



INTERNATIONAL ASSOCIATION  
OF YOUNG LAWYERS



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**Half-Year November Conference  
Girona, 15 - 18 November 2017**



# **From the books to the cinemas: The universe of IP rights cascade in the filming industry**

**Girona**

**November 16, 2017**





## Speakers

**Manuela Cavallo**, Portolano Cavallo, Italy – Moderator

**Roberto Hayer**, REBER, Switzerland

**Aideen Burke**, LK Shields, Ireland

**Emmanuel Verraes**, FLINN, Belgium



## Agenda:

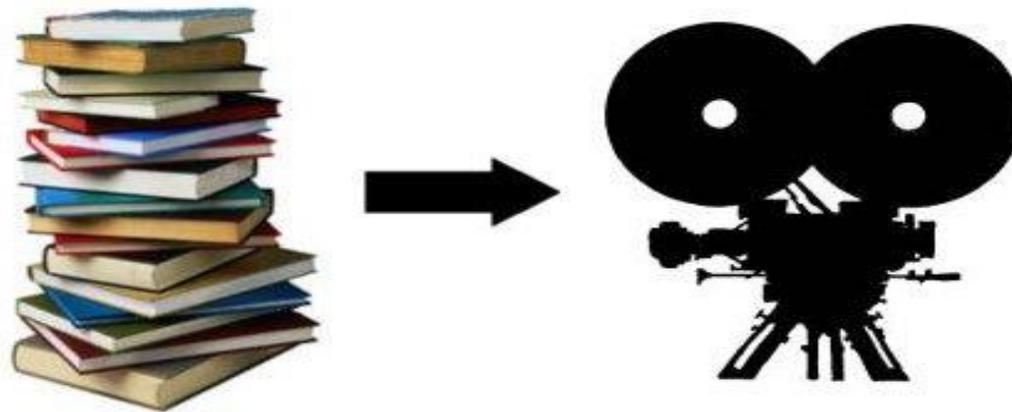
- Chain of title
- Due Diligence/Copyright Searches
- Focus on underlying materials
- Option agreement and acquisition agreement
- Case Studies

In reality we talk about this.....

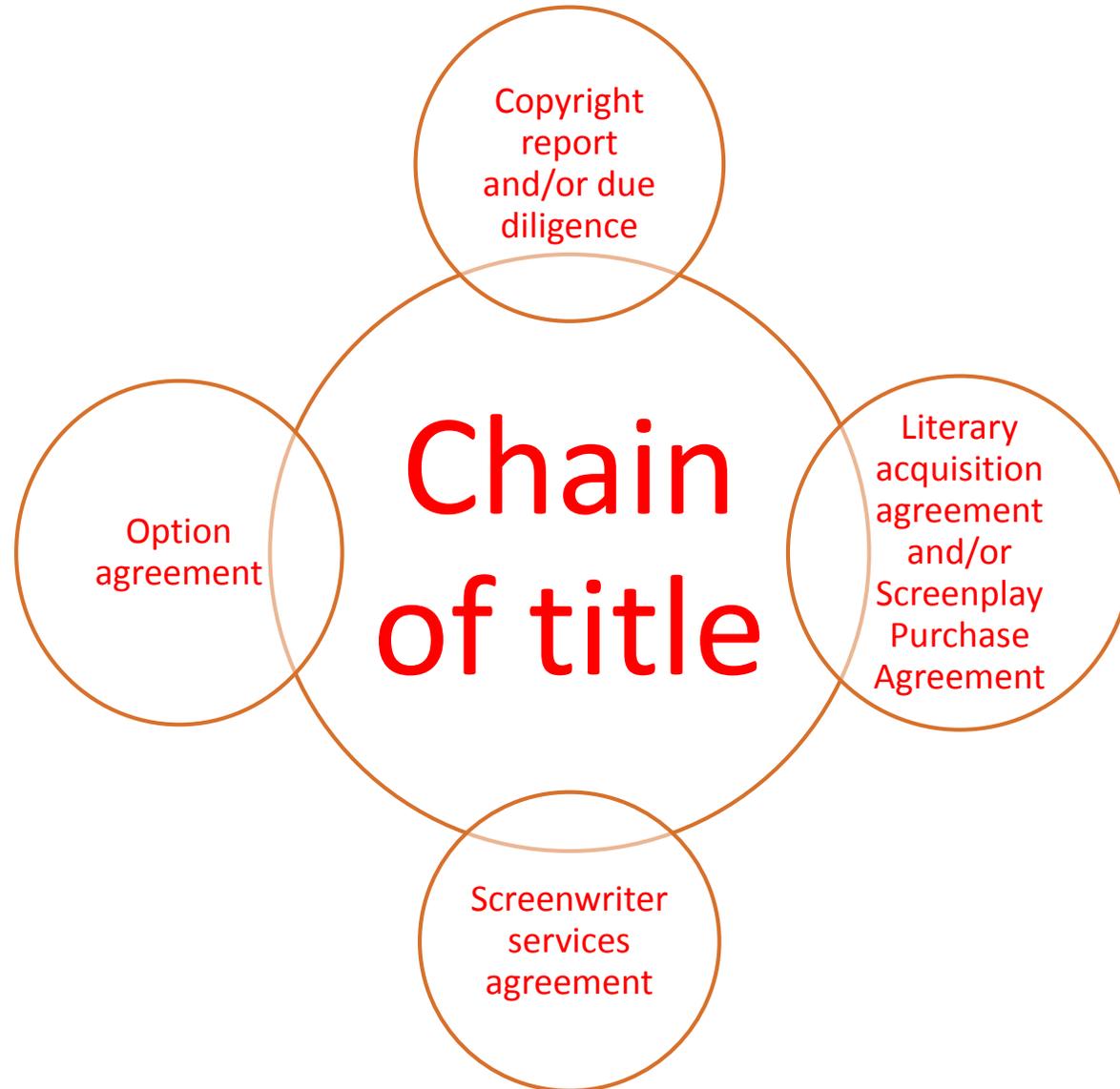


# Chain of title

“Chain” of documents that demonstrates the producer’s ownership rights in the film from the underlying materials works up to any other intellectual property rights (e.g. actor deals, music clearances, trademarks, etc.).



# Chain of title includes among others



# Due diligence over materials

- Copyright searches: due diligence with the competent copyright office (if available) to ensure that the seller is the sole and exclusive owner of the literary material.
- Other due diligence activities depending on the circumstances:
  - ✓ Option agreements?
  - ✓ Previous screenplays?
  - ✓ other copyright materials?

# Due diligence over materials

In the area of cartoons and musicals etc. searches may include extensive research on all initial material such as drawings, music score and lyrics etc. including:

- the identification of all persons involved
- chronology of development from the first “raw” character to the final character or of the score etc.



**NO COPYRIGHT !**

# Option agreement of the underlying materials (books, comics, article, play...)

- **exclusive** right to develop materials (treatments and screenplay) and buy the literary property during a defined period of time for a certain project.
- **European vs. US approach:**
  - ✓ work of co-authorship vs work for hire
  - ✓ importance of collective rights management in EU
  - ✓ importance of guilds in US
  - ✓ following Digital Single Market Regulation in EU, online broadcast will be subject to compulsory license

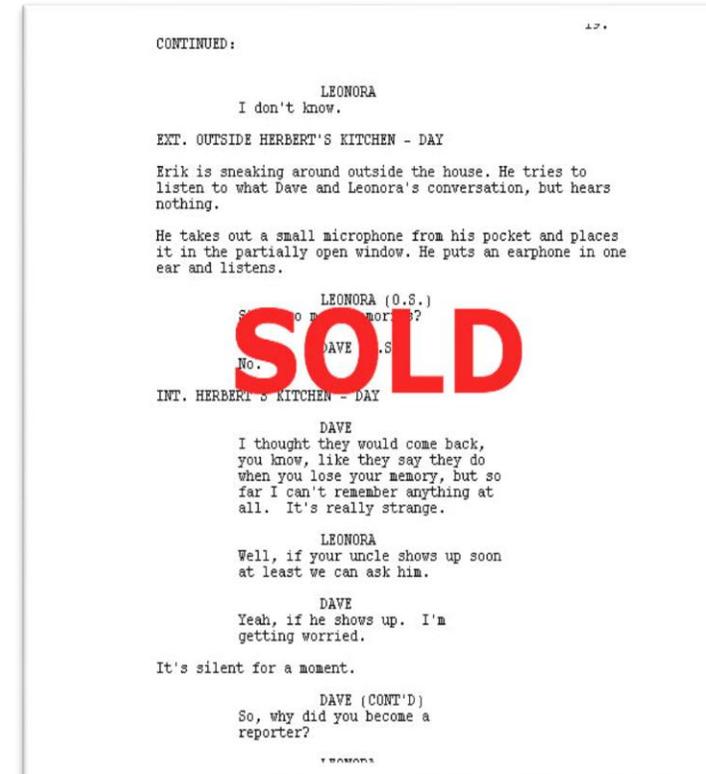


# Key points of option agreement:

- Simultaneous negotiation of the option agreement and the acquisition of the literary material.
- Exercise of the option by purchasing the literary property during the option period.
- Reversion to the owner of the right to sell the literary property when option is not exercised.
- Perpetuity
- Fees

# Literary property acquisition agreement:

The contract that transfers to the producer the agreed rights to the purchased literary material.



# Rights Granted

- Right to make changes
- Motion picture rights
- Television rights
- Merchandising rights
- Trademarks
- Title and naming rights
- Right to derivative works (e.g. sequels, remakes, video games)
- Right of publicity

## Limitations:

- Medium
- Duration
- Geography

# Rights reserved

Often the writer keeps the following:

- ✓ Book rights
- ✓ Radio rights
- ✓ Comic book rights
- ✓ Stage rights

And: Some rights are inalienable:

- ✓ Personality rights of author, and possibly of characters (biographies etc.) and of music authors etc.

# Further terms on reserved rights

## Holdback period:

- during which the owner cannot exploit the reserved rights

## Right to first negotiation:

- Copyright owner's obligation to first negotiate the sale or license of the reserved copyrights with the producer

## Right to last refusal:

- Copyright owner must first offer those same deal terms to the producer.

# Do you have ALL rights you need to exploit the film?

- Right to make the audiovisual work based on the property, in all media throughout the universe in perpetuity
- Right to promote, publicize, advertise, distribute and otherwise exploit any version of the literary property that producer is allowed to make
- Right to make TV programs based on the property and/or to adapt into TV programs
- Right to create and market merchandise based on the film adaption of the property
- Further exploitation rights (depending on new technology)

# Case – Life Story Rights

## It's My Life!



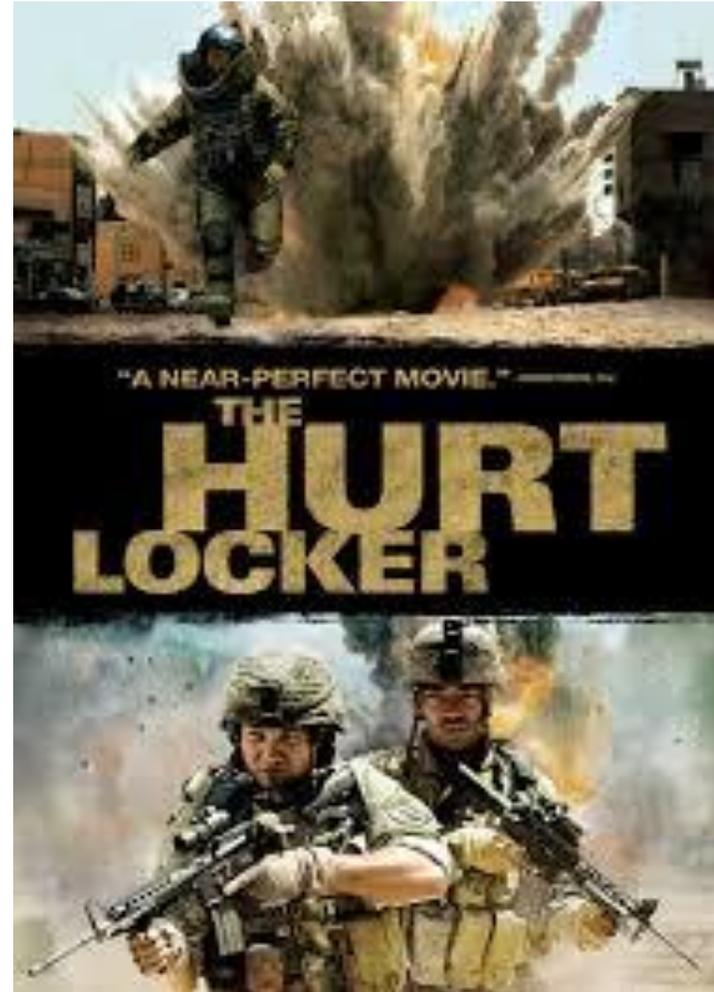
# Case – Life Story Rights

- ✓ ‘Life Rights’ – a myth; no IP in life story *per se*
- ✓ No requirement to acquire ‘life rights’ but there are advantages to doing so:
  - Reduced risk of claim for defamation or breach of privacy
  - E&O insurance may be more easily obtained
  - Enhanced authenticity/commercial appeal
  - Easier access to valuable materials/information or other underlying works (ie sound recordings/compositions)
  - Ability to reduce risk of competing works being made
- ✓ Biographies and Autobiographies – when underlying rights might be advisable
- ✓ In any event, trade mark searches are essential

# Case study – client acquiring ‘life rights’ and book rights

- ✓ Straight-out acquisition of Life Rights and Book Rights
- ✓ Specific features of ‘life rights’ element of agreement:
  - Right to make film based on life story and right to use name, likeness, biography
  - Right of access to source material; notes, journals, etc.
  - Assistance with obtaining clearances from other individuals
  - Obligation to provide consultations services to filmmaker, scriptwriter etc
  - Warranty re pre-existing works
  - Undertaking not to work with any other filmmaker
  - Exclusive right to use published biography
- ✓ Other considerations: Libel reads of screenplays

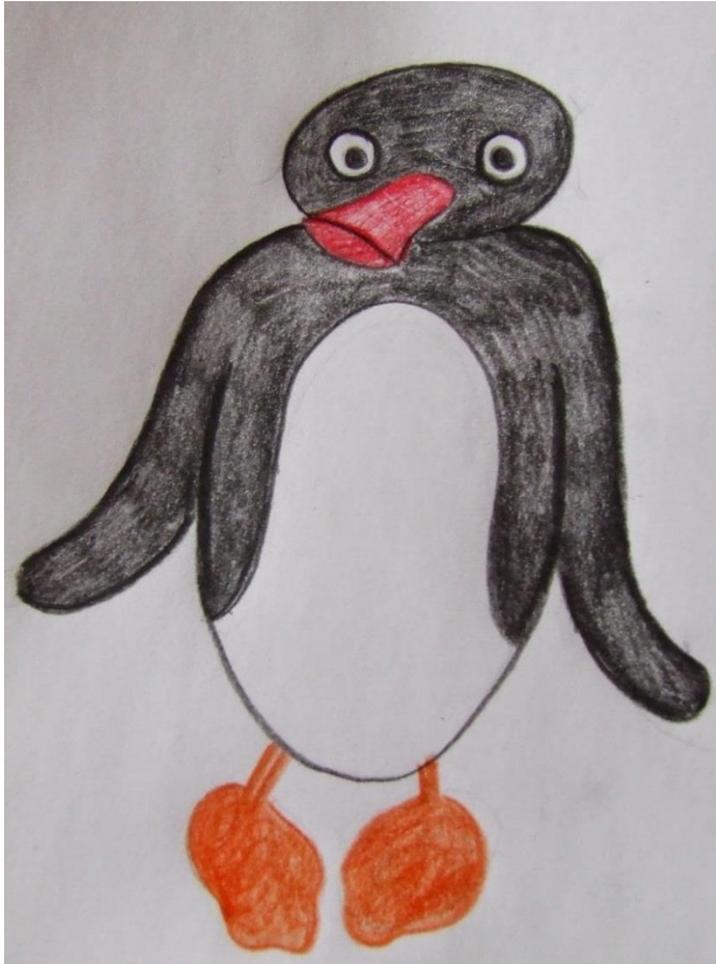
# Famous Case – Life Story Rights



# Case Study – Purchasing Cartoon Rights



# Case Study– Purchasing Cartoon Rights



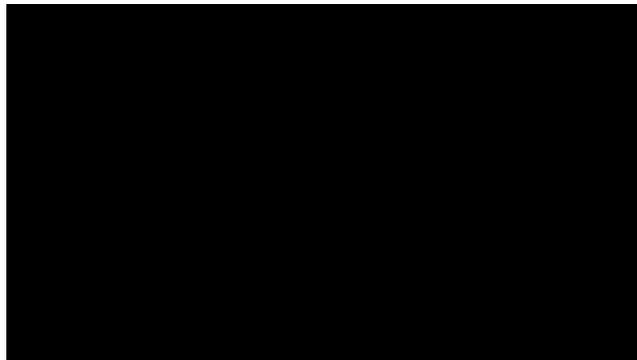
# Case Study – Purchasing Cartoon Rights



# Case Study – Purchasing Cartoon Rights



# Case Study – Purchasing Cartoon Rights



# Case Study – Books in the public domain

- ✓ **Derivative work** is one that is based on, or adapted from, a preexisting work
- ✓ Copyright protection for film #1 produced based on the book
- ✓ Protection is limited to film #1
- ✓ Film #2 can be produced by another production company based on the books in the public domain?
- ✓ What happens if I buy remake rights from film #1? Am I protected? And to what extent?
- ✓ Characters
- ✓ Title

# Case Study – Books in the public domain

1. **The Adventures of Huck Finn** by Mark Twain (1885)

*Revenue = \$24.1 million (1993 film)*

2. **The Adventures of Tom Sawyer** by Mark Twain (1876)

*Revenue = \$23.9 million (1995 film Tom and Huck)*

3. **Aladdin** from a folk tale in One Thousand and One Nights (1706)

*Revenue = \$504 million (1992)*

4. **Alice in Wonderland** by Lewis Carroll (1865)

*Revenue = \$1.02 billion (2010 version) + \$?? original revenue unknown (1951)*

13. **Frozen** from Hans Christian Anderson's Ice Queen (1845)

*Revenue = \$1.651 billion (2013 film)*

14. **Hercules** from the Greek myth  
*Revenue = \$252.7 million (1997 film only)*

24. **Pinocchio** by Carlo Collodi (1883)  
*Revenue = \$84.3 million (1940 – 39th highest grossing box office gross as adjusted for inflation)*

25. **Pocahontas** from the life and legend of Pocahontas  
*Revenue = \$346 million (1995)*

## Top 50 Disney Movies Based On The Public Domain\*

\*Forbes -

<https://www.forbes.com/sites/derekkhanna/2014/02/03/50-disney-movies-based-on-the-public-domain/#6d120c3e329c>

# Case Study – Different cuts of the film can correspond to different films

Apocalypse Now



# Ready to shoot!

