

COLLABORATIONS AND CO-PRODUCTIONS

By Mark Litwak

A co-production can be as simple as a director and producer collaborating on a project, or as complex as two multi-national corporations sharing risk and revenue on a movie. In the independent film arena, it is often two producers deciding to pool their resources to make a film. If the producers are from different countries, you have an international co-production.

A co-production should be distinguished from an employer/employee relationship. If a producer hires a director to work on the producer's project, and the producer owns and controls the distribution of the completed picture, then the director may be an employee even if the director has certain creative rights (*e.g.*, final cut) or is entitled to share in profits.

The fact that a person receives a "producer," or "co-producer" credit does not necessarily define the nature of the relationship. Some films list five or more producers. These "producers" may earn their credit because they were the manager of a star who agreed to accept a role in the picture. Or the credit could be given to a dentist who is one of the principal financiers of the movie. An "assistant producer" or "associate producer" credit might be a perk given to compensate someone who agreed to accept a reduced wage. Since the Producers Guild is a professional association, and not a union, it is not party to a collective bargaining agreement that restricts the granting of credits. Therefore, unlike director and writer credits, producer credits can be freely granted — even to people who don't deserve them.

Co-productions are often based on each party bringing something valuable to the project that the other collaborators lack. For instance, one producer might contribute a script and have the ability to attract a star, while another producer might be able to raise financing and recruit a talented director. For the relationship to work, the parties need to realistically value their contributions. If parties make unequal contributions, their control, fees and ownership of the project can be adjusted to reflect that so the deal is fair for all parties.

It is not unusual for collaborations to fail. After spending a lot of time developing a project, the parties may come to a creative impasse, or there may be so much interpersonal conflict that they can't continue to work together. If there is no agreement providing for resolution of disputes, and how to divide material developed together, the project may die. Once a relationship has deteriorated and become antagonistic, it may be difficult for the parties to agree on anything.

One should get to know a potential collaborator before rushing forward and encumbering a project. The parties should discuss their expectations of one another and determine whether those expectations are realistic. If one party, for example, is expected to raise production financing, there might be a deadline for the funds to be delivered, and the terms of the deal modified if that deadline is not met.

It is not a good idea to take on a collaborator simply because you are lonely. When you collaborate with another, that person may make creative contributions and submit the project to third parties. If the collaboration dissolves, the law may imply that your former collaborator has rights to jointly developed material. Under copyright law, when two writers collaborate on a work, it is presumed they will own the copyright equally unless there is an agreement that provides otherwise.

In negotiating a collaboration or co-production agreement, it is important to understand the difference between sharing ownership of the property and sharing revenue derived from it. The copyright owner of a motion picture determines how the work may be distributed and exploited, and whether to allow any derivative works to be adapted from it. On the other hand, a party that “owns” 50% of the net profits from a picture has an interest in the revenue stream derived from the movie. Such a profit participant does not necessarily have any control over how the property is exploited.

Frequently, collaborators who desire to make an independent film will set up and co-own a new legal entity (*e.g.*, corporation, LLC, limited partnership) that will hold the copyright to the picture. Collaborators may share the management and control of this entity, or management may be delegated to one collaborator, or to an outside manager. Samples of collaboration agreements can be found in my book, *Contracts for the Film and Television Industry, 3rd Edition*, published by Silman-James Press.

Excerpt from *Risky Business*, 2nd Edition by Mark Litwak, Silman-James Press.
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