

NEW MEDIA PRODUCTION: A FEW CAUTIONARY TALES

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INTRODUCTION

- New media works are multimedia
- The legal issues cross disciplines including:
 - publishing
 - entertainment law
 - intellectual property rights (copyright, patent, trade- marks, titles, torts (right of privacy, right of publicity, defamation and unfair competition))
 - contract law
- Nothing is simple

COPYRIGHT

- Loosely the right to copy, reproduce and modify.
- Is the work subject to copyright protection?
- If so, you need permission to use it.
- Make sure the person giving permission has the necessary rights:
 - Copyright may be jointly held.
 - Interests may have been transferred to third parties.
 - Ownership may be unclear.

COPYRIGHT (cont'd)

Fox TV's "Boot Camp"

- Military theme reality series
- Characters
 - Struggle with challenges
 - Talk to cameramen
 - Vote others off the show
- Was pitched to CBS
- Exec Producer was producer of original Survivor
- The lawsuit:
 - Copyright infringement
 - Divulging trade secrets

COPYRIGHT (cont'd)

Barbara Taylor Bradford's "A Woman of Substance"

- Aka "Karishma, the Miracles of Destiny"
- Fanmail from India – thrilled with the series!
- In interview, producer said:
 - Novel was the template
 - He bought DVD of western adaptation for star to watch
- Preliminary injunction issued after first episode aired
- Series suspended pending trial

COPYRIGHT (cont'd)

How much can you copy?

- Gilbert O'Sullivan case:
 - 3 words (alone again naturally) and 8 bars were used
 - Found to infringe
- If it's important to you, there must be a reason
- Get a license

MORAL RIGHTS

- Statutory right to:
 - Protect integrity of work
 - Be identified (or not) as author
- British author suing DreamWorks
- He wrote “Escape from Cold Ditch”
- Lawsuit:
 - Attribution of “Chicken Run” to animators violates his moral rights

TITLES & NAMES

- Titles can be protected under unfair competition and trade-mark laws.
- Prevents mislabeling so as to cause confusion as to origin.
- Conduct a title search to determine if there are any conflicts.
- No errors & omissions coverage without a title search.

TITLES (cont'd)

Dreamwerks v. DreamWorks

- Dreamwerks operated StarTrek conventions since 1984.
- A company "hardly anyone had heard of" but its name was trademarked.
- Irrelevant that DreamWorks became famous.
- Ensure that your name (company or project) does not infringe.

CHARACTERS

- Does the character:
 - Infringe on someone else's copyrighted character?
 - Resemble actual people and is the portrayal defamatory or invasive?
- Is there trade-mark protection?

CHARACTERS (cont'd)

- Teletubbies v. Wal-Mart
 - Wal-Mart sold Bubbly Chubbies which were "obvious, studied knock-offs of the Teletubbies Characters"
 - Case settled when Wal-Mart:
 - Took dolls off the shelves
 - Provided plaintiff with information on manufacture and distribution
 - Lawsuit continued against manufacturer

CHARACTERS (cont'd)

- Aqua's "Barbie Girl" song:
 - "I'm a Barbie Girl, in my Barbie World
Life in Plastic, its fantastic
...
I'm a blonde bimbo girl in a fantasy world
Dress me up, make it tight, I'm your dolly"
- Ad ran during morning cartoons
- MCA tried to sell in toy stores
- Packaged in electric pink, like Barbie
- 1.4 million sold
- No trade-mark infringement
- "The parties are advised to chill"

DEFAMATION

- A defamatory statement harms the reputation of another so as to lower him in the opinion of the community or to deter others from associating or dealing with him.
- Several important defenses and privileges, including truth.
- When portraying living individuals.
 - Keep carefully annotated scripts.
 - Obtain releases whenever possible.
 - Change the names and the setting.
 - A disclaimer may not be enough.

PRIVACY RIGHTS

- The right to live one's life in seclusion, without being subjected to unwarranted and undesired publicity
- Supreme Court of Canada held that publication of photo of woman sitting on stairs of a public building violated her right to privacy
- Differs from right of publicity

RIGHT OF PUBLICITY

- Right to control the use of one's image, name, and likeness in a commercial context.
- Obtain from every person appearing a signed release giving the right to use name, voice, likeness and identity in all media worldwide in perpetuity.
- Johnny Carson and the "Here's Johnny!" case.

USING OTHER WORKS

- Need licenses or assignments to incorporate pre-existing works, but from whom?
- The ownership of such rights may be unclear - contracts may be silent, unclear or unavailable.
- "Owners" may not hold all the rights necessary to exploit as multimedia programs, and you can't buy what isn't owned.
- May meet refusal – people want to be paid.
- Get representations and indemnifications and waiver of moral rights.

CLEARANCE PROCEDURES

- Errors & omissions application makes a very good checklist.
- When should you put the policy into effect?
 - Only covers claims arising AFTER effective date.
- Contact your insurance agent and lawyer early.
- The lawyer should read the script early in development.
- Ask whether anyone has been involved with a similar concept.
- Where did the rights come from?

CLEARANCE PROCEDURES (cont'd)

- Copyright report on any rights you are buying
- Get warranties and indemnifications
- Get permission for most uses of trademarks and logos
- Don't use identifiable props that are protected by copyright
- Get a written consent from everyone on screen
- Get a title availability search

CLEARANCE PROCEDURES (cont'd)

- **Some things to avoid:**
 - real names of people and organizations
 - identifying someone by a specific job or involvement in actual events
 - real addresses
 - real phone, credit card or other numbers

CONCLUSION

- Document everything
- Be able to find documents for everything
- Do the paperwork early and do it right
- Assume nothing