

Off the air

Screenrights' Newsletter

screenrights

Screenrights is a non-profit company which administers copyright licences in Australia and New Zealand and collects similar royalties from Europe and North America for its 2,600 members from 54 countries.

April 2008

Feature: Someone else's brilliant career

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ISAN news

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EnhanceTV ATOM Awards open for entries

The EnhanceTV ATOM Awards are now open for entries.

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April 2008

Feature: Someone else's brilliant career

With the drama series **Underbelly** a huge hit on Australian TV, Katherine Giles, Senior Solicitor, Arts Law Centre of Australia, looks at the legalities of basing your film project on someone else's life.

There is no general law in Australia to stop you from basing your film on the life of another person, living or deceased. In Australia, individuals generally do not have any ownership over their life story. Despite this, as a producer, there are a number of legal issues to consider.

Defamation

Generally, only a living person can be defamed, however, even if your film is based on the life of a deceased person, you may still need to consider whether it could defame others associated with the dead person. A film may be defamatory if it damages or lowers the person's reputation, causing people to shun and avoid them and show ridicule and contempt towards them. It is important to remember that changing a character's name won't protect you if the person is still reasonably identifiable. There are also a number of defences to defamation, such as truth and opinion, which may apply. However, before relying on these you should always seek legal advice.



Senior Solicitor, Arts Law, Katherine Giles

Breach of confidence

If the film is based on information obtained in secret or on a confidential basis it may be a breach of confidence to reveal any of this information in your film. This situation could arise if the person you base the film on agreed to discuss their life with you or the screenwriter on a confidential basis. This puts you or the screenwriter on notice that the information is confidential. Even if the person does not explicitly state that they are speaking on a confidential basis but you had reason to believe this, based on the way you obtained the information, you may still need to consider breach of confidence. It is important to remember that information already in the public domain is not protected by confidentiality.

Contempt

As the producers of the current television series **Underbelly** will attest, contempt may also be an issue for you as a producer if you are basing your film on a person who is currently on the wrong side of the law. You need to consider whether the story you want to explore is currently under police investigation, in the courts, or court proceedings are pending (this can be important if the trial or police investigation is a lengthy one). The law of contempt covers criminal as well as civil litigation and the proceedings of tribunals, royal commissions and other bodies that are not courts, such as the Administrative Appeals Tribunal. Contempt law exists to protect the publication of material that would prejudice or bias a jury, influence or intimidate a judge, jury or witness, or impacts in any way upon the defendant's right to a fair trial or interferes with proceedings.

Misleading and deceptive

If the person you base the film on is well known, you may also need to consider whether the viewer will be misled into believing that he or she endorsed the film or is associated with it. This is often more of an issue if the person who you base the script on is a 'celebrity' or has a high profile.

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Written agreements with the subjects

One way to get around some of these issues is to obtain written approval from the person you are basing the film on. The agreement should take into account whether:

- the arrangement is exclusive, and if it is, how long it will be exclusive for;
- you will be granted access to records, archives, personal memoirs and other interview subjects such as family and friends;
- the subject will warrant that the information they are providing you is the truth and they will not sue you for defamation or breach of confidence at a later date;
- they will allow you to fictionalise the story to make it more dramatic;
- they are currently involved any civil or criminal legal proceedings; and
- the subject has any right to income from your project, and if so, how and when will they be paid.

In next month's Off the air Katherine Giles will continue this feature by looking at the legal ramifications of using a life story from a book.

To find out more about Arts Law and the services it offers, visit www.artslaw.com.au. The Arts Law website has a number of free information sheets covering issues relevant to this article, including: Defamation and Unauthorised Use of Your Image.

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Changes to NZ copyright laws benefit filmmakers and educators

Both filmmakers and the education sector will benefit from a number of changes introduced into the New Zealand Copyright Act.

The Copyright (New Technologies) Amendment Act, which was passed in early April, provides for:

- A technology neutral right to communicate films to the public (which incorporates the current broadcast and cable rights as well as new technologies, such as making a work available online)
- An extension of the educational licence in New Zealand to allow schools, polytechnics and universities to communicate copies of programs to teachers and students. This is similar to the Australian educational licence, and will allow for copied programs to be placed on the establishment's Intranet. It will also allow for use of electronic white boards and full use of learning management systems developed by New Zealand companies, such as E-cast (www.e-cast.co.nz)
- Provision for "educational resource suppliers". These are non-profit organisations that supply copies of programs to educational institutions. Suppliers must be declared by the Minister of Education and licensed. This will allow for full resource centre services similar to those operating in Australia, increasing the avenues by which educators can obtain copies of programs, and thereby improving returns to rightsholders.

Screenrights Chief Executive Simon Lake said: "Screenrights worked closely with the New Zealand film industry, through the Screen Producers' and Directors' Association (SPADA) in talking to the Government about these amendments."

"We are delighted at the smooth passage of these changes," Lake said. "They ensure filmmakers' rights reflect the way in which their work is used in the digital age. They also benefit the educational sector, providing greater access to this important learning resource."

ISAN news

ISAN – the unique digital identifier for audiovisual works – is spreading across the globe, with 17 agencies now providing registrations in Australia, the United States and major European territories.

It is expected that eight new registration agencies will be appointed in 2008, covering China, Hong Kong, Japan, India, Singapore, Mexico, Austria and Portugal.

Since it began operating in 2004, more than half a million ISANs have been delivered to audiovisual product, providing an effective way of tracking use, managing rights data and combating piracy. The majority (60%) of ISANs have been delivered to television episodes, with ISANs also appearing on feature films, documentaries, commercials, games, music video clips and other audiovisual works.

In Australia, the identifier has been taken up by funding agencies and producers, with ISANs appearing on new features and television programs. To find out more about obtaining an ISAN in Australia visit www.australasia-isan.org

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Over \$4 million distributed to members in two months

Screenrights distributed a total of \$4,438,768.63 from 1 January 2008 to 29 February 2008.

This money was collected from the Australian and New Zealand Educational Services, the International Service, and the Australian Retransmission Service.

Deadline for 2002 royalties

With Screenrights having six years in which to distribute educational royalties, the deadline for money collected from Australian and New Zealand educational institutions in the 2002 distribution year (1 July 2001 – 30 June 2002) falls on 30 June 2008.

Only 1.63% of the 2002 Australian pool and 2.97% of the New Zealand pool remains to be paid to rightsholders. Member Services officers will be contacting potential claimants in the coming months, and rightsholders whose programs were broadcast during this period and believe they may have a claim to royalties are urged to contact Screenrights (memberservices@screenrights.org) as soon as possible.

EnhanceTV ATOM Awards open for entries

The EnhanceTV ATOM Awards are now open for entries.

The Awards recognise excellence in film, television, animation and multimedia across more than 30 categories.

Entries close at midday on 10 June 2008, with finalists notified by email in August.

To find out more visit www.atomawards.org