

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.

May 2008

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This is an online newsletter. You can subscribe by emailing ota@screenrights.org

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May 2008

Feature: Plots, themes and scenes: It's all in the story

What happens when you want to base your next film on someone else's book? In the second part of our feature on using other people's lives and stories, Katherine Giles, Senior Solicitor, Arts Law Centre of Australia, highlights the potential legal pitfalls.

One of the first things a producer will need to do is work out whether the book is still protected by copyright law. In Australia, copyright in published works lasts for the lifetime of the author plus seventy years. Before 1 January 2005, copyright lasted for the lifetime of the author plus fifty years. This means that if the author died before 1 January 1955, then you only need to add fifty years, and the work will no longer be protected by copyright.

If the work is still protected by copyright, you should seek permission (usually in the form of an option and purchase agreement) before you base your script on the book. This is because the copyright owner (usually the author, but sometimes the publisher) has the exclusive right to reproduce and make an adaptation of the book.



Senior Solicitor, Arts Law, Katherine Giles

Using a book as "inspiration" and using characters

What if you just want to draw on the book or a character from the book for your script? The difficulty here is that copyright does not protect ideas or styles, only the expression of an idea in material form. To make things even more confusing, the legal principle is that reproducing the whole or a substantial part of the book without permission may infringe copyright. We know that a substantial part is an important or essential part of the book, but the guidelines are no clearer than this, and there is no specific guidance on whether a character would be considered an essential or important part.

If you are using a character, constituting a substantial part of a book, in your film, then this may infringe copyright, even when the character is used outside the original context. Graphic characters, such as Disney characters, or Superman, may also be registered trade marks as well as being artistic works and this makes it difficult to use these characters without seeking permission. However, using character types and traits is different. For example, Spiderman is protected, but the idea of a young boy with superhero powers is not. If you are drawing on a character from another book, relevant factors include how developed the character in the book is, how you have used it in the film and whether the character is a vehicle for telling the story rather than an essential part of the story.

Nonetheless, you can use another person's work for inspiration and you can often draw on generic plots, themes, characters, historical facts and scenes without infringing the copyright protected book that inspired you. If you were sued for infringing the copyright in a book the court would compare plots, moods, scenes, sequences of events and characterisations to see whether you have reproduced a substantial part of the novelist's work, or captured the 'total look and feel' of the novelist's original work in your film.

Depending on the type of film you are producing and the use you make of the work you are drawing on, you may also be able to rely on one of the exceptions to copyright infringement contained in the *Copyright Act*. These include exceptions for the purpose of criticism and review, research and study and parody and satire. For some filmmakers the parody and satire exception, which allows for the use of copyright protected material if it is used for the purpose of parody and satire, may cover their use of the book. These exceptions are limited so you should always get legal advice before relying on them.

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Non-fiction works

If you are creating a non-fiction work you are probably drawing on a number of resources including historical texts, newspaper articles, diaries and interview transcripts. You should consider whether you are reproducing a substantial part of these works. Copyright will not be infringed merely because you have drawn on the same facts, or you have incorporated those facts into your film, but will occur where you have copied the material in which the facts are presented.

As a general rule, the law affords less protection to works that track real events closely or base them on real events. Copyright really only protects the author's selection or arrangement of the historical facts or the way in which they are described, not the facts themselves. This makes sense. No one person has a monopoly on creating the only book or the only film, definitive as it may be, on any one moment in time. Nevertheless, as a producer you need to be careful that your film is only using the sources as a basis for obtaining the facts, and you are not copying or reproducing the way the author of the work has presented them.

Option and purchase

If you do wish to base your film on the work of another author, and that work is still protected by copyright, then you should approach the copyright owner (usually the author, but in some cases the publisher) for permission to do so, and enter into an option and purchase agreement. This is an agreement where the owner of copyright in the literary work grants permission to a filmmaker to adapt their literary work into a script and then to produce a film based on the literary work. Arts Law has a sample Option and Purchase agreement available from www.artslaw.com.au that can be adapted to suit your needs, as well as explanatory notes taking you through each clause.

Some of the legal issues a producer must consider when involved with the development of a film based on interviews, anecdotes, life stories or a book can be complex. If you are a producer and you need further assistance you should always seek legal advice from the Arts Law Centre of Australia or your lawyer. To find out more about the services offered by Arts Law visit www.artslaw.com.au

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More than \$3.6 million distributed in March/April

Filmmakers have benefited from distributions totalling \$3.7 million during March and April.

The latest round of Screenrights payments were from all services, including educational royalties from Australia and New Zealand, and back payments of retransmission royalties.

Screenrights Member Services Executive Emma Rogers said the team commenced distributing royalties collected for retransmission by pay television operators since March 2001, only five months ago.

"We have already paid out almost a quarter of this money," she said. "This is an excellent result, and wouldn't have been possible without members registering their titles so quickly with us."

"This money will keep coming in, so its important that members remember to register any new titles with us as soon as they are completed," she said.

For more information visit www.screenrights.org

More teachers than ever visiting EnhanceTV

EnhanceTV, Screenrights' online resource hub linking filmmakers and the education sector, now has more than 1.5 million page views per month.

"This is excellent news for our members – the producers and other content providers who are making the programs our educators are using," EnhanceTV Manager Jamie LeHuray said. "It clearly shows the site has become a very effective vehicle for assisting teachers and academics in using audiovisual material. And in doing this, it improves the industry's access to this important market."

Teachers visiting EnhanceTV can download free study guides and subscribe to a weekly online guide highlighting upcoming broadcasts relevant to their teaching areas.

"There are now more than 10,500 subscribers to the guide," LeHuray said. "And because it lets teachers know about what's coming on air, they can plan their recording schedules, making sure they copy programs under their Screenrights' licence."

The site also provides licensed institutions with copies of broadcasts on request, paying filmmakers for this use of their work.

Producer Melanie Coombs, from Melodrama Pictures, recently received a royalty cheque for a copy of **Harvey Krumpet** made by EnhanceTV.

"We're delighted that our Harvie continues to share the lessons of his life with audiences around the country, long after we've both moved onto our next project," Coombs said. "EnhanceTV's great work in copying films for educational institutions is not only giving us more financial returns but also sharing our story with new audiences, many of whom we hope will want to see our next project, the feature film **Mary and Max**, which should be released early 2009."

To find out more about EnhanceTV, go to www.enhancetv.com.au

May 2008

ISAN Update

New Australian titles, including the recently aired ABC drama series **East of Everything**, continue to register for an ISAN, the unique digital identifier for audiovisual works.

ISAN is also now a requirement for any new Blu Ray titles, with ISAN Australasia registering its first titles with local Blu Ray authoring facilities.

In other developments, a strategic partnership between renowned technology leaders such as Philips, ISAN, Gracenote and Teletrax, and various other parties in different application fields, have established a new service, Mediahedge.

Mediahedge allows the media and Internet industry to:

- Register live or archived media content in the Mediahedge database of fingerprints and set the rules for its web-wide use.
- Recognise and verify uploaded media content and ownership on Media sharing websites and P2P networks before it goes live, using the Mediahedge detector.
- Crawl and identify media content on the web. The monitoring system constantly scans the Internet for media based on keywords. Suspect media is downloaded, fingerprinted and identified.
- Manage media content, apply business rules for the use of content and tap into new revenue streams.
- Report media content and understand where and how content is used on the web. The reporting system gives browser access to reporting and analysis by "event" or by "site."

Although not yet released in Australia, this exciting new technology sees ISAN proving itself to be a vital part in the rapidly evolving digital audiovisual sector.

For more information about ISAN Australasia visit www.australasia-isan.org