usually the SPE) is crucial to potential exploitation. However, in the animation sector, determining who is a creator and who is simply a technician can be problematic. Part of the issue revolves around the amount of guidance and instruction given to the technicians as well as how much freedom they are given to alter those parameters.

For that reason, prior to the production process, the authors (writer, director, composers, character artists) develop what is referred to as a Production Bible which can include a very specific Style Guide and often a Story Reel. Examples of these can be found on the internet, and there are several excellent books to guide new producers in this area. Together, this Asset Package provides a clear guide to the animation technicians. As those technicians are not considered the creators, they do not hold any copyright in the project. This needs to be made very clear in all agreements – that they are not contributing anything that can be considered an original work of authorship. Of course, the producer must do their part and not ask technicians to do creative work. The complexity of this asset package varies with the project's subject matter and the budget of the picture, but all animated projects are based on an Asset Package of some kind, usually including the following elements:

**The Bible** (which usually starts as a Pitch Bible developed during the development and funding process) is the visual and narrative description of the project. While there may be a previous pitch deck used to sell a project containing some of the same material, the official post-funding bible is far more detailed and sufficient to be the basis of contractual obligations. Narratively the bible will contain seasonal story arcs (for episodic tv), short descriptions of each episode, character, storyworld and thematic goals of the project.

**The Style Guide** is the visual component of the bible that includes all character designs laid out in detailed explanations and perspective drawings with numerous facial expressions and characteristic poses. Clothing, props, and recurring scene locations are also presented in technical form (blueprints) and color concept art showing various lighting and mood options. While a bible is necessary for any in-house production, an outsource package being sent to an outside studio (mainly for episodic TV) will include storyboards and

exposure sheets detailing the frame counts for character actions and camera movement that the outsource studio must adhere to exactly.

**The Story Reel** Sometimes called an animatic, this is a rough version of all the shots (as represented in storyboard images) in an edited form that includes temporary dialog recording, music and sound effects.

The story bible and reel provide a clear guide and goals for the animators hired to work on a project. These guides are referred to in the contracts with for-hire animators, further reinforcing the fact that they are not creators, but technicians basing their work on these guides. The complexity of these asset packages varies with the project's subject matter and budget, but all animated works are based on a bible of some kind.

### **Regulatory Considerations**

If producing for television, there are almost always local content guidelines such as the TV Parental Guidelines established by the 1996 Telecommunications Act in the U.S. which provides ratings from the mildest, TV-Y (appropriate for young children) to TV-MA (for mature audiences only), often accompanied by a descriptor indicating the reason for the assigned rating. It is important to specify and adhere to these local guidelines to assure that the content will be appropriate for the likely distribution outlets. Many channels will not program TV-MA material at all or not before a certain time, while others are only interested in licensing programs designed for children of any age.

Children's animation often has other restrictions such as educational content adhering to local norms, and in much of Europe, the broadcast of a children's program cannot specifically promote or advertise a product, even limiting advertising for tie-ins and merchandise related to the characters. It is important to familiarize yourself with local regulations and content guidelines including those of any potential distribution outlets.

While it is not an absolute requirement for copyright protection, registration of the copyright is highly recommended to avoid problems and clarify ownership. Local requirements regarding registration vary, and in some cases, it might even be prudent to register the copyright in the U.S. or E.U.

### **Cultural Considerations**

As previously mentioned, animation gives creators the chance to produce epic, historical, or fantasy worlds that would be prohibitively expensive in a live-action format. This can allow history and culture to be communicated by local people in ways previously only available in

printed format. That said, even within a country, citizens often do not agree on their own history or what constitutes culture.

You have all seen programs that inspire, teach, offer universal messages, and tell stories in ways that do not emphasize nationalism, tribalism, or political divisions. If you live in a country confronting these challenges, you do not need this training tool to tell you how to deal with it. However, if you intend the project to gain an international audience, it is important to make the themes understandable and relevant outside your home culture. Keep in mind that audiences consistently demonstrate that they care about characters more than plot, so be aware of cultural elements that could confuse a global audience. Programs that have had the most success internationally often feature a protagonist who teaches without being a teacher and who is engaged with culture in a positive way. One of the best examples is Dora the Explorer, who is culturally Latina, is an explorer rather than a teacher and has been successfully translated into about fifty languages.

## **4.2 Production - Technical Considerations**

One of the great things about animation is that a single person with the right skills, computer, and software can develop characters, write a script, compose, perform, or license music, and complete the steps necessary to produce an animated work. Best practices related to contracts should still be followed (yes, that means making a contract with yourself as the producer or an SPE) in order to smooth exploitation or the creation of derivative works. However, to create something that will pass international technical standards for most platforms, higher quality deliverables (the master elements) than can be produced on a laptop computer are usually required. This training tool does not address technical issues such as 2D vs. 3D, length, different software packages, sound mixing, voice-over, dubbing, or production costs. However, all of those need to be researched and part of the budgeting, scheduling, delivery, and production package. Generally, these do not give rise to copyright considerations.

As with amateur filmmaking, amateur animation production can be a great start to a career. However, to complete outsourced work or to produce to international technical standards, significant training (usually several years) on current software packages and hardware is crucial. Increasingly, countries are allocating resources to develop animation infrastructure and training both as a way of attracting outsource revenue and a way of developing the local copyright sector. If you live in one of those jurisdictions and can take advantage of those programs, this guide should help you to understand how to best retain ownership of your creative output. If you do not, we encourage you to work with your local government and

trade organization to implement training and infrastructure programs that emphasize local creativity and best practices as outlined here.

### **4.3 Production Agreements**

The primary purpose of Production Agreements is to convey the copyrights to the production entity (often structured as a Single Purpose Entity or SPE) to facilitate copyright registration and exploitation. Production Agreements are discussed in much more detail than is possible here in many books on the animation business as well as in the WIPO publication, *From Script to Screen*. From a copyright perspective, it is important for all parties to understand the sources and uses of production funding as well as what copyrights are being licensed to the (SPE), how revenues will be shared, and payments made.

Therefore, it is crucial that all parties understand the agreements and that the agreements are clear and adhere to the highest industry standards.

### **4.4 Finance Sources and Models**

In most cases, finance and distribution are closely linked. The distributor might be the funder, as is often the case with local television funding, and in some cases, global distribution models. Once a producer has developed the basic creative aspects of their project, the next question anyone seeking to finance the production needs to ask is, “how much do I need to make it?” The second question is, “how much is it going to earn?” The third and fourth questions should be, “where do I get the money?” and “where will the revenue come from?” This chapter will help you examine some of those issues.

#### **Animation Budgeting**

In most cases, the budget must bear some relation to the potential revenues that will be generated, though this depends on where the funding originates and whether or not it needs to be repaid from revenues. For instance, many Canadian projects receive 30-50% of their budgets from sources that do not require repayment. Therefore, the revenues only need to cover the balance of the budget to be in profit.

Producers preparing a budget typically are familiar with potential revenues in their markets and the availability of grants and subsidies. This information, along with knowledge of local costs and the delivery elements which will be required, shape the basic budget decisions. However, the first budget pass may be closer to a “wish list” that is later adjusted to meet the risk threshold of the investors, the successful application for grants/subsidies, and possibly changes in necessary deliverables (especially if elements will be delivered outside the local

territory). The wish list is necessary to allow the producer to understand all the competing interests of the creators and stakeholders before applying cost-cutting measures.

The producer will break down the script and fill out their best guess numbers, usually on an Excel spreadsheet or using one of the available audiovisual budgeting software packages such as Movie Magic, Celtx Budgeting, and Gorilla Budgeting. There are also many movie budget forms online and in easily accessible publications. It can also be helpful to ask for budget advice from other local producers. After an initial pass, the producer will often seek comments and review from animation department heads or managers with experience in forecasting. There may also be a formal technical review in the case of a program with high complexity. An example of a budget summary (also called a “Top Sheet”) can be found at the end of this text.

### **Basic Finance Structures and Agreements**

The three principal financing structures are:

- the **Subsidy Finance Model** – where direct public finance is the principal source of funding (in the form of grants, required pre-buys or direct finance from required spending by local TV operations, or tax credits). This model can also be supplemented by multi-territorial co-production, where multiple public finance sources are used.
- the **Presale Model** – where the sale of distribution rights to territorial distributors (usually by a sales agent, but often by the producer) forms the collateral for a production loan from a bank.

and

- the **Pure Equity Model** – where investors provide the funds (often with the contribution of local support mechanisms, grants, and subsidy programs). Other direct investments may come from toy or merchandizing companies who have realized that a break-even animated TV show that is successful can sell merchandise that is far more profitable than the actual program. This reality has led to various rights-driven investment entities that seek undervalued brands or future brands in need of financing. The investors may serve as brokers between brands and toy companies or studios. This can create complicated copyright ownership situations as the ownership of copyright and distribution rights are often part of the finance agreements with third-party financiers.

These models are explained below; however, the budget is usually raised through a combination of these models – usually favoring one over the others depending on factors such as budget and nationality.

### **The Subsidy Finance Model**

The starting point for the financing of many projects in Europe and Canada is the amount of funding that can be supplied through government programs, either through direct subsidies (grants or investments) or through tax rebates, credits and offsets. This is increasingly the case in the United States, where many states offer subsidy programs. These programs rely on various systems to determine the amount of funding available from a particular jurisdiction to a specific production. This might depend on the cultural content of the material (was it written by a European writer? Is the director European? Are other creative elements from the European Union?), the location (will the work be done somewhere that provides financial resources, funds for training, facilities, or other advantages funded through the government?), or simply the amount of money spent in that jurisdiction.

### **The Presale Model**

We have already discussed the role of the Sales Agent and the fact that the completed sales can be used as collateral to support a production loan. In recent years, these sales have become very difficult, and in many parts of the world, the financial infrastructure and budget levels do not lend themselves to production lending. The exception, as noted, are the global deals with Streamers or Major Studios. However, as monies are often paid upon completion of the project, loans, equity investment, or subsidies inevitably need to be secured in order to fund the production.

### **The Equity Model**

Although this is fairly self-explanatory, there is one aspect that should be discussed, as it is often a significant source of equity investment funds: the obligatory production finance that some end users such as TV broadcasters and other platforms must invest owing to local regulations. In France and some other European Union countries, television stations must contribute a share of their net turnover to the production of European animations. Since November 2010, SVOD platforms have had the same kind of investment obligation in France.

In addition to the above, equity can take many forms, including direct investment of cash to the production or in-kind investment by a services provider and even crowdsourcing (which has fallen out of favor). Direct cash investment is extremely high-risk, and it is very common



for investors to lack the level of sophistication necessary to analyze the potential risk of the investment. Smart investors will surround themselves with knowledgeable experts with specific experience in the animation industry, including finance and legal professionals. If producers seek investment funding, it is crucial that they understand local securities laws to avoid problems.

### **In-Kind Finance, Sponsorship, and Product Placement**

Service/equipment providers such as animation studios, post-production facilities, visual effects, sound labs and even caterers might provide their services free of charge in exchange for a share of potential revenues or for exposure in the marketplace. In addition to product placement, computer hardware, and software studios frequently offer heavily discounted products to gain a foothold in a new market. This may be of particular interest to producers in countries where the animation industry is in the early stages. Sponsors might fund the entire production budget if they can control the advertising or if they can use the material to enhance their brand. Product Placement involves payment for the actual portrayal of the product or service in the work itself. While sponsor deals are common in live-action films for an adult audience, there may be restrictions on using entertainment to sell products to children. In the USA, the Federal Communication Commission sets limits on the number of advertising minutes per hour that can be shown to children and can prohibit a show from including obvious selling in its programming. China has taken more direct control of online and over the air programming for children to avoid the exploitation of minors. China, however, does allow sponsorship, but within a stated mission to promote approved cultural and national themes, rather than financial return. Animation studios in other markets will have their own local customs and requirements to meet, but animation products for export must conform to the requirements of every potential market. This may be a matter for consideration for studios with international ambitions where localization (customizing a product for each territory where it may be shown) is an option.

### **Co-Production**

There are two kinds of co-productions – treaty and non-treaty. The non-treaty co-productions are easy – they are just cooperation between producers from two different countries not based on any government-level agreement. Sometimes they can provide specific benefits granted by one of the countries (if the work meets the qualifying criteria). An example would be China, where a co-production might result in favorable distribution terms or other benefits, whereas no mutual benefits are provided by the co-producing country.

Treaty co-productions are more complicated. In many cases, countries pool their production resources based on the terms of co-production treaties. If certain conditions are fulfilled, the production may qualify for national status in both (or more) countries, opening the door to production incentives that may help cover a significant proportion of the budget or provide favorable distribution terms and even subsidies.

### **Mixed Finance Strategies**

The subsidy, equity, and presale models are often combined. In Europe, animated material strongly depends on presales to the major local television broadcasters or local distributors in other media. This can sometimes take the form of an equity investment which includes the license of the local distribution rights. In some cases, the local broadcaster can also be a statutory co-production partner, leading to the benefits listed above. Equity is often needed to complete the budget or to trigger the pre-sales or subsidy amounts.

Work-for-hire may be expanded to include equity participation and even a share in copyright ownership. A typical arrangement would be for the outsource studio to offer discounts in exchange for distribution rights in their own country. This works for both sellers and buyers as small markets are often best served by those living and working in the country. The governments in the outsourcing countries are interested in both local and global success to bring attention to their industry.

### **4.5 The Asset Value of Animation Copyrights**

Though the financing and revenue generation of individual titles is the goal of most producers, companies seek to grow and create value for their investors/owners. If successful, this can lead to self-funding through revenue streams or establishing banking relationships based on those revenues. To that end, animation producers and distributors who have managed to defy the odds and achieve success over many years have created a solid asset value tied to the intellectual property they control.

As we have seen through the success of the Marvel Universe, the creation of successful animated characters can create significant asset value, but only if those character rights are retained by the producers rather than being licensed along with the distribution rights.

This asset value is tied to two main factors:

- Existing revenue streams from distribution activities

- Revenue streams from the exploitation of related rights – revenues that can be legitimately expected from sequels, remakes, character licensing, merchandising, secondary rights collection and even stage productions

#### **4.6 Finance Agreements**

The great variety of potential finance and revenue generation structures makes it impossible to cover the specifics of any particular finance agreement in this limited space. However, a few elements are the foundation of every finance agreement:

- Budget/Production Schedule (use of funds) – The agreement must clearly specify the costs and how those costs will be allocated over time. This is the producer’s responsibility. Animation is very different from live-action production where most of the funds are spent during a short production period. Animated projects can be made quickly, or the production period can stretch over several years. Interest rates, fees, and even taxation issues must be considered. Some financiers will require that the production use a completion bond to assure that the project will not go over budget or be delivered late.
- Investment/Subsidy/Other Sources (source of funds) – Whether the production is being entirely financed through local subsidies, banks, a single global distributor, or a rich relative, the agreements must clearly address the financial obligations of the financier – when they will make monies available and how much.
- Fees and Interest – It is best to think of money as having a cost. Soft money (subsidies, grants, or other support that does not require repayment) has little or no cost, whereas a bank loan has multiple cost factors including interest, fees, legal costs, insurance requirements and possibly hefty renewal or late payment provisions.
- Repayment/Allocation of Revenues – As mentioned above, this is the “waterfall”, the element most subject to disputes. Many agreements will require that a Collection Account be established with a third-party financial institution to act as the central clearinghouse for all funds, assuring that parties are paid according to the terms of the contracts.
- Insurance – This is one area where animation beats live action. There is very little to insure outside of the completion and copyright. The Completion Bond has already been mentioned, and the copyright is insured through Errors & Omissions Insurance, which covers events related to flaws in the Chain of Title documentation.

The usual advice applies to finance deals. Understand what you sign, seek legal representation if you need it (you probably do), and understand what you are giving up for

the funding both in terms of revenues and copyrights – try to retain character rights, sequel, remake, merchandising, and other ancillary rights. If the financing involves sharing revenues in perpetuity, try to retain control of those rights rather than ceding them to a third party who might not have the ability to exploit them properly.

## **4.7 Distribution Models and Agreements**

### **Single Global Distributor Model**

In many cases, a production will be distributed through a single company on a global scale. Netflix has started to aggressively license global rights to animated work from around the world, and the major studios produce and acquire local productions to put through their global distribution systems. There are many advantages to global deals, as discussed below, but the option is usually not available or might not be a good fit for a specific work.

### **Global Streamer Model Considerations**

Global Streamers such as Netflix and Amazon have started to produce locally (in which case they will handle all worldwide rights) or acquire local productions from Nigeria, Turkey, Indonesia, Argentina, and many other countries. There are a few special considerations related to Global Streaming deals:

- Global means global and that can include the country of origin unless specific rights are excluded. Producers can often negotiate a “window” to release the work locally before the animation would be made available through the Streamer.
- Payments can stretch over long periods. Netflix, for instance, usually pays in quarterly installments over a period of three years from delivery. Other Streamers have similar payment arrangements, which can be very frustrating for producers, especially in high-interest-rate environments.
- Acquisition deals can have very limited terms. Whereas some distributors might want to control your rights for 25 years (a standard major studio deal), a distribution agreement with a Streamer might be as short as two years. After that, the rights can be resold by the producers. If the streamer is fully funding the production, though, they will probably want to own it in perpetuity.
- A global SVOD platform means that a huge number of people will see the work and will hopefully be impressed by the creators and talent. This will help their careers. It also means that people will receive your message, get to know your country and culture, or just be entertained by something you produced.

## **Major Studio Deals**

The Majors (Universal, Disney/Fox, Warner Bros., Sony, Paramount, and MGM) acquire worldwide rights to locally produced material and may fund that production directly. They have incredible reach, great resources and, if they decide to support a project, there is no other distribution method that can generate similar revenues. They will also usually pay the highest advances available. A studio distribution deal, if available, is usually the best financial deal. The advance is paid on delivery or soon after, and their analysis and modeling will make sure that the release is (usually) tailored to the production to maximize revenues.

However, these are golden handcuffs, and producers rarely see money beyond the advance and the producer loses all control over the promotion and distribution. There is no easy answer, but usually the safest course is to accept the bad aspects along with the cash and to use the success to pursue future production and distribution deals.

## **Split Rights Deals**

In most cases, independent productions are distributed through split rights deals where one entity handles distribution in the home country and another entity handles distribution outside the country or region. Since, for most animated works, the local market will be the most lucrative, the producer is usually very involved in the release there, but much less involved in any potential distribution outside the territory.

## **Market Access**

Ultimately, this is about gaining access to markets in order to make money. What are the barriers to accessing local or international markets? Can a producer do that on their own or do they require a distributor, aggregator, international sales agent, or producer's rep? What control does a producer relinquish and how much is it going to cost?

The answers vary by territory, but a few conversations with successful local producers is usually all it takes to develop a plan for accessing markets. This should be done prior to the production of the project as part of the overall business plan that will be presented to investors and financiers.

## **The Initial Distribution Agreement**

All entities in rights transactions, including rightsholders, sales agents and territorial distributors must have a good understanding of all agreements, especially those that they are to sign. If there is something that any party to the agreement does not understand, questions must be asked. Never accept the phrase "oh, that's just standard language."

Poorly drafted contracts are a major source of litigation and bad feeling in the audiovisual industry. The Distribution Agreement is a rights transaction and becomes part of the chain-of-title documentation.

Distribution agreements for audiovisual works have changed significantly over the past hundred years but the basic elements have remained the same. Most distribution agreements are of two types: sales agency agreements (the agreement between the copyright holder/producer and a third party that will license the distribution rights to territorial distributors); and territorial distribution agreements (usually between a sales agent and a territorial distributor or between the producer and the distributor in their own country). The general terms and concepts can just as easily be applied to any type of distribution agreement anywhere in the world.

Distributors and producers must keep in mind that these are negotiable agreements. They can ask for changes and, depending on how much the other side wants the work, they might be able to negotiate a much better deal than the “standard” deal being offered. Because of the nature of audiovisual distribution, these relationships last for many years, and it is nearly impossible to change the distribution terms once the contract has been signed and the work released.

Two of the most important sections of all distribution agreements deal with the collection and disbursement of revenues. These are also the areas that create the most conflict between the parties. Producers and territorial distributors have learned that the best defense against disputes is to always get to know the company and speak with others who have done business with them to find out if they are honest. Word of problems spreads quickly in the small world of distribution, and therefore crucial that everyone maintains a spotless reputation.

### **Revenue Tracking and Sharing**

In Europe, payment of the talent is based on the copyright principle that the assignment of rights shall comprise a proportional participation for the author in the revenue from the sale or exploitation of the work. Therefore, the definition of net revenues is quite standard and mainly includes the elements of production costs including fair payment to the producer, as well as the distribution expenses and commission (which are strictly capped) for local and worldwide sales.

In a typical deal, the distributor is allowed to recoup all costs of distribution as well as any advance paid to the producers, sometimes with interest. They may also be able to charge a

distribution fee and possibly, in the case of the major studios, an overhead charge (a charge that pays for the general expenses of the studio). The distribution fee may be calculated as a percentage of gross revenues or after expenses have been deducted. A general rule of thumb is that a good deal for both the distributor and the producer/rightsholder is when revenues minus expenses are split evenly.

From the producers' share of revenues, all production costs are recouped including interest and any deferred payments. Often, producers will be forced to forego a portion of their up-front fees and defer the amount until investors and banks are repaid. Lenders are usually repaid first, then investors and only then are net revenues paid to talent participants.

There should always be a termination mechanism in the contract, although these are usually subject to significant dispute, as by the time a cause for termination has arisen, such as bankruptcy, non-payment, non-performance or some other breach, there is a major problem between the parties.

### **The Sales Agency Agreement**

Though most of the elements are the same, the sales agent agreement involves more rights (usually all rights worldwide except for the country of origin), and spells out exactly what services the sales agent is providing in exchange for their fee (usually expressed as a percentage of revenues). Other provisions, such as up-front marketing costs, expenses, and dispute resolution, are surprisingly similar to terms in the deals the sales agent will conclude with territorial distributors.

The services of a sales agent may include a variety of functions, but principally sales agents are responsible for licensing the distribution rights to territorial distributors around the world, collecting and accounting for any monies due, making delivery of materials necessary for distribution and confirming that the distributors remain in compliance with all aspects of their distribution agreements. They may be selling a completed animated film or series, or they may be responsible for securing presales for the project that will be used for financing purposes. In the latter case, they will be responsible for providing sales estimates and possibly working with financiers to secure production loans or other funding.

Sales agents might in fact be licensees of the distribution rights if they are acting on their own behalf (often the case if a substantial advance has been paid) or they may simply be agents acting on behalf of the producers. This is an important legal distinction in many jurisdictions. It is advisable to seek legal advice when negotiating these agreements.

## 4.8 Avoiding Problems

### Allocation and Distribution of Collected Gross Receipts

1. Collection Account Management Fee and CAM Expenses
2. Sales Agent (Commission + Expenses)
3. Residuals to Guilds/Unions
4. Lenders/Banks
5. Deferred fees/payments
6. Investors – repayment of investment plus premium (often 20%)
7. Subsidies – if they require repayment
8. Profit Participants
9. Balance Split Between Talent and Investors

As expected, a large number of the legal problems that arise are based on payments and the distribution of revenues. Most disputes between

rightsholders and producers or between producers and distributors happen because of a misunderstanding over up-front payments or the way revenues will be shared. The order of sharing of revenues is often referred to as the “waterfall.” To the left is an example of a typical waterfall as it would appear in a contract. Please note that this is just a reflection of the explanation of the division of receipts contained in the body of the agreement.

On the author side (script, direction, music, original art/characters), the biggest confusion comes in the calculation of net receipts. If the author belongs to a guild or union, there are often paid ongoing payments (residuals). It is also possible that they will be paid a percentage of the revenues, but usually only after recoupment of production and distribution costs (sometimes called “first break-even” although definitions of terms in this area vary greatly). In some agreements, there seems to be an effort to make these clauses as difficult as possible to understand. “Producer’s Adjusted Gross”, “Net Profit at First Break Even”, “Net Profit” and “Adjusted Net Profit” might all have the same definition in different agreements.

### Transparency

These systems only work when all the players trust the numbers being presented. Even then, it is inevitable that misunderstandings will arise. The more successful the project, the more likely it is to create problems between the profit participants, producers, and investors. Transparency is key to avoiding problems and producers should prudently share as much financial information as possible with interested parties.

### Know the Players

The way to achieve the best results and avoid problems on the business side of the industry (finance, distribution, and revenue tracking) is to make sure you know the people you are



doing business with. Rising budgets and quality levels lead to greater specialization, as well as the involvement of more players in the process, forcing people to trust others who are not always well-known to them. Who are the financiers, executive producers, producers, distributors, sales agents, etc.? Which ones can be trusted?

As all distributors and producers who have been involved in at least one project know, a large part of the business is solving problems that could have been avoided with a few phone calls to find out whether this or that player/technician/financier could be trusted or whether he or she was competent. Some of the saddest tales are those about people who thought they were working with financiers when they were actually working with people who had access to finance but were unclear about the difference.

Equally tragic is when a person claims to hold certain copyrights when in fact they do not. It is often prohibitively complicated, time-consuming, and costly to determine the facts with 100% certainty, so instead, it is important to rely on the reputation and history of the people involved.

Part of understanding the players is to know what roles people play in the production and distribution process – and more importantly, what the producer or distributor expects those people to do. The duties of a producer or executive producer can vary from project to project or even inside the structure of a single animated production, and each person's contract must clearly state that person's role. The same is as true for lawyers at various stages of the process as it is for the creative elements. For each person, it is important to know his or her history and whether they are reliable.

### **Distribution Statements**

Assuming all has gone well leading up to the receipt of the first distribution statement (and hopefully payment), the producer should generally understand what that statement will contain even before looking at it. If there are surprises in the statement, they are likely to be bad (but often involve misunderstandings rather than outright distributor fraud).

### **Reviewing Revenues and Expenses**

As mentioned, a producer should already have a good idea of what the expenses will be before they get the first statement. Those expenses should be compared either to the pre-approved budget or to explanations or promises regarding those expenses made by the distributor, whether contractual or not. Any discrepancies should immediately be addressed in writing and through conversations where possible. There are usually clear and reasonable

explanations if the distributor is a reliable company. Even the major studios will make mistakes sometimes, and it is important to be vigilant.

The revenue picture can be murkier. If the producer is lucky enough to live in a country with reliable box-office information, and that is the first release window for their film, that can be a good starting point. However, finding any useful third-party confirmation of ancillary (VOD, DVD, TV) revenues is nearly impossible. It is also possible to discuss these issues with other producers with projects being handled by the same distributor and compare figures. The distributor might not like that, and there could be reasons for discrepancies, but it may reveal fraud on the part of the distributor. At that point, a producer might choose to move on to an audit depending on the terms of the distribution agreement.

### **Auditing and Enforcement**

Of course, trying to enforce an agreement is more a matter of the personal relationship between the parties than it is a matter for lawyers and courts, and the best way to ensure compliance is to negotiate a fair agreement and to maintain a good relationship and open communication between the parties.

Contracts should include a provision for verifying the accuracy of distribution statements and making sure they follow the provisions of the agreement. The statement should include a clear accounting of expenses, fees, and royalties payable. Usually, it is a simple matter to ask a distributor to explain anything that is difficult to understand in a statement. In some cases, though, there may be deeper concerns that are not adequately addressed. In that case, an audit might be in order.

Usually, an audit must be conducted by a certified (chartered) accountant familiar with the industry. The cost of the audit is borne by the producer unless the result indicates an underpayment of at least 5%. An audit is often an aggressive measure and might upset a delicate relationship with a distributor. Enforcement of the audit determination might not be automatic and might even require arbitration or litigation – which can be costly and might not result in the desired outcome.

### **4.9 The Nature of Disputes in the Animation Industry**

All business transactions are, at some point, subject to disagreements, non-performance, or worse. The animation industry is no exception. These disputes can have highly disruptive effects on distribution schedules and budgets. They can severely affect successful partnerships and tarnish reputations. If not properly resolved in an efficient forum, such

disputes may be time-consuming and costly, particularly in the case of an audiovisual work, as the value can decline owing to piracy and other market challenges.

The often-international nature of these disputes adds a layer of complication not only to their resolution but also to the enforcement of decisions against the offending party. This is why it is important to explore all available dispute resolution options and choose an appropriate and effective mechanism that fits the parties' needs.

These disputes fall into just a few categories, with the most common being disputes over the allocation of monies earned or the non-payment of monies due (including alleged fraudulent investment opportunities). It is also common for there to be disputes related to adherence to non-financial aspects of contracts (most commonly, violation of release or other exploitation obligations), misuse of copyrighted material (including plagiarism) and violation of contractual terms related to credit obligations.

#### **4.10 Dispute Resolution Choices**

##### **Type, Forum, Applicable Law, and Jurisdiction**

Parties must agree on the type of dispute resolution (courts, arbitration, mediation, or expert determination) the forum where the dispute will be settled (location of the proceedings, applicable legal system) and the jurisdiction/enforcement mechanisms. These choices are normally recorded in the distribution agreement. For example, if a producer in the Philippines licenses distribution rights to their animated series to a United States distributor, the parties may agree that disputes will be settled using WIPO's Arbitration system in Geneva, Switzerland, with United States (specifically California) law applied, and that the decision of the arbitrator is binding on all parties but must be confirmed by a court in the jurisdiction of the losing party. Of course, each party will seek to use the system most favorable to its side and it is important at this stage to clearly understand why one system might offer an advantage over another.

##### **Court Litigation**

Court litigation may be an appropriate forum for many disputes. For example, it may be necessary to resort to the courts if there is a dispute that cannot be resolved through arbitration or mediation (e.g., if criminal fraud is alleged). Also, where a party has obviously acted in bad faith, or where a public precedent is sought, it is more efficient to resolve the issue in court.

In general, the court process will require the use of lawyers who know the intricacies of litigation and the applicable legal system. The court's decision is binding and enforceable in the jurisdiction in which it is rendered.

Unlike in arbitration, a court's decision is not final, unless it is the court of last resort, and it is often possible to appeal the decision to a higher court. This may lead to lengthy and expensive court proceedings. Litigation is normally public and tends to end with a winning and a losing party. This may interfere with long-term business relationships and not provide an adequate solution for the parties. An additional difficulty is that judges are rarely specialized in audiovisual matters.

Finally, there may be international enforcement difficulties, as there is currently no international instrument that allows for the effective enforcement of foreign court judgments, unlike in arbitration, where such instruments exist.

## **Alternative Dispute Resolution (ADR)**

### **ADR Basics**

In light of the disadvantages of court litigation, more and more parties now choose to resolve their disputes through ADR. ADR refers to a number of dispute resolution methods such as mediation, arbitration, and expert determination, which allow parties to resolve their disputes in a private and flexible forum. ADR is a consensual process, which means that in order to use ADR, parties have to agree to submit their disputes to ADR. This can be done by inserting an ADR clause in the distribution agreement providing that any future disputes that may arise in relation thereto will be resolved through ADR. If no such clause exists in the contract, the parties can conclude an ADR submission agreement, submitting an existing dispute to ADR. Several institutions have model clauses and submission agreements that parties may use, including WIPO.

ADR is also a neutral process, which is particularly important in disputes involving parties from different jurisdictions. ADR is flexible and gives the parties control over the process, and it is usually less expensive and faster than the courts. ADR procedures are normally confidential, which allows the parties to focus on the issues in dispute and on preserving their professional relationships.

### **Mediation**

In mediation, an intermediary, the mediator, helps the parties to settle their dispute. The mediator assists the parties to identify their interests to come to a mutually satisfactory

outcome that often consists of a practical business solution. The focus on business interests helps to achieve win-win solutions that allow the parties to preserve their relationship or create a basis for a new collaboration. The mediator cannot impose any decision on the parties. Mediation usually results in a settlement agreement, which has the force of a contract.

Mediation can be combined with arbitration or other ADR procedures and is often attempted during or after court litigation.

### **Arbitration**

In arbitration, a dispute is submitted to one or more arbitrators who make a binding decision regarding the dispute. Arbitration is a more formal procedure conducted within a framework of rules, including the applicable substantive law and the procedural arbitration law. Binding arbitration usually ends with a legally enforceable decision, the arbitral award.

### **Expert Determination**

In Expert determination, a dispute between is submitted to one or more experts who rule on the matter. The determination is binding unless the parties have agreed otherwise. This procedure may be particularly useful for technical issues such as the determination of a royalty or a distribution commission rate.

## **4.11 Collective Management of Copyrights**

Collective Management Organizations (CMOs) administer the collection of distribution revenues and secondary rights monies, distributing these funds on behalf of the authors, performers, and producers. These include monies paid to CMOs for blank media levies, retransmission, music use and certain public performances, among other purposes. National and, in some cases, multinational organizations such as the Association of International Collective Management of Audiovisual Works (AGICOA), which acts as an international umbrella federation, a type of pan-European clearinghouse for independent producers and rightsholders), the Canadian Retransmission Collective (CRC), the *Société pour la Rémunération de la Copie Privée Audiovisuelle (Copie France)*, and the *Performers Rights Society of Kenya* collect these monies and disburse them to the registered rightsholders – usually through organizations specialized in supervising the collection and disbursement of worldwide secondary rights monies, such as IFTA Collections in the United States, the Society of Audiovisual Authors (SAA) in the European Union, and Compact Collections in the United Kingdom.

As CMOs vary significantly from country to country, rightsholders should research their local situation. For more information on the topic, please see [www.wipo.int/copyright/en/management/](http://www.wipo.int/copyright/en/management/).

#### **4.12 Creative Commons Copyright**

*From the Copyright Alliance – [www.copyrightalliance.org](http://www.copyrightalliance.org):*

*A creative commons license is a license issued by the copyright owner to allow anyone in the world to use his or her copyright work in any manner consistent with that license.*

*Creative Commons licenses are essentially standard form license agreements that can be attached to a work to enable its use under certain circumstances without the need to contact the author or negotiate terms of use.*

*The Creative Commons form licenses can be found at [www.creativecommons.org](http://www.creativecommons.org), and are particularly useful for people who want to share their work as broadly as possible on the Internet. Rights granted are broad and are intended to facilitate sharing as well as mashups and derivative works. Although some creators find Creative Commons licenses useful for expanding access to their works, this may not be the appropriate approach to take with works you think may have a commercial value you may be interested in exploiting now or in the future.*

Use of these works may also present issues related to underlying rights (which may not have been properly licensed by the person or company designating the work as CC), so it may become necessary to undertake additional research prior to incorporating the material in another work. Again, always err on the side of caution.

## **5. Building for the Future**

### **5.1 Creating Business Opportunities**

Previously discussed elements like professionalism and being part of the animation community in your area are prerequisites to success. One of the main decisions producers need to make is whether to invest in the infrastructure, personnel, training, and software to create a full-service animation studio. The usual business factors apply – cost vs. revenues, availability of support funds, personnel, borrowing, competition, and the future state of all of those. A business plan is a great place to start – not a pitch to investors, but a genuine attempt to coldly look at the business facts. The answer might be that there are already too many animation companies in the business. This is what happened in Canada and Colombia after the government implemented programs to encourage animation capacity-building. There may not be a sufficient number of trained animators or technicians available. Local outlets such as TV stations may not pay enough to support the costs involved.

One factor is that there is simply a great deal of animated material on the market. It tends not to look old in the way live-action content does, and even when that happens, it might be considered classic animation. The price per minute for animated content might be attractive to your local TV stations, giving them no incentive to support the local production community. Local government can help solve this issue by imposing quotas for the use of local content and requiring that a percentage of revenues be directed to the production of educational or children's content.

Will your studio be able to compete in the global out-source market for animation services? Though this volume specifically addresses copyright issues, most animation studios take on work-for-hire to supplement their income from original content. What advantages can you bring in terms of talent, cost, and efficiency? How are you going to sell your services?

### **5.2 Building a Content Library and Character Portfolio**

Once you have established your studio, you will hopefully also be building intellectual property libraries of both content and characters. This should be a goal of any animation studio. The concept of retaining ownership to characters including a sequel, remake, merchandise, and other derivative rights has been discussed. Future revenues from content can be more difficult to control and quantify. Some major producers have their own in-house sales and marketing teams doing their global licensing, but this is rare. Most studios rely on sales agents, which can be very expensive (charging between 30-50% fees plus expenses)

or hope to receive ongoing revenues from relicenses to local stations or royalties from primary deals.

If you own content, you have the potential to make money in the future and therefore need to keep accurate records regarding what has been licensed and what rights might be available, and to always be looking for opportunities to generate revenues. This data is usually contained in a database listing the title, rights licensed, to whom, for what price, for how long, and whether or not you expect additional revenues and how those are tracked and paid. Just requesting and reviewing distribution statements can be a full-time job at some studios.

Proper documentation and record-keeping are crucial to potentially monetizing the content/character library through sales as discussed above, but also through licensing the characters, selling the entire studio to a third party, or seeking finance, either through investors or banks. Moreover, that kind of documentation is nearly impossible to assemble after the fact. It needs to be part of the business plan from the first day of operation.

### **5.3 Common Pitfalls and Solutions**

Most start-up animation studios face the challenge of limited resources, which means they often cannot afford professional legal services. In those cases, the proper documentation of copyright transactions is the responsibility of the business owners. There are a number of basic rules that can be followed to avoid potential problems. While many entities can acquire and control creative rights, typically, disputes are most likely to arise between creators and producers. The best way to avoid these problems is with transparency and written and signed contracts.

Best practices include:

- Acquire rights to works as early as possible in the process, ideally before any work is performed.
- Studios should avoid accepting unsolicited material. If they do, the author should sign a release form absolving the studio of liability if the submitted material is similar to projects already in development at the studio.
- Conversely, artists should document their ownership of the material and carefully track all submissions, retaining copies of release forms and correspondence related to any rights discussions.
- Verbal agreements may be acceptable for some transactions, but all copyright transactions must be in written form. They should follow standard formats (as



discussed in this training tool and other WIPO publications mentioned), and producers should be prepared to supply a complete chain of title when that is requested.

- Letters of Intent (LOI) or Memorandums of Understanding (MOU) are often used as preliminaries to more formal (and complex/expensive) agreements. They outline the goals and expectations of the parties but are usually non-binding.
- Templates for relevant employment, rights transfer, work-for-hire, and other contracts can often be found online. These can be customized to conform to local laws and business practices. Local trade groups and other producers in the country can be excellent sources for standard agreements.
- Most agreements can and should be negotiated! It is important, however, that all parties understand what is being negotiated and behave reasonably in negotiations.

When staffing a studio, the studio owner should make sure employment contracts addresses the ownership of work created by a full-time employees. Artists doing the creative work should be clear to separate their personal creative work performed outside business hours from work covered by the employment contract. The artist should make sure his work is copyrighted and that there is a clear separation between paid work and personal work. Aggressive producers may seek to control all work by an employee regardless of where or when it is created a practice that has been increasingly discouraged, but still exists.

#### **5.4 How Streaming and Gaming Are Transforming the Animation Industry**

The advent and rapid growth of streaming has changed the animation industry by providing a large accessible library of animated movies, mini-series and episodic series to viewers including both fans and occasional animation consumers. Fundamentally, this is an increase in access to animation by aggregating properties from around the world in a subscription model. Overall, this increases the foregrounding of animation in a streamer's display of available shows and promotes turnover which in turn increases the need for new animation, growing the market and revenues for animators. One of the most exciting developments is that streamers license material from around the world, giving viewers access to creativity and culture that they would have rarely seen outside of film festivals in the past.

Gaming's contribution to the wider appreciation of animation is largely technical. Real-time game engines such as the Epic Games Unreal Engine and Unity's rival option make the

creation of animation much easier to render (the final stage of animation production). Related game-changing technology is the use of motion capture that has drastically dropped in price over the past decade. Motion capture produces very realistic animation, essentially accurate human performance. This is in contrast to cartoon animation which is stylized. However, the overall expansion of the animation audience and the adult audience for more realistic storylines and production has made motion capture far more relevant to animation production in non-game applications.

## **5.5 How Technology and Artificial Intelligence Are Transforming the Animation Industry**

Digital technology continues to evolve rapidly on many fronts making animation production simpler and more democratized. The most exciting development is Artificial Intelligence (A.I.) which is being applied to most aspects of animation and graphic art production. The most revolutionary use is still in development with the goal of recording video of human motion or even motion capture and using A.I. to manipulate the human motion and convert it to stylized animation.

A.I. has also changed the use of voice talent in animation. Currently, there are several new providers of virtual actors in a range of ages and accents. These service providers take a recorded performance by an unknown talent or even the producer or director and alters it to sound like any of the available virtual actors. This would allow a production to use virtual voices, even the voices of long-dead celebrities and historical figures if recordings of their voices are available.

A.I. has also been applied to various aspects of editing and animation production. These tend to be purpose-built filters to speed up repetitive processes. This is happening in all aspects of animation production and can be expected to increase in capability and range of use. Overall, this continues the trend of making film and animation production less expensive.

Recently there has been a lot of talk about A.I.-created artwork based on platforms such as Dall-E, Midjourney, and Stable Diffusion. There is speculation that there will soon be similar A.I. image generators that can create animation content. The sector is currently addressing copyright issues surrounding these developments, as these systems rely on huge amounts of images, most subject to copyright protection to create what is essentially a derivative work that is used for commercial purposes. The process makes it nearly impossible to determine which protected images were used, frustrating efforts to apply traditional copyright

enforcement methods, but that does not negate the fact that the images are protected and have been used without a license. The A.I. platforms will need to transparently disclose their image sources and properly license those images. Until then, the debate rages over whether or not A.I. created images (and potentially animation), can receive copyright protection, and, by extension, who is the owner of that copyright?

## Epilogue

The global animation industry is undergoing a period of radical restructuring that is increasing opportunities for producers and distributors alike, while also presenting new challenges. One thing that is not changing is that quality and creativity are prized, and the business community is very often responsible for recognizing and nurturing these rare commodities. Part of that responsibility is properly documenting copyright transactions, giving credit to the authors and properly compensating all parties.

While small countries are clearly at a disadvantage owing to limited internal markets that cannot support a significant animation output, it is possible for these same countries to produce animated content that can travel within the region and to diaspora communities around the world. Some will even cross over to new, unexpected audiences completely unconnected to the country of origin, often through global streaming services. These factors are unlikely to change, and the industry needs to focus on training professionals, developing and producing high-quality animation productions and taking advantage of the local creative communities that already exist.

Above all, communities should not lose what is distinctively theirs – the things that have made their creative industries successful in their own country and abroad. It is not necessary to imitate Hollywood or Tokyo. It is highly likely that every country has a community whose creative talent connects with people in a distinctive way, and that this skill, if not lost in the rush to internationalize and tap into the riches of global distribution, will be what leads to their success.

As has been repeatedly stressed throughout these chapters, regardless of a country's situation in terms of the development of its animation industry – from a very local market with a limited number of studios producing original content to a thriving export market like the one that has developed for Japanese Anime – it is important to have at least a general understanding of the laws related to intellectual property, as well as the business of animation finance and distribution. The value of an animated work and a financier's ability to recover their investment (and for the work to find an audience) depend entirely on the proper adherence to copyright laws.

### **Your role in the future of making a living in the animation industry**

As this training tool attempts to make clear, there are many careers in the animation industry that do not involve the creative side of the business – writing, directing, voice-over, music

composing or any of the other creative activities that go into producing animation. Whether you are on the creative side or have a career in law, finance, government, or distribution, you are part of a global animation industry and the future of the industry as a whole is in your hands.

You can hone your skills in any of these areas by participating in trade organizations, online communities, social media and, when you feel confident that you have something to share, through teaching and mentoring. Simply put, be a professional and do everything you can to professionalize your local animation community.

### **Overcoming Challenges**

Many people on the business side of the industry do not understand how animation producers overcome the incredible odds of getting a project made. It is possible but takes hard work and perseverance. It also takes the desire to be part of a community. A piece of advice you often hear is that the animation community might be hard to break into, but once you are in, you are in for life. Ask others in the industry for advice and even to help resolve disputes and overcome challenges.

A good start is always reading training materials like the one in your hands (or on your screen). There are many books available about the creative careers and business side of animation. There are also innumerable YouTube videos and forums, and, of course, WIPO programs such as WIPO for Creators – Promoting Rights Awareness. Hundreds of animation festivals around the world offer opportunities to meet colleagues in person and share insights.

Legal representation is valuable for those who can afford it and those who live where specialized copyright attorneys practice. Always make sure to use the same level of due diligence in engaging a lawyer as you would in any other hiring decision – check their credentials, speak with their clients if possible, and make sure you feel comfortable with them. Remember that they are just representing you and that you are liable for anything you sign, so make sure you understand every word of every agreement – do not expect your lawyer to know everything or to always have your best interests at heart.

### **A Broader View of the Importance of the Animation Industry**

A lot of time has been spent in these chapters discussing the financial and legal aspects of the animation industry. Never forget, though, that no matter what your role is in the process, animated works are a cultural product, and therefore occupy a special place in a country's economic life. They express the hopes, dreams, self-image, and self-criticism of a people.

They are a mirror that shows people the best and worst of who they are. They inspire people, educate them and at the same time if they are doing it right, they entertain them. The fact that the majority of animated material is produced for children and is often educational makes the industry an important factor in shaping the future of a country.

You are part of that, so take pride in your work, work on your career and live up to the high standards expected of a cultural ambassador.

## Resources

### Government/Trade Organizations:

World Intellectual Property Organization (WIPO) – [www.wipo.int](http://www.wipo.int)

Centre Nationale du Cinéma et de l'Image Animée (CNC) – [www.cnc.fr](http://www.cnc.fr)

Registres de la Cinematographie et de l'Audiovisuel (RCA) - [www.cnc-rca.fr](http://www.cnc-rca.fr)

Independent Film & Television Alliance (IFTA) – [www.ifta-online.org](http://www.ifta-online.org)

### Books:

Winder, Catherine; Dowlatabadi, Zahra; and Miller-Zarneke, Tracey, Producing Animation, CRC Press; 3rd edition (January 3, 2020)

Levy, David B., Animation Development: From Pitch to Production, Allworth; 1st edition (September 8, 2009)

Donaldson, Michael C. and Calif, Lisa A., Clearance and Copyright: Everything the Independent Filmmaker Needs to Know, Silman-James Press; 4th edition (December 15, 2014)

Litwak, Mark, Contracts for the Film and Television Industry, Silman-James Press 3rd Expanded edition (June 1, 2012)

Squire, Jason, The Movie Business Book, Routledge; 4th edition (August 3, 2016)

### Magazines:

3D World Magazine – [www.creativeblog.com/3d-world-magazine](http://www.creativeblog.com/3d-world-magazine)

Animation Magazine – [www.animationmagazine.net](http://www.animationmagazine.net)

Animation World Magazine – [www.animationworld.net](http://www.animationworld.net)

Animation World Network – [www.awn.com](http://www.awn.com)

Animation XPress India – [www.animationxpress.com](http://www.animationxpress.com)

Keyframe Magazine – [www.keyframemagazine.org](http://www.keyframemagazine.org)

## Glossary

**2D/3D Animation** – While both methods are done on computers, 2D still requires the animator to make a series of drawings to create movement while 3D uses rigs and complex software to create movement in a three-dimensional environment.

**Author** – National legislation will define who are considered the authors of an audio-visual work, but in most cases, they are the producer, the director, the screenwriter and those involved in creating the music.

**Bible/Pitch Bible/Show Bible** - A reference document containing detailed information on characters, settings, episodes, plots, and other important elements of an animated project.

**Chain of Title (COT)** – the COT is the documented collection of assignments to the producer, SPE, distributor or other entity that proves ownership or distribution rights to a work.

**Development** - refers to the time and actions necessary to move from an idea to a completed script (or screenplay) ready to be produced.

**Motion Capture (Mocap)** - The process of recording patterns of movement digitally for the purpose of animating a character in an audio-visual work.

**Option Agreement** - The instrument by which a producer controls a property for a limited amount of time before deciding to purchase the rights.

**Pre-Production** - the preparation and organization of the project before the start of production.

**Property** - the script, story, or other material a producer options or purchases to make the project.

**Reserved Rights** - those rights not specifically granted by the rights holder to a third party.

**Single Purpose Entity (SPE)** - This is the rights holding company that holds the copyrights that together comprise the Chain of Title (COT) and therefore ownership of the project.

**Stop Motion Animation** – A technique in which objects are physically manipulated in small increments between individually photographed frames so that they will appear to exhibit independent motion when the series of frames is played back.



**Storyboard** - a series of drawings and annotations based on a script or story idea.

**Story Reel/Animatic** – This is essentially a filmed series of storyboards, usually including a temporary voice track. It is a rough approximation of the finished work. It can be used by producers to show animators what they are engaged to create but can also be used to pitch animation projects to potential funders or distributors.

**Underlying Work or Underlying Material** - the material or story that forms the basis of the script.

**Voice Work** - The recording of vocal performances of the dialogue of characters or informative narrative to an audience in audio-visual works. Performers are referred to as voice actors, voice artists, dubbing artists, voice talent, voice-over artists, or voice-over talent.



[www.neoncreation.com](http://www.neoncreation.com)

Sarah Kyungwon Han-Williams, CEO of Neon Creation, Inc. in Korea generously shared some information about the company in December of 2022. The company was launched in 2010 in Gwangju CGI Center, where the local government was supporting the growth of the local animation industry by subsidizing computer equipment and render systems, as well as providing reasonable rent. The local government also supported training programs for their potential animators, and once they were hired full-time, they paid some of their labor costs for 6 months. When the studio was launched, most of their work was outsource work-for-hire but now includes fifty percent original content production.

Sarah says that they use contract forms provided by the government free of charge that reflect the needs of the animation industry for licensing original material. Neon Creation develops its own intellectual property (IP) – character designs and story concepts – and handles their own licensing for merchandise in-house.

*According to Sarah, “Since the Covid-19 pandemic started, structuring funding in Korea for original projects has been tough. Outsource work has also been reduced for smaller studios because U.S. and European producers have reduced or canceled many projects due to a lack of funding sources. Naturally, international co-production opportunities have also been reduced. However, it seems like the big, long-established projects have been mostly unaffected by the pandemic. Neon Creation wasn’t in that “bubble” so didn’t receive any benefit.*

*In recent years there have been increasing opportunities for studios or animators working in low to mid-income countries because many Korean studios outsource work to them for their original projects and even outsource client work to them to save money at certain stages of animation. Also, labor costs keep getting higher and higher in Korea, and it’s very difficult to find qualified artists in the animation field. As our expert artists age and retire, we face the challenge of generational change in the Korean animation industry. Successfully training up to meet demand will be a key factor in determining if we will maintain a high percentage of outsource work from U.S. producers or not.”*