Column: Damn right you should take all rights

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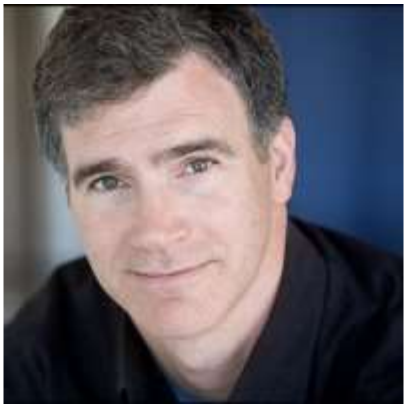

By Douglas Murray

The issue whether or not to enter a coproduction with content creators is a common one in the industry: creators often think that a 50-50 share in ownership is the most equitable solution, given it is their idea providing the foundation for the new project. But for both parties, especially when working together for the first time, a coproduction may in fact cause more problems than it solves.

A coproduction structure makes sense when both parties' contributions are vital to the execution of the production: i.e. in a regional or international coproduction where tax incentive access requires ownership. But in a more traditional arrangement with the producer in the driver's seat, a coproduction should be the exception, not the rule.

Besides the obvious reason that a producer holds more leverage, coproductions require significant investment in time and legal fees in order to set up, especially when a single-purpose entity is being created. Creators may not realize the level of investment required in order to set up a single-purpose business.

Coproductions also carry liability. As co-owner of a show – either directly or as a shareholder or director – the creator carries liability in a variety of areas, including delivering the show to the network, covering any cost overages, unpaid bills, accidents on set and any third-party claims that may come forward once the show airs. Some of this can be dealt with in the co-pro agreement and insurance coverage, but creators need to be aware of potential liability.

The good news is that fair terms are absolutely possible without the entering a coproduction agreement.

Creators are often worried that giving up their rights can result in their being cut out of the production, and that their ability to capitalize on the property ends after the first broadcast licence fee. A clearly communicated option/shopping agreement, or detailed rights assignment, can go a long way toward clarifying this and establishing a positive new relationship.

In addition to the usual purchase price and/or creator royalty for picking up the rights, the initial shopping agreement can include negotiated commitments to engage the creator for production roles for the life of the series, production credits for the creator and/or their production company, and often a share of back-end. These types of agreements can contain many or all the benefits of a structured coproduction without the added costs and liability of an actual coproduction.

Or in other words, there are ways to have your cake and eat it too.

Douglas Murray is a TV, film and music lawyer with the law firm Taylor Klein Oballa, *a Toronto entertainment and new media firm representing Grammy-winning recording artists, Academy Award-winning producers, film financiers, new media and tech companies, writers, directors and performers.*
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