

RIGHTS RETENTION



American Gods: SVoD
platforms like Amazon Prime
offer new sources of revenue

You've got to fight for your rights

The rise of SVoD platforms with deep pockets and global distribution is a boon to producers, but negotiations over IP are increasingly complicated. **Tara Conlan** reports

IF I WERE TO COME BACK, I'd want to be a rights lawyer," jokes the king of live TV, Whizz Kid Entertainment founder Malcolm Gerrie.

The rise of VoD platforms and new technology such as VR means there is more money and potential sources of revenue on offer to producers than ever before. The downside is that rights retention, negotiation and future-proofing has become harder and more complicated.

Gerrie compares it to the launch of Channel 4: "Being in the middle of the revolution is the most exciting thing if you're a creator of content."

The man who helped launch *The Tube* and whose company makes C4's *Stand Up To Cancer* and MTV's *Ex On The Beach* explains what he calls the "new world order", which features big platforms such as Amazon and Netflix.

"It's incredibly exciting and the upside is they will write a big cheque. It's a one-stop shop. Usually, for a producer to get a programme made, you have to put together a patchwork quilt of funding.



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MALCOLM GERRIE
WHIZZ KID

"With the new kids on the block, it's a different model; if they want something, they will write out a cheque. There are a lot of analogies with what happened in the music business."

The digital revolution that ushered in Spotify and Apple Music moved the power away from the record labels, while promoters revitalised touring by giving bands a cheque and taking on the risk in exchange for rights.

"If someone comes along and immediately you're in business – and they pay top dollar for it and maybe a bit more to bring on board a huge piece of talent – it's very, very tempting," Gerrie says. "It's different if you're a super-indie [wanting to exploit rights], but for a small or medium-sized producer, it's hugely tempting."

The same is true of talent: emerging presenters will not have the same bargaining power as someone like Jeremy Clarkson or *Line Of Duty* writer Jed Mercurio.

However, Gerrie says that in exchange, producers will have secured full funding "from day one" and an

almost global presence, which is very attractive: "The downside is: what happens to your rights? You can sign away a considerable amount."

VoD services are not alone: big US companies such as Disney have pushed hard for rights in the past. But Gerrie says the rise of VR offers new opportunities: "Every time a new piece of tech comes along, the rules, to some extent, have to be rewritten."

Ben Green, founder of rights consultancy Ben Green Associates, is currently helping an SVoD start-up acquire rights for shows. Green previously worked at the BBC for 20 years, where he was involved in ground-breaking rights deals for new services such as iPlayer and BBC Store. He says: "What's interesting to me is how some distributors don't actually know what rights they have and find it hard to answer quite a basic question."

Doing a regular rights audit will speed up the sale and communication to buyers, he adds.

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Bondi Rescue: distributed by TCB Media Rights

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“Some programme-makers say it’s subject to underlying clearances and they sometimes don’t know how much its going to cost,” says Green. “If there’s a piece of film footage that needs re-clearing in one or five years’ time and they can’t grant a 10-year licence, they need to know what it might cost.”

Creative windowing can help VoD platforms, says Green, whose client is looking to have content available for one or two months “almost like a magazine style”. Other options include a year’s licence, but with exclusive windows to bring it in for a month and swap it out again.

Green says it can get bewildering for the viewer as shows switch in and out or between platforms, unless there is “some big landmark event or something like a season”.

Voice of the Listener and Viewer chair Colin Browne agrees that it can be frustrating for viewers having to chase content, particularly films, across new providers such as Netflix, Amazon, Google Play or Apple.

“I think it is confusing. There’s a big issue in terms of providing more clarity, but I’m not sure what the solution is. Maybe there is scope for a website to help viewers sift through.”

Amazon, Netflix and the other big players are “pushing up prices for VoD

rights”, reflects Green. That’s great for producers and distributors; less so for new SVoD services.

Brexit, and the uncertainty surrounding its impact, is an issue too.

Intellectual property, as the Creative Industries Council (CIC) puts it, is the “lifeblood of the creative industries”, but “while the basic concepts of copyright have been agreed at a global level, many provisions of UK copyright are derived from European Union directives”.

Cross-border access

The EU is looking at more copyright legislation via the Digital Single Market, which could impact British producers even if it does not apply in the UK.

Pact’s position on this is that full cross-border access to content would “erode the exclusive territorial exploitation of film and TV rights in Europe”. Meanwhile, the CIC has stated: “Any move to curtail the territorial selling of rights could seriously undermine creative industry business models.”

Green adds: “I’m worried that people won’t want to grant Europe-wide rights or it will affect the price so badly that it will really impact the market.”

The film and sport sectors are not particularly happy about Europe-wide rights, he adds. But, like many, he is

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PAUL HEANEY
TCB MEDIA RIGHTS

not sure what they will be able to do “other than that they own the property and have the asset and they can put a block on it”.

In the meantime, one of the biggest challenges for SVoD platforms is that content owners have no consistency in approach, terms, accuracy or information, with different rate cards and speeds of response.

“There’s a lot of talk about a rights database,” says Green. “It’s one of the last things people invest in because it’s not very sexy. For me, it’s essential; it’s like having a shop and not knowing how long your stock life is.”

He thinks the industry needs to work together to put future-proof mechanisms in place using collectivism rather than individual transactions.

Distributors do need to ensure the full value of a show is realised across its lifetime, says BBC Worldwide president, global markets, Paul Dempsey.

“While SVoD deals can deliver good value for rights holders, it’s important to understand the variety of sales options that may be possible and to regularly reassess market position.”

He says BBCW does this on behalf of rights holders, while looking for the best value across a broad customer base.

“Rights holders also need to bear in mind the reach and prominence that shows will receive, the deliverables required in each deal, the marketing and branding impact and – critically for smaller rights holders – the payment terms,” he says. “All of these things need to be considered to understand the true value of deals”

TCB Media Rights chief executive Paul Heaney reckons that for distributors, it often comes down to definitions with SVoD.

“It’s all about the nuance,” he says. “If you don’t get it right, you could crash into rights that you’re going to exploit with another platform.”

Linear broadcasters, he says, have learned to compromise on windows and exclusivity. But distributors need to keep platforms in check to ensure their rights are being exploited appropriately.

“You can’t have your cake and eat it, you just have to have really classy negotiators with very good relationships and rationalise with the broadcaster. Sometimes they will see your opinion. You always have to argue back – otherwise distributors will have an ever-decreasing set of rights to exploit.” ☺

From Balamory to Braveheart

New SVoD platforms are increasing demand for archive content from films to kids' shows – but rights deals aren't always straightforward, says Ben Green

ONE OF THE KEY PIECES of the business plan jigsaw for any VoD platform is to estimate the rights budget line: CEOs, CFOs and investors need a clear indication of the costs to license third-party films or TV for the service. You'd think that information would be relatively straightforward to source, through a simple process of approaching the owner or distributor with a list of titles and being quoted a price.

A client of mine – a niche SVoD start-up called WatchScotch, planning to launch in several territories with a cross-genre service of Scottish (or Scottish-related) films and television archive – engaged me to validate the rights licensing and cost estimates for a broad range of titles. After some painstaking research into the ownership of each title, (frustrating circles and dead-ends as companies appeared not to have an accurate record of the chain of title), the conversations then moved on to deal terms – and the tactics and gameplaying started: "What's your budget? How much are you prepared to pay?" (erm... guess that depends what I'm getting?), and

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BEN GREEN
BGA LTD

"Oh, we can't confirm if/when these rights are available, or if there are any additional clearance costs, and we have to check with the initial broadcaster/US office" etc, etc.

Of course, most of us know that some rights are fiendishly complex to administer (they have often been carved up by territory, platform and duration, or sub-licensed or assigned onwards several times), and the various stakeholders all have different agendas and slices of the cake. Distributors' sales teams are there to make money from the catalogues they exploit, and while some I've encountered are fast, efficient and ready to strike deals, others have come



Scottish content: CBeebies show Balamory; Mel Gibson's Braveheart (below)

across as shockingly slow, disorganised, and vague about the rights they can license.

All of this points to content owners and distributors having to become a lot more aware of the rights they own (or license), through regular rights audits, asset and rights management, with tracking mechanisms to keep on top of licence renewals. With the growing trend of more niche SVoD services like WatchScotch, there is now a steady stream of new content buyers eager to license, so it's becoming obvious that successful sellers need to up their game and know

their stock inside-out, back-to-front and at the flick of a switch. Indie producers should be ensuring that they (or their distributor) have an up-to-date rights 'avails' status, able to be quickly amended in real time, to gain that competitive edge.

While shiny, star-studded ratings winners always attract buyers from around the world, many older programmes and films are now finding new revenue streams with niche providers. Sure, unlocking the rights can often be time-consuming, but that can enable the owner or distributor to deliver some interesting and rare commercial opportunities: through a tie-in with a revived series, anniversary or event; or via curated archive seasons

compiled around the key talent. These can all rekindle interest and drive sales.

As I found when negotiating countless archive deals for the BBC, rights-holders can often be persuaded to agree realistic terms for new platforms and distribution models – they would often prefer to see their work become available again, rather than gather dust and be forgotten.

So do invest in your rights and IP strategy, archive clearances and rights management. Deals are out there to be done, that will benefit services, rights holders and audiences alike. (By the way, *Braveheart* is already licensed exclusively elsewhere, but I'm still working on *Balamory*...) ■

As the BBC's Head of Rights Business Development, Ben Green led the rights strategy and delivery for both the BBC iPlayer and BBC Store, plus many pioneering rights deals for TV and radio archive products and partnerships. He is now an independent rights consultant at BGA Ltd, advising the broadcasting and arts sectors on rights strategy, negotiation and management

