

Protection of the Intellectual Property in the Film Industry: The Irish case.

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In October 2000 the Minister for Arts, Heritage, Gaeltacht and the Islands Síle de Valera, delivered a speech on the Irish Film Board (Amendment) Bill, 2000 in Seanad Éireann.

The minister noted that the development of Irish business based on intellectual property was key to the international trade promotion and marketing of Ireland. The minister suggested that Irish filmmakers with intellectual property to be exploited, should carefully develop a detailed business plan that would allow them to move beyond a 'subsistence' mode of development to a more ambitious model where they maintained a slate of in-production titles that would result in a library of film product to be sold internationally. The Irish Film Board was identified as the key state agency with responsibility for the implementation of Government policy on film.

Up to this time the Film Board concentrated on attracting large budget international film projects to Ireland with its wide variety of locations, low-cost / high-skilled workforce and reasonably predictable weather patterns. Indigenous product was not developed to any significant degree and there was little product available to be sold internationally.

Today, Irish filmmakers are developing projects that have greater international appeal and which are more suited to new media distribution systems. The Irish film industry is consistently well represented at the major film festivals including the Cannes Film Festival and the Toronto International Film Festival. Therefore, it is time to focus on the exploitation and protection of the intellectual property inherent in these Irish products.

This paper looks at how the Irish film industry is protecting the intellectual property of local filmmakers through professional advice services and the implementation of copyright protection technologies. Industry practitioners from several companies that are extensively involved in the area of new media broadcasting in Ireland were consulted. These include, Mark Byrne (Irish Film Board), Stephen Murnane (Piranha Bar), Graeme Kelly (DV4) and Kevin Quinn (Servecast).

Mark Byrne joined the Irish Film Board after working for several years as a solicitor involved in the filmmaking industry in Ireland and the UK. Mark currently advises filmmakers on intellectual property issues related to film production loan applications to the Film Board. Stephen Murnane, Business Development Manager at Piranha Bar has worked on a variety of DVD titles and film productions that have utilised online broadcast technologies. Kevin Quinn is the Servecast Founder and Head of Sports and Media. Graeme Kelly is a Founder and Director of DV4.

The Irish Film Board

The Irish Film Board 'provides loans and equity investment to independent Irish film-makers to assist in the development and production of Irish films'.

The Film Board annually funds a variety of features, shorts and animations. The funds take the form of repayable loans to filmmakers, which leave the producer with the rights needed to exploit the film product and make money. The loan is repaid to the Film Board when the film is released.

Before loans are issued the Film Board will actively work to ensure that all intellectual property rights related to the film project are in order. A legal advisor will ensure that the producer has properly secured the rights to a script by way of straight purchase or script 'option'. To assist film producers, the Film Board may provide sample writers' agreements, assignment of copyright and waiver of moral rights documentation. The Film Board has drafted a minimum contract requirements document that can be used as a checklist for producers who are hoping to purchase a script and develop it into a completed film. This document sets out the main copyright issues including underlying rights agreements, the

writer's agreement, the director's agreement, the performer's agreement and the crew agreement.

On receipt of film loan applications the Film Board expects that the producer will have everything in order and will point out which areas of copyright that need further attention. The Board does not give formal advice to filmmakers on the legal framework of intellectual property law in Ireland but will identify shortcomings in the producers work to secure adequate rights to develop a film project correctly. This includes making provision for the efficient exploitation of rights including securing the rights to digital distribution via webcast, wireless, download etc. Recently, the Irish short film titled 'Joyriders', directed by Rebecca Daly, featured a popular song by UK band Catalonia. The clearance rights to the use of the song only extended to film festivals and did not include television or web related distribution media. Following consultation with the Film Board the rights to use the song in the film were quickly negotiated to clear the film for all distribution media (including wireless), except download. The Film Board recommends that the producers of short films work with local musicians and composers to develop original musical scores to avoid rights issues.

The Film Board works with many filmmakers who option a script for development. In this case, the producer is usually unable to secure the funding to buy the rights outright, but wishes to option the script for a period of time to allow them to develop the project, shoot the film, market and distribute it. Producers are advised to exercise an 'agreement to buy' which ensures that the writer will still sell them the script at the same price after the producer has completed the development work. This is particularly important, as it is the development work that will actually make the script a more attractive property and raise its value. Without such an agreement, the writer is free to sell the script on to the highest bidder despite the previous option agreement arranged with the producer. Therefore the Film Board advises that scripts should not be bought for very low fees e.g. €100, as this will lead to conflict if the film performs well and the writer feels they were underpaid. It is better to option the script for a small fee and agree to buy the script within a period of time if it is being developed

successfully and looks likely to go into production. At this stage the writer can be paid a fee more in line with the true value of the work.

In all cases the Film Board appoints a distributor to sell content developed through their loan agreements around the world. Therefore it is very important that all rights issues are cleared up for distribution via all media.

Industry Training - FÁS / Screen Training Ireland

FÁS / Screen Training Ireland is a state funded training body which receives funding from FÁS - the Irish National Training and Employment Authority and The Irish Film Board.

According to Grainne Bennett, Project Advisor, FÁS / STI does not intend to develop training programmes dealing with new distribution technologies as they are not aware of any significant potential revenue streams in this area for Irish filmmakers. FÁS / STI no longer sees DVD production as a new technology and does not deliver training in this area either.

Courses dealing with the protection of intellectual property in the film industry take the form of questions and answers sessions with industry experts.

DVD Authoring - Piranha Bar

Piranha Bar offers a variety of digital media services in the area of 2D/3D animation and motion graphics.

Piranha Bar has developed several DVDs in 2006 including the historical Irish film 'Irish Destiny' (1926) directed by George Dewhurst. The company mainly works on content by Irish producers that have not been tied into major deals with larger companies. While the production of DVDs is down this year following a sluggish 2005, Piranha Bar intends to secure significant market share in Ireland in 2006 including the encoding and authoring of a significant amount of sports material.

Piranha Bar provides DVD authoring and encoding of source materials. The company offers Irish copyright holders the opportunity to protect their DVDs from piracy in two ways, Macrovision ACP and Macrovision RipGuard.

DVD content can be copied through the analogue output from the DVD player. Macrovision ACP is added by the DVD replicator following content authoring. Macrovision ACP technology is supported via extensive licensing with manufacturers worldwide. Working with Piranha Bar, the rights owner directs the replicator to set Macrovision protection control during authoring. The content protection does not effect normal viewing of content but will distort or prevent duplicated content playback.

Pc-based DeCSS ripper software can be used to make near perfect copies of DVD content. The copied content can be burned onto recordable DVDs or shared online. Piranha Bar can also flag content for Macrovision RipGuard protection. RipGuard applies a Unique Digital Framework to each DVD title that prevents ripping. RipGuard is applied when titles are shipped from author to replicator.

Webcasting - Servecast

Servecast has been involved in the development of new media sportscasting solutions since 1998. The company provides commercial consultancy, streaming services (via Global Data Network), Digital Rights Management, Customer Relationship Management, billing services and syndication services. Servecast's partnership network includes broadcasters, clubs and sporting bodies. Their webcast services include UK Premiership Football; Champions league soccer; horseracing and rugby including the Six Nations Championship.

Servecast provides geotargeting services which enable rights holders to sell distribution rights in specific regions. The system identifies the viewer location by a combination of IP address (logged via the Internet Service Provider) and credit card details. This allows a content producer to sell the distribution rights to their content for broadcast to specific geographical regions without infringing on the copyright related to other regions. Recent content delivered using Servecast includes international Cricket broadcast only to North American audiences and Rugby broadcast only to the UK and Ireland. The Ryder Cup 2006 took place in Ireland and Servecast distributed the coverage for Sky to the UK and Ireland only. Servecast also broadcast events such as the entertainment pageant show 'The Rose of Tralee' and various

film content. The Irish national broadcaster Radio Telefís Éireann use Servecast to broadcast live content when the two RTE television channels RTE 1 and Network 2 are already broadcasting important live events and a third 'live' channel is required.

Servecast also provide DRM encryption of content for download and viewing. Recent content includes 'Most Haunted' and 'Grey's Anatomy' for Fox TV Europe. Servecast encrypted content that can be downloaded by viewers is encoded at a higher bit rate and is higher quality. Servecast broadcast Champions League Football via Setanta Sports. This is pay-per-view and there are no advertising revenues. Setanta Sports also digitally broadcast schools rugby and other sports content that is not available on national television.

Interactive TV - DV4

DV4 specialises in the encoding and streaming of digital media content and DVD authoring. DV4 provide digitisation and encoding services for DVD and interactive TV. They use 'forward lock' DRM with Irish mobile phone operator Vodafone content to prevent material downloaded to a mobile phone from being forwarded to another mobile. Typical content includes entertainment products such as music videos, MTV content, trailers provided by film distributors such as Warner Brothers.

DV4 is an approved encoding partner for Apple's iTunes. For iTunes, DV4 encodes music video content using FairPlay, the digital rights management technology developed by Apple. FairPlay-protected files are MP4 files with an encrypted audio stream.

For IPTV (Internet Protocol Television) DV4 uses Windows Media proprietary DRM system to protect content from piracy.

Conclusion

Intellectual property in Ireland is primarily protected by European legislation. The Film Board actively advises filmmakers of their responsibilities and best practice procedures to ensure a smooth release of their product into the international marketplace.

Recently Slysoft.com released CloneDVD in Ireland to allow DVD content to be converted to a format that will play on portable devices. This represents another step toward increasing copyright infringement that will undermine attempts by Irish filmmakers to generate revenues. Companies such as Piranha Bar and DV4 offer a variety of anti-piracy protection methods to protect both DVD and new media broadcast content. Servecast also offer a sophisticated mechanism for targeting content to specific geographical areas where distribution rights have been agreed.

Irish companies are significantly involved in the application of copyright protection technologies, however the legal protections are dictated by broader Eu legislation. Further training is required within the film industry to ensure that Irish filmmakers are aware of their rights, the steps that need to be taken to legally protect their rights, and what technologies are available to secure their products in international markets in a cost effective manner.

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