

Chain of Title Example

EXAMPLE

Chain of Title

[INSERT NAME OF PRODUCTION](the “Production”)
[insert name of producer or production company if incorporated]
(the “Producer”)
As of [INSERT DATE]

- Option Agreement between Author (Name) and Producer (Name) made as of the 31st day of December, 1999 for Documentary Film Rights to the book Title (Literary Property).
- Option on Literary Property extended to May, 2001.
- Writer’s Agreement between Producer (Name) and Writer (Name) made as of the 28th day of July, 2001;
- Director’s Agreement between Producer (Name) and Director (Name) made of the 30th day of January, 2003;

COPYRIGHT issues arise in every phase of the film-making process, from the formulation of the concept of the film to its distribution. Consequently, it is in a film-maker’s best interest to ensure that it has obtained the requisite licences and permissions for all copyright protected material used in a film.

Chain of title documentation refers to a series of documents or agreements that establish proprietary rights in a film and all its parts. This entails not only ensuring the protection of all original works used in the film, but also establishing that there is appropriate documentation in relation to rights assigned or licensed by third parties to the film-maker.

Chain of title documentation for instance, includes:

1. synchronisation licences (a licence to use music in the film) from the relevant collective management society or owners of the copyright protected work;
2. trademark licences;

3. designs rights licences; and

4. talent agreements, including agreements with scriptwriters, actors and actresses, set designers, illustrators, sketch artists, graphic designers, costume designers.

Below I have highlighted some of the documentation that may be required in the Development and Pre-Production phases of film-making.

This is where it all begins. The filmmaker must find or create a story on which to base the film. This story may come from an existing book, play or could be based on an original screenplay. In any event, the filmmaker will need to acquire the rights to the story. This is usually done by way of an option agreement. This is effectively an agreement that gives the film-maker the option to purchase a screenplay (and if the screenplay is for example based on a book, the rights to that underlying material) for a specific period of time, after which the filmmaker purchases all the rights to the work for an agreed price.

In acquiring these rights, as well as others that may arise in the making of a film, the film-maker should take every possible step to satisfy himself as to who the true owner of the material in question is. As there is no copyright registration system in Jamaica, where the works are unpublished or the copyright claims are not clearly set out, this will be a tad more difficult than in other jurisdictions as the film-maker would be unable to conduct a copyright search. However, he should for instance ask that the author of a screenplay to produce evidence of his copyright. The film-maker should also ensure that the agreement by which he acquires the rights includes a warranty from the author that he is the true owner and an indemnity that he will be liable for any loss the film-maker may incur in the event of a breach of this warranty.

Whilst generally there is no copyright in the title of a film, a film-maker may also need to obtain a clearance for the proposed title. For example, where the title includes the name of a place, music band or product he should do a search of the trademarks registry at the Jamaica Intellectual Property Office (JIPO) to ascertain whether the name is trademark protected. This is a pretty simple process. It will also be necessary to do searches of the registry in other markets in which the film will be distributed. If the name is reg-

istered, then the film-maker will need to enter into a licensing agreement with the trademark owner for use of the name.

Proper clearance will also be required to use a trademark protected name at any juncture in a film. In 2005, Warner Bros. offered CAD\$5,000 (later CAD\$50,000) to the Canadian folk band the Wyrd Sisters for the rights to use their name in the film version of Harry Potter and the Goblet of Fire. Rowling had written a scene in the novel in which a band called the Weird Sisters appeared at a school dance, and the group owned the rights to the name in Canada. The group declined the offer, sued Warner Bros and the parties eventually settled on terms which have been sealed.

At this stage, the film-maker determines the talent that will be used in the film, such as the directors, actors and additional writers. This necessitates entering into a number of employment agreements. Let us look for example at the employment agreement with an actor. For chain of title purposes it is important that this agreement includes a legal release which ensures that the actors consent to their performance being used. This may be contained in a Grant of Rights clause granting and transferring to the film-maker:

- * sole and exclusive ownership, forever and throughout the world of production, performance and exhibition in any manner or method,
- * each and every right and interest of any kind,
- * whether such results consist of literary, dramatic or musical works in all results, product and proceeds of the services rendered.

Clauses of this nature should appear in some form in all talent employment agreements, including costume and set design agreements.

In 2008 the UK court presided over the case of Lucasfilm Ltd and others v Ainsworth and others. Lucasfilm Ltd. ("Lucasfilm") is the film-maker of the popular Star Wars movies. The dispute in the case involved a claim by Lucasfilm against Mr Ainsworth, who was engaged to make the helmets worn in the Star Wars films. After the success of the film, Mr Ainsworth reproduced replicas of various props used in the first movie. Mr Ainsworth claimed that he was the designer of the props and the helmets and that his instructions from Lucasfilm were general in nature, so the final products were essentially reflections of his creativity and ideas.

The UK court held that the copyright in the design of the helmets belonged to Lucasfilm, as Lucasfilm was able to show that detailed drawings were presented to Mr Ainsworth from which he had worked to produce the finished product. In any event, if Mr Ainsworth had acquired any copyright in the work that he produced he was under an obligation to assign all his interests to Lucasfilm.

Lesson - If there had been appropriate legal documentation between Lucasfilm and Mr Ainsworth, litigation would either not have been necessary or would have been much shorter and therefore much cheaper.

Conclusion

Creating, protecting and clearing copyright is the very essence of the property rights associated with film-making. Though I have only begun to touch upon the various form of Chain of Title Documentation required for a film, we hope that filmmakers reading this article will gain a better appreciation of how Chain of Title Documentation works and how valuable it is.

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