**ANNEX 7**

**MAKING A LIVING IN THE FILM INDUSTRY**

**CASE STUDY ANSWER KEY**

|  |
| --- |
| MODULE I |

**CASE STUDY:**

1. Who owns the copyright to *Man of Tai Chi*?

* Since this film was made as a work-for-hire, the copyright is owned by the Single Purpose Entity established by the filmmakers. Ownership of the copyright in this case is subject to the terms of ownership of that SPE – the owners of the SPE are the owners of the copyright subject to any assignment of those rights to third parties that may have been made.

1. What are the advantages to working with Universal on the distribution?

* A Major Studio has much more power in the marketplace than other entities, usually including the top local distributors.

1. What are the advantages to working with China Film Group and Village Roadshow?

* Both are the top distributors in their respective territories and therefore have significant power to access the top cinemas and distribution channels for other rights (DVD, TV, VOD). In the case of CFG, it is necessary to go through them to access the Chinese market.

1. What are the disadvantages to each?

* All are big companies that release a large number of films. They are likely to focus on the films that they perceive as potentially the most profitable and those that don’t require special handling. The producers probably had a difficult time influencing their activities and if there was a perception that the film would not be profitable, it is possible that it did not receive the attention that it might have from a smaller distributor.

1. How does this type of distribution vary from standard Major Studio distribution?

* Most films from Major Studios are very wide releases that do not rely on festival play. This film required targeted marketing to a narrower potential audience.

1. How does it vary from standard independent distribution?

* The budget of the film was higher than a usual independent film and the amount of money paid by each distributor was very high relative to the potential revenues. The distributors were also usually co-producers or essentially investors in the film. Universal’s involvement and the involvement of Keanu Reeves (star and director) meant that it would be treated as a major film by the press.

1. What do you think motivated the various parties to participate in this production?
   1. Keanu Reeves?

* Working with his Kung-Fu friends on a film he was able to direct with a significant budget.
  1. Universal?
* Potential profits from a commercial Kung-Fu movie starring the star of the Matrix movies. Potential benefits from developing their relationship with Keanu – letting him direct a big movie.
  1. Dalian Wanda?
* Chance to work with a Major Studio on a film with a U.S. movie star. Chinese companies are working hard to establish their credibility in the worldwide film industry and this would help. They were also hoping for significant profits from the growing Chinese market.
  1. China Film Group?
* Essentially the same reasons as Dalian Wanda.
  1. Village Roadshow?
* They were involved in the Matrix films and were hoping to continue that success on a smaller budget but with many of the same team.
  1. The Weinstein Company?
* Potential distribution profits.

1. What do you think could have been done differently to make this film a success?

* There really isn’t a specific answer to this question – it will hopefully inspire discussion.

|  |
| --- |
| MODULE II |

**CASE STUDY:**

1. Why does Colombia promote the film industry?

* Mostly for economic reasons but also tourism promotion and culture.

1. What economic benefit do you think they expect to derive from these activities?

* Employment
* Money spent locally on equipment, hotels, food, travel
* Development of infrastructure
* Promotion of tourism

1. What cultural benefits do you think they expect to derive from these activities?

* Introducing the world to Colombian culture including historical and contemporary themes.

1. In what ways do you governments should be involved in the film industry?

* This is more of a thought question. Most participants may want direct financial support while others might want distribution/export support or for the government to help bring foreign productions to their country.

1. What benefits have you received from your local government related to the film industry?

* Will vary by location.

1. What criteria should governments use to decide whether or not to support a particular film activity?

* Generally the government needs to consider the people they are working with (make sure they are reliable and have good reputations); they need to be able to confirm the economic or other benefits that conform to the support program (money spent locally, employing local talent, etc.); they need to have the financial or production expertise to do this research and make these decisions.

1. Do you understand what benefits the government offers to filmmakers?

* This will vary by participant.

1. Does the government offer any distribution assistance? Inside the country? For export?

* Varies by location.

|  |
| --- |
| MODULE III |

**CASE STUDY 1:**

1. Which copyrighted elements need to be licensed to make this film?

* Factual publications (magazine articles – the underlying basis for the story told in the movie)
* A documentary film (which included research and other information vital to the story told in the movie);
* The real-life story of a living person (sometimes called “life rights”).

1. What paperwork would the producer need to provide in order to confirm that they controlled the necessary rights?

* Contracts with the original publishers of the magazine article as well as the author of the article (unless the author had given the right to make a film from the articles to the publisher which is unlikely; a contract with the documentary film makers giving them rights to the material in their documentary (and to the extent necessary, confirmation of their right to grant rights to any underlying material used in the documentary); and a contract with the journalist granting the producers her consent to proceed with an adaptation of the material based on her life.

1. What limitations are there on the rights acquired?

* It is likely that the rights are limited in term and limited to the creation of just the one film with possibly an option on making sequels, remakes or series based on the material.

1. If the project is made and you wanted to do a remake of it in your country, how would you go about acquiring the right to do so?

* You would first contact the producers to see if they have the right to license you to make a remake. Even if they do not have all the necessary rights, it is likely that they will need to be involved in some way. They can help coordinate the acquisition of the required rights from the publishers, author and documentary filmmakers. Hopefully the producer has acquired remake rights from the writers of the screenplay or engaged them on a work-for-hire basis. Otherwise they will also need to be approached about licensing remake rights.

1. Have you recently read anything factual that you think should be made into a film, and if so, what would you have to do to secure the right to do so?

* This is a discussion question with no specific answer.

**CASE STUDY 2:**

1. What advantage did the screenwriter have because she also wrote the underlying novel?

* She controlled all of the rights and was able to only give the production the narrow set of rights they needed for that single film. Since this is not a work-for-hire, she maintains ownership of the characters and plot and therefore rights to potential sequels, remakes or derivative works.

1. What rights did the filmmaker need to acquire from the novelist in order to make the film?

* They need to license the right to produce a film based on the novel and to exploit the rights to the film created from the work in all media in the entire universe in perpetuity.

1. What rights do you think the novelist would have wanted to retain?

* Sequel, remake, derivative rights (right to use the characters or situations in another format such as graphic novels, series episodes, etc.).

1. Does the person who translated the film into Japanese hold any copyright?

* No. Translations are not considered original works of authorship for purposes of copyright.

1. Why do you think the Japanese distribution agreement was a separate agreement from the finance agreement?

* It is likely that this was because the distributor paid a certain advance for a specific set of rights (the right to distribute the film in all media in Japan) whereas the finance agreement gave the financier a different set of rights (the right to derive revenues from the worldwide exploitation of the film).

1. Why do you think Name & Likeness terms were important to the Japanese actors?

* These actors are well-known there and derive significant revenue from sponsorship deals. They would not want their name or likeness used in ways that might harm their ability to continue to exploit their own image and reputation.

1. What do you think the difference is between the rights the production secured from the bands for the pop hits and the music created for the film by the composer?

* The pop hits were acquired for a single use by the production (for use in the film), whereas the music composed for the film was made as work-for-hire and therefore the production also owned some of the copyright to those compositions and controlled their use in other media.

|  |
| --- |
| MODULE IV |

**CASE STUDY:**

1. Why do you think the producers chose to premiere the film at San Sebastian?

* Probably because it is the most prestigious festival in the Spanish-speaking world. Also, the festival has a strong reputation and attracts European acquisitions executives.

1. Why was the festival strategy so important to this film?

* The film did not rely on stars big-budget special effects for success. This film needed to demonstrate that it was a high-quality film and the best way to do that is for the film to be selected for prestigious festivals and then get top critics to see it and hopefully say nice things about it.

1. Why do you think the producers chose Shoreline for international sales?

* Shoreline has some previous experience with non-English-Language films and they have a good reputation. The fact that they would even be interested in a small, Spanish-language film and were promising to invest the time and money into helping to make it a success were certainly important factors as well. It is also possible that they provided the producers with sales estimates that were higher than other sales agents and/or fees that were lower.

1. Why do you think Shoreline was interested in the film?

* Shoreline’s main motivation has to be that they can make money with a film – otherwise they wouldn’t stay in business long. In addition to that they probably felt that the film was prestigious and could potentially win prizes and achieve the type of critical success that helps establish a good reputation for a sales agent.

1. What contract would the producers need to sign with Shoreline? With Wolfe?

* They would sign a Sales Agency Agreement with Shoreline and a Territorial Distribution Agreement with Wolfe.

1. What are some of the most important points those contracts need to contain?

* See IV .2.2 and IV.3.1

1. What type of copyright documentation would the distributors require from the producers?

* They would want a full chain-of-title that would include all music clearances/licenses, a screenplay agreement and all agreements with talent.

1. Why do you think the film didn’t perform as well as the producers expected it to in Colombia and Peru?

* It is probably because of the gay themes and the conservative nature of the audiences in those countries.

1. If you could ask the producers one question about their experience distributing this film, what would it be?

* This is subjective and is meant to promote discussion.

|  |
| --- |
| MODULE V |

**CASE STUDY:**

1. What agreement needed to be signed with the novelist for the original film rights to the novel?

* Rights Purchase Agreement Contract

1. What do you think the terms of the agreement that was signed for this specific production were?

* It is likely that this was in the form of an option agreement whereby the author received a small payment to hold the rights with the promise that they would be paid more money when the film was made (when the option was exercised). It is also possible that there was an ongoing royalty payment due to the writer from film revenues.
* The Producers needed to license the right to make a single movie from the novel, but they might have also had an option for remakes, sequels or other derivative rights.

1. What would someone need to do if they wanted to produce a sequel to the film?

* They would probably need to first approach the producers of the film to find out if they have an option to produce the sequel. If not, then they would need to contact the writer directly to negotiate a new agreement. It is quite likely, given the success of the first film, that the original producers would be involved in any sequel. It would be very important from many angles to have the active involvement of the original writer in a sequel – not only for legal reasons but also for creative reasons and for credibility in the marketplace. It cannot be seen that the writer of the underlying material for a successful art film is pushed to the side when the sequel is made.

1. How important do you think film festivals were to the success of the film?

* The festival strategy was hugely important to the success of the film.

1. What other factors do you think led to the film’s success?

* It was a really good movie. The cast was perfect for the film and the director, Gavin Hood, developed into a world-class director. It also told a universal story – redemption and the healing power of love.

1. How would you choose the best festival to introduce your film to the world?

* Look at which festivals played similar films. Research the reputation of those festivals and approach the top festivals first. Ask exporters or other producers about their experiences.

1. How would you find a reliable sales agent for the film?

* You should look at other film projects that have had success in the marketplace and research which sales agent handled those rights. It is also good to ask the producers of those films what their experience was with that sales agent and possibly what they would have done differently. It is good to start this process as early as possible. Once you have targeted a set of potential sales agents then you would approach them with the project and hope that they will be interested in working with you on it.

1. What were the risks of rejecting the Miramax offer?

* It is possible that there would not have been another offer at that level and that Miramax would withdraw the offer after the rejection. The film might not have received another offer for theatrical release in the United States.

1. Who would you thank if your film won the Oscar?

* Obviously a fun question to promote discussion. Everyone who has ever made a film has dreamed of what they would say if they won a big award.

|  |
| --- |
| MODULE VI |

**CASE STUDY 1:**

1. What factors do you think led to the buyers licensing the film?

This was a comedy in the Arabic language that was likely to play to a broad audience. The budget was much higher than average which meant that the production quality was likely to be quite high. Finally, the Egyptian actors were popular throughout the Arab world.

1. How do you think the distribution contracts were used to access the cash needed for the actual film production?

In this case it is unlikely that a bank was involved in the process, but financiers in the region would have been sophisticated enough to understand that the pre-sale contracts were with reliable companies and they could count on being paid when the film was finished. They would have lent against the amounts due and the film would have had the cash they needed from these financiers.

1. What types of infrastructure do you think are required in the following sectors to make this finance plan work:
   1. Cinemas

Since a significant amount of the potential revenue for the film will come from the theatrical release in the region there need to be cinemas, marketing people who can advertise the film, laboratories that can provide 35mm prints or other elements to screen and finally, accountants to issue statements and pay monies due.

* 1. Television

Television stations need to exist and be willing to play local content. They need to be financed in a way that will allow them to pay out monies for the films they license (they might be commercial stations that rely on advertising, state-run stations that rely on tax-payer funding or pay stations that rely on cable or satellite subscribers for revenues.

* 1. Banking

Whether or not a bank is making the loan, to deal with two million dollars in funds is more than the average person can do. They need a bank to hold the monies, accept payments due (usually into an escrow or collection account) and provide checking account or other payment facilities.

1. What is the state of the infrastructure in those sectors in this country (where the conference is being held)?

This will vary by location.

1. What differences within the region do you think affected the film’s popularity in the different Arabic-speaking countries?

Clearly some of these countries are more conservative than others and the idea of romance might be quite different in Saudi Arabia and Lebanon. Humor often doesn’t translate well between cultures and what is funny in Egypt might not be funny in Jordan. This is especially true in Latin America. There are probably other factors that can be discussed such as civil strife and the existence of distribution infrastructure and piracy.

**CASE STUDY 2:**

1. What amount of money has been paid to the Licensor?

* US$2,072,568.87 up to this statement where an additional US$867.01 was due. When that money is paid, which should be concurrent with the statement being issued, the total will be US$2,073,435.88.

1. What was the initial advance minimum guarantee payment?

* US$705,625

1. What were the theatrical revenues?

* US$ 1,859,916.66
* These are the theatrical “rentals” and in Spain that is approximately 45% of box office (revenue from the sale of tickets). Total box office was probably a little more than US$4 million.

1. What were the theatrical costs?

* US$811,805.05

1. In what currency were the revenues earned?

* Euros – this was in Spain.

1. In what currency is the revenue being reported?

* US$ - even though revenues have been earned in Euros. It is important to confirm that the distributor is using appropriate exchange rates and therefore it is better to get a statement in the local currency and converting it yourself.

1. Which are the most important facts in this distribution statement that should be checked against the distribution terms in the distribution agreement?

* Minimum guarantee amount, royalty percentages, restrictions on recoupment of expenses.

|  |
| --- |
| MODULE VII |

**CASE STUDY:**

1. Why do you think this case was judged by a French court?

* That is the type of dispute resolution required by the contract.

1. What legal system do you think the French court used?

* This would be specified in the agreement, but it is most likely that the law was French statutory law (Civil Law).

1. Do you think that the concept of “moral rights” was part of the decision?

* In this case, moral rights were not at issue – only the specific contractual terms and the behavior of the parties that confirmed their respective understanding of those terms.

1. What could TF1 have done in the contract stage to avoid this problem?

* They could have specified that the acceptance of the version of the film had to be made in writing and that the final version needed to conform exactly to the script. Their involvement in the editing process, including giving notes on the first cut, led the court to conclude that they would accept a version with those modifications. The fact that the only way to make a version that conformed to the 90-120 minute contractual requirement was to modify the original script was probably clear from the beginning.

1. What could TF1 have done during the delivery stage to avoid this problem?

* Every time they commented on each of the cuts they could have also specified that they were not waiving the requirement that the film be delivered by a certain date and between 90 and 120 minutes. It is crucial that at each step in the process, communications that have contractual implications are carefully worded so as not to forego rights or alter contact terms by implication.

1. Why do you think TF1 refused delivery? Do you think the timing of their decision (following the U.S. release) have any impact on their decision?

* It is curious that they refused delivery after having been involved in an editing process that would clearly resulted in on-time delivery of a film that exceeded the contractually specified maximum running time. The quality of the film as well as the film’s poor performance in its U.S. release might have influenced their decision to then find reasons to refuse delivery and not make the required payment.
* It would be interesting to know if they would have rejected delivery if the long version had been a big hit in the U.S. and gone on to win the Academy Award.

1. Why do you think there was a settlement following the court’s decision? Why didn’t Lee just get paid by TF1 following the judgment?

* As the original amount due was US$11 million and the judgment was for a much greater amount, it is likely that TF1 would appeal the ruling and that it would eventually get reduced. These things often develop in a predictable way and by settling at a point where he was in a position of strength, it is likely that Lee was able to get paid immediately an amount that was satisfactory to all parties.

|  |
| --- |
| MODULE VIII |

**CASE STUDY:**

1. Why do you think a rights holder would choose to have a third party collect CMO monies that are due to them?

* The process is very complex and dealing with each individual CMO would probably be very time consuming with only a limited financial benefit.

1. What do you think IFTA Collections would do for the rights holder

* Register their title with CMO’s around the world. Process CMO payments and pay out monies due to rights holders. Try to resolve any conflicts that arise.

1. What fee are they charging for these services? Do you think that’s fair? What other fees do you think come out of these monies before getting to IFTA Collections?

* 15% fee. Whether or not it’s fair depends on the amount of work and the actual amount of money represented by the 15% fee (is it US$15 or US$1,500?). Each CMO will take a processing fee as well prior to sending the funds to IFTA Collections.

1. Based on the report, where do you think the film was most successful?

* Spain, Switzerland, Scandinavia.

1. In what other ways might that information be useful to the rights holder?

* They might learn that a film was sold to a territory they were not aware had been sold or that the film is being exploited without their approval or proper compensation.

**ANNEX 8**