

Contents

1	Introduction	1
2	The business	4
	Setting up a film or television company	4
	Employment	10
3	The idea	20
	Protecting an idea when presenting it to others	20
	Copyright and how it works	22
	How to use copyright to protect an idea	25
	How to prove ownership and how to prove when the idea originated	26
	When copyright will not help to protect an idea	27
	Breach of confidence	29
4	The deal	32
	Binding agreements	32
	Offer and acceptance	35
	Consideration	35
	Certainty	36
	Intention to create binding legal relations	39
	When a contract is broken	41
	Indemnities	41
	‘Best endeavours’ and ‘reasonable endeavours’	43
	Competition law	44
	Conclusion	48
5	Development	49
	Development issues	49
	Development finance	49

	Underlying rights	59
	Commissioning a treatment or script	80
	Writers' agreements	80
6	Financing	86
	Financing options	86
	Investing in a production company	87
	Investment in the production	90
	Pre-sale of rights	90
	Case study	94
	Tax shelter schemes and governmental grants	100
	Sponsorship	106
7	Production and financing agreements	110
	Legal issues in production	110
	Different types of production, finance and distribution agreements	110
	Cash-flowing Financier	111
	Overcost – when the budgeted costs are exceeded	112
	Take-over and abandonment rights	115
	Rights/distribution rights	116
	BBC, ITV and Channel Four commissions	118
	Terms applicable when commissioned by any of the broadcasters	118
	ITV commissions – the Network Centre	119
	The BBC	122
	Channel Four	124
8	Hiring and firing	125
	Contractual aspects	125
	The nature of the services	126
	Payment and tax issues	127
	Employed or self-employed?	128
	Foreign entertainers	128
	Protection against Inland Revenue findings that tax should have been deducted before payment	129
	Credits/publicity	129
	Warranties	130
	Other obligations	130
	Suspension/termination	131
	Rights of the contributor if there is a breach by the Producer	133
	Service companies – inducement letters	134

9	Rights clearances I	135
	Legal principles	135
	Rights of contributors	136
	How to clear the various rights	138
	Union agreements	150
	Collecting societies	154
	Performers	155
	Writers	156
	Directors	157
	Location agreements	159
10	Rights clearances II	162
	Music	162
	Case study	168
	Film and television clips	179
	Photographs and other artistic works	185
11	Completion guarantees and production insurances	187
	Introduction	187
	Completion guarantees	187
	Production insurances	195
	Errors and Omissions insurance	196
12	Script and content clearance	201
	Danger areas	201
	Avoiding liability	208
13	Distribution agreements	220
	Essential elements to an agreement with a distributor	220
	Obligation to account	227
	Sales agents	232
14	Secondary exploitation	233
	Secondary rights	233
	Exploitation of character merchandising rights	237
	Format sales/changed format sales	243
	Book publication rights	245
15	Legal proceedings	246
	Avoiding being sued or prosecuted	246
	Injunctions	247
	Defamation	251
	Summary	252

Appendix A: Professional bodies and useful contacts 253

Appendix B: Recommended reference materials 256

Appendix C: Recommended reference books 257

Appendix D: Release to be signed by individuals permitting fictionalization 258

Appendix E: Analysis of typical provisions in production and financing agreements 261

Appendix F: Summary of the Broadcasting (Independent Productions) Order 1991 ('the Order') 274

Appendix G: Inducement letter 277

Appendix H: Release form 280

Appendix I: Definition of distribution expenses 282

Index 285