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From Red Carpet to Rights: Top 5 IP Considerations for TIFF Goers

The Toronto International Film Festival (TIFF) isn't just a red carpet for filmmakers – it's a global marketplace where content creators, distributors, investors, business professionals, and film enthusiasts converge. Amid all the glitz and creative content, intellectual property (IP) issues may not be top of mind for many at TIFF, but a film's journey from inception to screening should carefully curate relevant IP rights to avoid unhappy IP plot twists. In this post we discuss five practical IP considerations for navigating the film festival.

1. Chain of Title

Before any distribution, streaming, or financing deal can proceed, buyers and partners will want to confirm the necessary rights are in place. A clear chain of title is an important consideration for the business side of TIFF. This involves documenting rights for scripts, music, performances, and any source material, including adaptations from books or social media. In Canada, explicit waivers of moral rights are also a consideration, as the *Copyright Act* provides for these rights. Lack of consent or rights and ambiguous contracts can complicate negotiations and hinder a film from fully benefiting from opportunities at a film festival.

2. Music & Public Performance Rights

TIFF's format – ranging from packed theatres to exclusive online showings – brings music and performance rights, as well as other copyright considerations, to the forefront. It's important to consider public performance licenses for various exhibition formats, including festival-specific music synchronization and master-use licenses.

In addition to copyright covering aspects of the film and script, copyright in musical works and sound recordings is governed by the *Copyright Act*. Using any copyrighted works, including music, without proper clearance can lead to unwanted disputes. For example, using a popular track or a trending artist's work without securing the appropriate rights can result in the need to address potential liabilities including copyright infringement claims. Reviewing copyright ownership and licensing terms for all music and sound elements is a prudent step for any film project.

3. Fair Dealing, Fair Use, & Documentary Footage

Documentaries and unscripted content may rely on archival footage, news clips, or social media snippets, raising additional copyright considerations. In Canada, the fair dealing exception is narrower than the US fair use doctrine and is directed to specific purposes such as research, private study, education, parody, satire, criticism, review, or news reporting. If the film uses unlicensed material, it's important to assess whether the use fits within one of the permitted purposes and whether it's fair in the circumstances. Careful review of third-party content and its copyright status can help avoid disputes and ensure smoother negotiations.

4. Copyright in Film Exhibition & Social Media

TIFF, like many major festivals, has terms and requirements that filmmakers and rights holders should be aware of when it comes to copyright, exhibition, and social media. Films submitted to a festival should comply with any and all requirements required by the festival including, for example, public performance rights for music, archival footage, and third-party materials. By submitting a film, entrants typically grant the film festival a license to use excerpts, stills, and trailers for promotional purposes, including on social media and the festival's website. With the continued use of hybrid and online screenings, it's important to clear rights for both in-person and digital exhibition, as well as for the use of clips on social media. Reviewing a festival's agreements and submission guidelines carefully and ensuring all necessary permissions are in place can help avoid negative consequences.

5. The Rise of Generative AI

Generative AI is the breakout star of the last year, powering everything from de-aged actors to script rewrites – but the legal landscape is still evolving. The copyright status of AI-generated content is uncertain in Canada, the US, and around the world, with ongoing questions about authorship, ownership, and the extent to which human input is required for copyright protection. If a film uses generative AI tools, it's important to consider licensing terms and to document the involvement of human creators. Commercial agreements increasingly address AI use and related risks. Staying informed about developments in this area can help manage legal and business risks while ensuring creativity keeps flowing.

Conclusion

TIFF, like other major international film festivals, is a showcase for creative vision that intersects with commercialization and shapes pop culture. It's an opportunity to enjoy and promote

the arts and creativity. At its core, IP is about fostering creativity and innovation while protecting those works. As film festivals continue to evolve, staying informed and attentive to these IP considerations will help ensure works are properly protected and ready for the spotlight – on screen and beyond.