

Suzan Dormer: Directors UK

Although film and television directors in many European countries have long been recognised as being authors of their work, directors in the UK (as you will be aware) were only identified as authors and rightsholders in 1996.

At the time directors welcomed the legislation, regarding it as a major achievement – but the celebrations were short-lived. The assumption that the newly established rights would result in financial recompense proved wrong. The only immediate effect was that their contracts suddenly became much longer, more detailed and more demanding, particularly in relation to provisions covering rights.

I'd like to quote from a fairly typical director's contract. This particular clause comes from a contract for a television production. But film contracts tend to be very similar in general content - although probably 3 or 4 times longer in length.

'The director hereby assigns the entire copyright and all other rights to the Company absolutely, such that the Company shall have the exclusive right, in perpetuity, to utilise and exploit the film (and/or parts thereof) throughout the Universe in any and all media whether now in existence or developed in the future. To such end the director assigns to the Company, free from all charges, liens and encumbrances, the entire copyright and all other rights of whatever nature throughout the Universe (where relevant by way of present assignment or future copyright) in and to all such products and contributions for the full period of copyright therein including all renewals, reversions and extensions thereof and thereafter (insofar as the director is able to grant the same) in perpetuity.'

This is just one of 8 clauses in the section of the contract entitled 'Copyright and Consents'. Other clauses relate to 'irrevocable and unconditional waiver of the benefit of any provisions of law such as 'droit moral, 'droit d'auteur' and 'droit de suite' and seemingly any other rights yet to be dreamt up.

So, in practice the rights acquired by directors in 1996 proved initially to be worthless. This was despite the fact that the Copyright and Related Rights Regulations referred to 'an unwaivable right to equitable remuneration for the rental and lending of copies of a work'. I can say quite confidently that no film or television director in the UK has ever received payment specifically for the rental or lending of copies of a film or programme they have directed. Even before the legislation was formally adopted contracts required directors to agree that the fee for their services included payment for rental and lending. We monitored the level of fees very carefully at the time and there was no indication whatsoever that fees were increased to take account of this 'unwaivable right to equitable remuneration'.

As has been pointed out on many occasions directors' contracts are individually negotiated and any director could (in theory) insist on being paid separately for rental – or claim further payment if the film was subsequently a major success in the rental market. In practice no director would be prepared to take such a stand. In a freelance area with more directors than jobs, we couldn't find anyone prepared to act as a test case in respect of the rental right and equitable remuneration.

In 2000, DPRS (the name by which Directors UK was known up until two years ago) mounted a major rights campaign – a campaign that involved nearly every television drama director in the country assigning rights in future works to DPRS on a pre-agreed date. This, in effect and in the eyes of

producers, made those directors 'unemployable'. An inability to assign rights to the producer or broadcaster was a deal breaker. The action did, however, eventually result in discussions on directors' rights and in July 2001 a Rights Agreement was concluded between DPRS and the BBC, ITV, Channel 4, Channel 5, S4C, Sky and the Producers' association, PACT. It was in many respects a ground-breaking agreement: the first all-industry agreement and an arrangement whereby DPRS received an annual payment to cover the assignment of rights under individual contracts. Broadcasters and producers had an obligation to supply information on repeat transmission and sales of programmes and DPRS was charged with devising a scheme for the distribution of payment to individual directors. This is unlike many other industry agreements covering residuals where the broadcaster is responsible for the administration of individual payments.

The scheme has worked well administratively for 8 years - but the size of the annual payment is becoming increasingly unacceptable to directors. And, I'm sure Rob Kirkham won't be surprised to hear me say this.

There are benefits to both sides of the 'lump sum' rights payment - but not when it means that the author (the directors) receives less than other authors and rightsholders. An example that I heard only last week:

One of my members was engaged to write and direct a major drama documentary. He was paid his normal rate as a director (and, as is frequently the case in documentary production, expected to write the script and commentary for no additional fee). He worked on the film for nearly a year without a break, long hours and most weekends. The film was highly successful with several awards and sold round the world and was released on DVD in many territories. The director received payment from us for these

sales and secondary uses. Two weeks ago an actor who had worked on the film for just 4 days rang him to say 'thank you' – he had just received a cheque for sales of the programme – a cheque for several times more than the director/writer received.

This story is far from unique. On every drama production directors' rights are valued less than those of the writer or actors.

In feature films the situation is even worse and only in very, very rare instances will the director receive any payment over and above the fee for directing. The vast majority of directors receive no payment for the rights they assign under individual contract – even when the film is highly successful.

One of my board members directed a highly successful film in the late 1990s. The production budget was around \$42million. Worldwide theatrical box office gross was over \$363 million (nearly nine times the cost of production). International television distribution generated further sums, as did DVD and video sales and rental worldwide. The director received a one-off payment. Unfortunately I can't name him or the movie – it would be in breach of the terms of his contract. I can't even name the actors (one of the top US female leads and one of the top British male actors) but both earned millions from this particular production.

In the UK directors don't benefit from the strong and long-established collective bargaining position of directors in the United States (a bargaining position that would be impossible to establish today). They don't benefit from European traditions that ensure that authors receive 'fair' remuneration for their rights. We believe that there is a need for legislation to ensure that rights

of all authors are adequately and fairly compensated for. There are models in other European countries that could and should be emulated.

We were asked in the brief for this meeting to consider possible areas where research would be beneficial. A comparison of the value of the rights of the various audiovisual rightsholders in the UK and further comparison between audiovisual rightsholders in UK and the rest of Europe would, we believe, be useful.

Directors want their programmes and film to be seen. They appreciate that producers and distributors need their rights to be able to fully exploit their work – but they don't feel they should be required to give away their rights for little or no payment.