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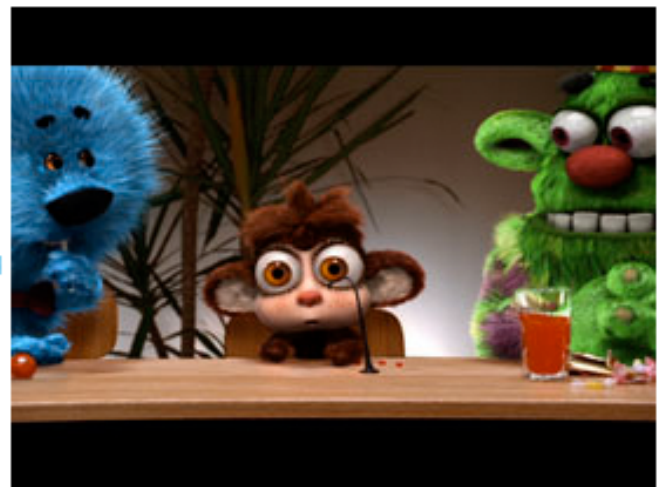
Building Character: Commercial Houses Retaining Rights

Karen Raugust reports on how some commercial animation houses are starting to ask for ownership and participation in commercial characters and concepts they have developed.

July 25, 2007
By Karen Raugust

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Commercial animation houses often make critical creative contributions to the TV spots they animate, but they traditionally have not retained any rights to the characters or other elements they help develop. That means they are left out of any participation if the characters or concepts have a further life beyond the original spot, such as in sponsored web content or merchandise. But the status quo is slowly starting to change as a few agencies are, in select cases, taking steps to maintain some sort of ownership.



Hornet kept merchandising rights to Binky (center) from a European TV campaign it created for Dodge. Courtesy of Hornet. Agency: BBDO.

"I've been a big proponent of trying to make this happen," says Michael Feder, partner/exec producer at Hornet Inc. He notes that, after five years of having this discussion on all the house's bids -- except in cases where the agency had already fully developed the concept -- it's getting easier to convince agencies of the merits of his views. "The first times were more challenging because they weren't doing it and didn't understand it. But when you explain it to them, they understand. We simply want to share in the success. If you want it for TV you can have it for TV. But that doesn't mean you can go crazy and use it for anything and everything, without even talking about it."

Feder points out that keeping rights is a matter of principle. "It's not a lot of money in most cases. The [initial] cost includes TV rights for the run of the TV spot, and that's usually sort of where it starts and where it stops. The majority of time it doesn't lead to anything else. But you never know when you'll have the next AFLAC duck."

Hornet did a TV campaign in Europe for Dodge, through BBDO, that featured a character named Binky. The client later decided it wanted to make 6,000 Binky toys for a giveaway in London (some of which can now be found on eBay). Hornet had retained merchandising rights, and stood firm on the price it wanted for the toys, even though it was roughly double what the agency offered. Eventually, the agency gave it what it asked, because it wanted the promotion to happen. Another Hornet campaign, for Sony PSP, led to banner ads and other subsequent uses featuring the rat and squirrel characters the house created for the TV spots.

Still, this type of negotiation is not yet the norm. "I think it would be a lovely trend if we could make it happen," says Glenn Holberton, exec producer at London-based Loose Moose, creator of the global Energizer Man character. But, for every company that retains some rights, he estimates there are probably at least five that will give away everything.

"I wouldn't call it a trend, but it is a topic of discussion," says Matthew Charde, exec producer at Global Mechanic. "I hope it becomes a trend -- I really do. It really incents both parties to do great work. [The animation houses'] compensation is directly tied to the success of what they do."

These types of discussions, when they occur, vary depending on the agency, the client, the animation house, their relationship and other factors. "It would be great if everyone had the same policy," says Audrey Robinson Favorito, exec producer at Reelworks Animation Studio, which has long expected payment for any usage outside the scope of the original job. It recently saw a group of holiday elf characters it created for the amusement park at the Mall of America, through agency Kerker, developed into licensed merchandise sold at the venue.



Reelworks Animation Studio saw a group of holiday elf characters it created for the amusement park at the Mall of America developed into licensed merchandise sold at the venue. © Reelworks Animation.

Jeb Milne, owner of Wit Animation, which recently completed an animated campaign for McDonald's, notes that many animation houses understandably don't want to be too aggressive about retaining ownership because they don't want to jeopardize their relationship with the agency or client. "If you're hired by an agency, you don't want to push them too hard," he says.

"It's a big sword to fall on," agrees Ron Diamond, exec producer at Acme FilmWorks. "They can work themselves out of a job." [Full disclosure: Diamond is co-founder and publisher of AWN.]

Lally Inc. president Kathy Lally, a licensing consultant with advertising agency experience, points out that there are creative ways to structure a deal so the production house is adequately compensated and the client and agency are happy. These include having rights revert to the production house after a promotion is over, lowering the initial fee in exchange for the rights, or looking for ways to extend the campaign beyond the original scope to benefit both parties. "The contract is a blank piece of paper when it starts," she says. "You don't give away your rights until you sign the contract. But if you let go of them, they're gone."

Lally points out that any discussion about rights often occurs after the creative development is well in progress, rather than at the same time as the initial creative talks. "Have that brief conversation up front," she counsels.



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Building Character: Commercial Houses Retaining Rights

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"We're very well-suited for this type of deal," Winkler explains. The studio has been in multiple businesses for several years and can envision a further life for characters, if one exists. For the Crunchers characters, created by the directing team Ugly Pictures based on a concept from the agency, future initiatives under consideration include games, figures and a television series, as well as web entertainment; Mother and Curious launched a MySpace page for every character and the ads are available on YouTube. "We're sneaking them into the public consciousness through the broadband," Winkler says.



The growing importance of the Internet as a marketing tool is helping to drive the trend toward ownership. "The web is the playground where this is working itself out," explains Weber. "Agencies' interactive departments are willing to talk about [rights and ownership]." Interactive departments are newer and don't have as many preconceived notions as broadcast departments, and their budgets are lower so they need to be creative. "They say 'We don't know what the rules are, we're making them up, what do you think?'," Weber says. "Partners are really partners for them. It's not a top-down scenario. It'll be interesting to see how that trickles down into broadcast."

Should animation houses be aggressive about retaining ownership to its creations? Ron Diamond of Acme FilmWorks, which created the United Airlines Interview commercials, thinks it could cost a firm work. Courtesy of Acme FilmWorks.

Animation execs point out that the ownership model already exists in the broadcast world, where it is the norm for the animation house to get some form of participation. "In TV series work, it's not unusual for us to do a co-production deal where we'll defer some costs in return for international sales or something like that," explains Charde. "So, the mechanisms are there."

Whose Character Is It?

The main factor in determining who should own a character or element is where it originated. "It really depends on whether the origination of the idea starts at the agency/client level or if it comes from the production company," explains Diamond. Sometimes this is obvious -- either the agency or the production house clearly created a character or element--while other times the line is blurry.



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"Sometimes they come to you and they've create the concept and the whole world, and you just need to execute it," says Holberton. "They'll say, 'He's a melon, but he looks and acts like Brad Pitt.' If you design a character that's completely worked out like that, then the role of the character creator is reduced. But if they say, 'We want a cool character that's going to advertise our new car,' then they really need to recognize that there's been more than just draftsmanship. Sometimes there is a case for [giving rights to the production house], and the clients need to realize that."

On the other hand, Holberton points out that Loose Moose has often faced situations where it had significant input on a character but didn't get any rights or recognition for that. "We've never insisted on it," he adds. "We've always taken the view in the end that if the client wants to buy the rights from us, we'd be stupid not to sell. They need to control the underlying rights and we'd just as soon sell them and keep on working on the production."

One exception to the rule is when an agency wants to link with an already-created character. That was the case for Aardman Animations' *Creature Comforts*, which began life as a short film and was later licensed for an ad campaign for an electric company in the U.K.

In such a case, the client would more likely be willing to license the character from the creator for a finite period of time, instead of purchasing it outright. "If a character has been created already for one of our shorts, then there would be a completely different scenario in place," Holberton says, citing Loose Moose's character Ernie, a dinosaur from Brooklyn, as an example of a pre-existing property that might have commercial potential.

"You have to really come in as a creative partner," says Diamond, who reports that one of his agency's directors was able to sign a long-term licensing agreement with an agency for a commercial based on one of his stylized short films. "But that only happens on very rare occasions." Ownership is particularly hard to come by when it comes to characters, Diamond adds, which agencies often want to own outright even if they're based on pre-existing concepts or productions.

Another factor in negotiations is the planned usage of a character or concept. "In the end, it depends really on what rights the clients need," says Michael Uman, co-owner/co-creative director at INTERspectacular. He notes that if a character is closely connected with a marketer over a long period, that company really needs to own all rights. "In other cases," Uman asks, "why do they need those rights?"



Jeb Milne, owner of Wit Animation, which recently completed an animated campaign for McDonald's, notes that if you're hired by an agency, you don't want to push them too hard. Courtesy of Wit Animation.



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For Comedy Central, INTERspectacular did a series of IDs created by a number of underground illustrators, with each running a few times. "We have this inventory of one-off characters that people started to respond to," he says. INTERspectacular managed to keep the rights, over the objections of the network's legal department. "They fought us on it," Uman explains, noting that after one and a half months of contractual back and forth, the house ended up with the rights it wanted. That was due to pressure from the network's creative department, which really wanted those artists and those IDs. "They wanted the artists more than the rights," says Uman.

One of the characters in that series, Billy Bananas, is being made into a toy line that debuted at the New York Comic-Con. The animation house and the designer, who share the rights, are talking about developing a more extensive line of toys, as well as creating a Bible for a potential television series.

Lally advises that the animation house and agency also discuss upfront who owns unused characters and concepts. Animation houses often go through various rounds of concepting, with only one idea being used for the campaign. "Who owns all those other rounds?" she asks.

Of course, some ad concepts don't have a potential life beyond the original platform, making the discussion moot. "Not all will have a life outside the pure marketing arena," says Winkler. "Not all are repurposable."

Usage Fees vs. Ownership

An increasing number of commercial animation houses -- but by no means all -- charge the client when their work is used outside the scope of the original broadcast spot, such as for posters or billboards. But this often is more a matter of paying the agency for production costs involved in reformatting the artwork than for any underlying rights. In a work-for-hire situation, agencies can, and sometimes do, go to other designers and have the work recreated for the new platform, cutting out the original agency and artist.

"We've been firm about usage for years," says Favorito, who notes that this is not yet the industry norm, since many agencies are willing to throw in subsequent work for free if they're paid well for the broadcast work. "But that's not honoring the artist either," she points out.



Glenn Holberton, exec producer at Loose Moose created Ernie, a dinosaur from Brooklyn. This is an example of a pre-existing property that might have commercial potential. © Loose Moose Limited.



Another Hornet campaign, for Sony PSP, led to banner ads and other subsequent uses featuring the rat and squirrel characters the house created for the TV spots. Courtesy of Hornet.



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Holberton agrees that the artist's contribution is often forgotten. "What disappoints me a lot is seeing creations by one particular designer or animator that worked very successfully, and then the client hires someone else who is cheaper, thinking that no one will notice the difference," he says. "That happens a lot." He notes that using another artist to design subsequent broadcast spots or rework characters for other platforms is dangerous because the character can lose its edge, hurting the brand. "It's that indefinable little spark, that indefinable 10% that really makes something work. They spend a fortune on air time, but they don't understand the importance of the relationship between the animator and his creation."

One uncommon but potentially lucrative usage that production houses rarely participate in is merchandising. Budweiser's frogs and lizards, the AFLAC duck and the Geico gecko are examples of commercial characters that ultimately appeared on products such as toys or t-shirts. A commercial animation house that had retained merchandising rights upfront could participate in any fees that accrued from these products, as well as potentially having approval rights over how the items look.

Even with a contract in place that gives the production house merchandising rights, practical matters can complicate things, however. For example, the artists' objectives for the characters may differ from those of the companies making and selling the merchandise, and time pressures to get the products to market quickly can cause compromises that the house normally would be unwilling to make.

"The artists go through great pains to craft great characters, and that is easily lost in the commerce," explains Favorito. "You have to choose your battles. It's a classic conflict between art and commerce."

Many animation execs and other experts point out that music, film and video clips, graphics and photography have long been licensed for commercial use and products, with creators retaining the underlying rights, but that the commercial animation industry hasn't followed suit. "The rules are evolving and I think animation houses are behind the times," says Lally. "It's happened with music, it's happened with photography, it's happened with art. Animation houses should have more opportunities to leverage their rights."

Weber notes that it is important to center the discussion on how partnership and sharing ownership can benefit the client, rather than how advantageous it is for the animation house. "Vendors have to be very cognizant of the tone of the discussion," she says. "It's a big educational effort all along the line. It's kind of a free-for-all right now."

Karen Raugust is a Minneapolis-based freelance business writer specializing in animation, publishing, licensing and art. She is the author of The Licensing Business Handbook (EPM Communications).

Note: Readers may contact any Animation World Magazine contributor by sending an e-mail to editor@awn.com.

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