



The use of protected works in the education process for the students in Economics through the course “Film Business“

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Abstract

The purpose of this paper is to explain and to show the relevant instruments, which tutors in the field of film business can rely on, when using protected with IP rights work. The process of education in art-based courses, especially in online environment, raises some fundamental question regarding the use of protected artwork, which must be clarified for fulfilling the education plan of the students.

The course “Film business” relays on two main aspects:

- To provide theoretical knowledge, based on existing studies in the field;
- Practical knowledge of the tutor.

I am aiming to focus on the second main aspect – practical knowledge of the tutor and the potential to include in the education process materials which are protected by the relevant IP legislation, such as:

- Movie trailers or whole movies;
- Contracts with creative crew (Director, Director of Photography, Screenwriter);
- Budgets;
- Shooting schedules.

The quality of the education process is really improving by giving the students real life experience from the practice, but the main focus should be on acquiring the required rights for use of the aforesaid materials. Nevertheless, the materials and their usage in the education process is defined in the Copyright and related rights Act in Bulgaria, there are some other matters which the tutors must consider, before including materials in the education process, like:

- In what environment the works will be presented;
- How many materials are needed to cover the main topics of the course;
- Is there a relevant legislation exception which can guarantee the freedom of usage;
- Is there a way to acquire the necessary rights for use from the rightsholders;

The paper is trying to answer the aforesaid question but the focus is on the different rights acquired by the tutor for implementing practice materials in education process, also to track its number in COVID pandemic situation and online teaching.

Keywords: *IP rights, teaching, training, protected work*



1. Introduction

In the 2020, the world faced new challenge – the COVID-19 pandemic outbreak. That event has been changing variety of processes ever since and the field of higher education makes no exception. In the new environment, tutors around the globe, as well as universities administration had to adapt to the new conditions imposed, mostly, by social distancing, and lockdowns. The traditional educational process was somehow compromised and the online education was the solution of the upcoming disaster of canceling everything.

The course “Film Business” is a course which imply two main pillars in the educational process:

- Providing theoretical knowledge;
- Providing practical knowledge.

The main approach before the pandemic was a special fusion between the two aforesaid pillars. Every theoretical aspect, after covering in class, was duly refracted through the prism of actual practice, either based on the tutor knowledge and experience, or through the main participants and specialists (herein after referred as “the specialists”) in the film industry. Meetings with specialists in the industry were organized with the students, during these meetings each of the specialists was presenting different problems in the industry, through variety of visual materials, such as contracts, budgets, movie trailers, whole movies and every other applicable material which can emphasize the importance of the practical knowledge in the course. All of the mentioned materials are protected works in the context of the Intellectual property system.

The COVID-19 pandemic provoked change-over of the approach in transferring knowledge. We had to adapt to teach our students in online environment, and to provide the same and better education. According to that, the second part of the process, and its securing for the students was crucial.

2. Use of a protected works before COVID-19

In the years 2016-2019, me personally, as part of the educational process were used 79 materials related to specific processes in the film business. The table below shows the type, and the number of materials used in the aforesaid period [1]:

Marerial	Presented by	Position	Number
Feature film budget	Nikola Nikolov	Producer	11
Short film budget	Nikola Nikolov	Producer	9
Script	Venelin Georgiev	Director	7
Contracts with creative crew	Ivan Nachev	IP Specialist and CFO	25
Movie trailers	Nikola Nikolov	Producer	19
Whole movies	Venelin Georgiev	Director	3
Movie concepts	Georg Vrabchev	Producer/Director	5
TTL MATERIALS			79

Table 1. Number of materials used in “Film bussines” course for the three year period 2016-2019

The table shows that numerous materials were used to illustrate the theory, but what is important to perceive is the nature of every used material:

- Film budget (no matter short or feature) – is the financial “spine” of every production, representing the plan of the production, and the remuneration amount [2] the parties (producer and production crew members) had agreed on. The budget, before film realization, is one of the most kept in secret documents in the production company, also its content is known to a very few members of the producer’s team. That is the reason why it can qualify as a trade secret [3].



- Script – is a textual part of the film. In general, the script is a literary work with some additional elements [4]. That is the most important part of the film, which represents the whole idea and spirit of the specific movie. The script is protected, as a literary work, with the Berne Convention for the Protection of Literary and Artistic Work [5].
- Contracts with creative crew – these contracts are important for the production company, because through its certain IP rights transfers from the authors (Director, Director of Photography, Screenwriter) to the producers. Every contract contains specific terms and conditions, and it is somehow unique for every project and person. Mostly in the contracts the parties define the amount of remuneration, production schedules etc., which are, again, as the budget strictly confidential and crucial for the business advantage every producer has Infront of his/her competitors.
- Whole movies/Movie trailers – that is the complete work which is protected under the IP legislation [6].
- Movie concepts – like the budgets, and the contracts, movie concepts are strictly confidential, and highly important for the future development of a production company. The potential every concept comprise is the competitive advantage of the company in poses. The future script of the movie may be based on that concept, also, producers, based on the story, estimates the budgets, which aims their focus on different financial sources (personal funds, public and state funds, advertisers etc.).

All of the materials were presented Infront of students, without any possibility whatsoever the information to be recorded or in any way distributed. On the other hand, all presentations, with confidential information and protected work in them, were made by the persons shown in table 1, and the liability for all possible non-authorized disclosure of information was transferred to the presenter itself. That is the reason why the main question – how to use those works or subjects of IP protections was never standing.

3. Use of a protected works in years of pandemic.

The online education is a challenge for higher education system, and for every tutor the main focus is to maintain high academic standards in transferring knowledge to his/her students. So, instead of losing one of the main pillars in the process, regarding “Film business”, I was seeking solutions, how to continue using protected works, and how to prevent distributing of sensitive commercial information. Basically, every tutor in a state ratified the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred as the “convention”) [7], can rely on the possibility [8] to use a protected work without owe a remuneration, and without the consent of the rightsholders. Since all member states of EU are part of the convention, their legislation must be synchronized with the ratified document and that is what make possible the use of a protected work, as script, movie trailers and whole movies.

The important question here is what is happening with the materials, which are trade secret, and since in that field, there is no free use provisions (if the company in possession does not disclose it), what is the solution? There are different approaches, some of which could be

- Direct agreement with rightsholders – contacting with persons in-charge for the confidential information and seek for a disclosed information, which can be used freely, like – old budgets, filmed movie concepts, expired contracts etc.;
- Using materials which are outdated – materials publicly known and in circulation, related to the scientific field of the course;
- Participating in special online events organized by professionals. In such events all the liability of disclosing any information is on the organizer of the event.

Implementing the above listed solutions, the total amount of used materials in the “Film Business” course, for the two years period 2020-2022 (so far), is 53 duly presented to the students and pledged with the theoretical part of the subject.

Material	Presented by	Position	Number	Ground of use
Feature film budget	Ivan Nachev	IP Specialist and CFO	9	Contract/NDA
Short film budget	Ivan Nachev	IP Specialist and CFO	12	Contract/NDA
Script	Ivan Nachev	IP Specialist and CFO	4	Contract/NDA
Contracts with creative crew	Ivan Nachev	IP Specialist and CFO	15	Personal practice
Movie trailers	Ivan Nachev	IP Specialist and CFO	10	Free use
Whole movies	Ivan Nachev	IP Specialist and CFO	1	Free use
Movie concepts	Ivan Nachev	IP Specialist and CFO	2	Contract/NDA
TTL MATERIALS			53	

Table 2. Number of materials used in “Film bussines” course for the two year period 2020-2022

As Table 2 shows the ground of use, for the protected as trade secret materials is either contract or non-discloser agreement (NDA). Regardless the legal type of the document, the provisions related to the information are strictly obliged with the terms and conditions of use – I will list only three, which I think are more interesting of all:

- The liable person (the tutor) has the right to disclose any/or whole information, listed in Appendix 1 - part of the agreement, only with the written consent of the Company.
- The liable person (the tutor) has the right to use, all released by the Company, information within this agreement only for educational purposes, and the liable person must restrain any other third party to disclose or/and use the information for purposes other than education.
- The information delivered by the contract/NDA can be used by the liable party within 4 (four) months.

It is interesting that by the written in the second bullet, one significant question arise: how the tutor can restrain third parties to distribute any information, while the educational process is online based, where everybody can freely make a screenshot, or can use third party software for screen recording, and after that can distribute the result of his actions freely? That is one side of the possible analyses of the provisions. That is showing us, that the tutor needs to be the responsible person, and in this case liable, for any distribution of sensitive commercial information.

Conclusion

The COVID-19 pandemic made everything different, not only in our personal lives, but in every other public manner, and the higher education process was part of the change. We had to adapt to a whole new system, and in the process not to lose a single benefit, provided to our students, so to maintain higher academic standards. More challenging was for all tutors, whose courses are art-related, and they need to use multiple artworks in the teaching process. The main conclusion is that tutors in countries with adapted legislation to the provisions of the Convention can relate on free use, but when the material is protected as a trade secret, the process is much more complicated, and yet not impossible. My experience has shown, that relying on personal contacts, or simply contacting companies in the field, can lead to a success in the process of providing adequate practical information, crucial for maintaining the connection academy-business.

References

- [1] Data is a personal record of the author
- [2] There are variety of other budget items
- [3] <https://www.wipo.int/tradesecrets/en/>
- [4] Some of the additional elements of a script are location, part of the day etc.
- [5] Art 2, para. 1 of Berne Convention for the Protection of Literary and Artistic Works
- [6] Art. 2, para. 1 of Berne Convention for the Protection of Literary and Artistic Works
- [7] All member states of EU have ratified the convention – preamble of DIRECTIVE 2006/116/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
- [8] Art. 10 of Berne Convention for the Protection of Literary and Artistic Works