

Total collections of more than \$18 million

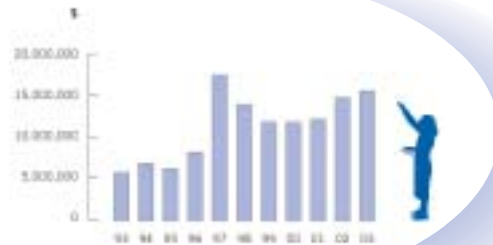
Screenrights' total collections for the 2002/2003 financial year has reached a new high of \$18.8 million.

This figure, which includes interest, was announced at Screenrights AGM in Sydney on 30 October. It is an 11.2 per cent increase on the same figure for the 2001/2002 financial year.

Screenrights generates income under its Australian and New Zealand Educational Services as well as its International Collections Service.

The overall distributable amount under all of these services was \$15.4 million, an increase of 8.6 per cent on the 2001/2002 figure.

The organisation's expenses for the 2002/2003 financial year totalled \$3.4 million, which brings the expenses to collections ratio to 17.4 per cent. In the year prior (2001/2002) overall expenditure was 16.1 per cent of total collections. This increase is largely due to the extraordinary expenses associated with making an application to the Copyright Tribunal for a royalty rate to be paid for the retransmission of free to air broadcasts. If this expense had not occurred, our expenses to collections would have remained steady at 16.1 per cent.



Distributable Amount (11 years)

Screenrights' membership has also increased in the 2002/2003 financial year. We now have 1,812 members from 45 countries. This represents a 10 per cent growth in membership over the 12 month period.

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Board of Directors

Screenrights is pleased to announce the election to its Board of Jill Bryant, Marketing Director Asia Pacific for BBC Worldwide, and the re-election of Jack Ford, Managing Director, Sony Pictures Television Pty Ltd; Philip Nelson, Managing Director, LIC, and Allison Rowe, Copyright Consultant.

We would also like to thank Gillian Guthrie, freelance producer, and partner at ITEM Media, for her contribution to the Board. Gillian has been a director since 2000 and was a member of the Board's Retransmission Working Party. With her considerable industry experience, Gillian brought the perspective of a working independent producer to the boardroom table. Her commitment to Screenrights and its members was valued.

The full Screenrights Board now comprises:

Martin Armiger:
Composer and author

David Baldock:
**General Manager,
Ninox Films Ltd**

Jill Bryant:
**Marketing Director Asia Pacific,
BBC Worldwide**

Tania Chambers:
Chief Executive, ScreenWest

Nicholas Collis-George:
Consultant, television industry

Will Davies:
**Executive Producer,
Look Film Productions Pty Ltd**

Jack Ford:
**Managing Director,
Sony Pictures Television Pty Ltd**

Bridget Godwin (Chairman):
**Manager, Regulatory and Business Affairs,
Seven Network**

Nicholas Hampton:
**Company Secretary, Australasian
Performing Right Association (APRA) Ltd**

Philip Nelson:
Managing Director, LIC

Alison Weston (Vice Chairman):
**Manager, Educational Programming,
Education television, ABC**

Allison Rowe:
Copyright Consultant ■

Amendment to **Articles of Association**

Following an amendment to its Articles of Association, Screenrights can now offer its members greater flexibility in dealing with royalty withholding taxation deductions from international collecting societies.

The amendment to the definition of "Voluntary Scheme" was made at Screenrights AGM on October 30.

The original definition was restricted to enable a member to appoint Screenrights as its agent only in administering its Registered Title Rights. This agency arrangement may have precluded Screenrights from pursuing a preferential position in reducing or

eliminating royalty withholding taxation deductions from international receipts under selected voluntary services.

Screenrights received external legal advice that it would need to be the beneficial owner of the relevant right through an assignment or licence of copyright in order to be entitled to royalty withholding taxation reductions.

The amendment provides flexibility for this to happen without affecting the agency relationships already in place with pre-existing members.

If you would like further information about how this amendment affects you, contact international@screen.org ■

Homemade history with Sophie Jackson:

A Member Profile

By Emma Rogers

Homemade History is a documentary series that draws upon 8mm home movies of ordinary Australians. Celebrating the private lives of 13 individuals or families, each five-minute episode tells a story, giving a personal touch to Australian history.

Screenrights Member Services officer, Emma Rogers talks personal history with producer Sophie Jackson.

With an interest in three dimensional art forms as well as film, Jackson attended the City Arts Institute in Sydney before specialising in producing at the Australian Film, Television and Radio School (AFTRS).

Jackson told *Off the air* that in this period her focus was on creating atmospheres, rather than telling stories.

"The individual films I made as a student explored the 3D elements of cinema, using the medium to move through time and space, which I think gave me a good sense of the filmic," she said.

More than a decade after literally drawing a production role out of a hat for a student film, Jackson is a working producer.

"That's pretty much how I became a producer, and it seemed to suit many aspects of my character," she said.

A key professional relationship was also formed on the same short film.

"The director of that project was Robert Herbert and we continue to work together, fifteen years later," she said.



Sophie Jackson and Robert Herbert

Straight out of AFTRS Jackson produced the short feature, *Square One* with Herbert.

"Unlike all the other films I'd made up to that point, it had a reasonable budget and a full crew. It really put everything I had learned to the test. As a producer I felt supported by an experienced team" and free to "act as a producer, rather than worry where lunch was coming from," Jackson said.

Jackson has enjoyed each project for different reasons. As producer of the documentary *Two Thirds Sky* (dir Sean O'Brien), about the creative lives of five contemporary artists and the Australian interior, Jackson was "back to a tiny crew and worrying about the catering."

"I was cooking on camp fires in the middle of the MacDonnell Ranges in the Northern Territory or at Mutawintji beyond Broken Hill. It was a fantastic experience".

Her most recent production, *Homemade History* (dir Robert Herbert), is a "documentary found in the bottom of the cupboard"; involving footage of home movies.

"We were constantly surprised by the generosity of the subjects, not just welcoming us into their houses, but the candour with which they let us into their lives," she said.

In fact it is the people and their lives that attracts Jackson to documentaries. "In documentary it's real people, it's an opportunity to meet people you may not have met in any other way. In that sense *Homemade History* in particular was endlessly fascinating".

While real people draw Jackson to documentary, it is character that attracts her to drama. She is interested in complex characters that feel real to the audience.

"Both genres are concerned with telling stories. For me the two are interlinked. I've never thought of myself as specifically a documentary producer, perhaps just a film producer," she said.

Jackson enjoys "shaping the creative ideas" with the writer and director in

the development stages of production, "feeling excited about the potential" of a project and getting others involved. She also gains satisfaction from seeing the project come together through editing and helping find the key to narrative problems.

" Fifty-two minutes
and a television
audience with remote
controls at hand
are quite challenging
parameters."

For Jackson, the biggest challenge is financing a project in an extremely competitive market. "You have to put a lot of work into getting a small amount of development money, and then you may be turned down anyhow. Although it is usually a useful process in terms of solidifying ideas, the creative challenges are much more satisfying."

"To me [the Australian industry] feels very much like a cottage industry. A lot of independent filmmakers give their heart and soul to one production that is creatively or politically very interesting, then spend the next two or three years trying to get the next one happening, while working part-time in unrelated fields."

After two successful documentaries in recent years, Jackson has a feature film in development entitled *Introducing Horror Hospital*. The feature is a "gay teenage punk romance based on a short story by underground LA writer Dennis Cooper".

Together with Herbert, she is also developing *Imaginary Traveller*, a poetic documentary using images from travelogue films of the 1950s, 1960s and 1970s with words from postcards and letters sent from home. "The film looks at the idea of visiting the exotic other from the perspective of staying at home."

Sophie Jackson is an independent Australian producer with her own production company Arcadia Pictures. *Homemade History* has been so warmly received there is a strong possibility of a second series, so if you have 8mm home movies, contact Sophie Jackson on arcadia@myplace.net.au ■



Joe Gauci from *Homemade History*

Code of Conduct Review

report

The report of review into the copyright collecting societies' compliance with their obligations under the Code of Conduct has been released.

The report was made by the Code Reviewer, J. C. S. Burchett, OC. It relates to the level of compliance by the collecting societies with their obligations under the Code during the first full financial year of its operation.

A full copy of the report can be viewed on Screenrights' website: www.screen.org ■

Awards

Screenrights has been delighted to sponsor two recent industry award events. In Australia, we sponsored the AWGIES, the annual Australian Writers' Guild Awards celebrating excellence in film, television, stage and radio writing. The awards were held in Sydney on Saturday 16 August, with Tony McNamara, writer of the feature film *The Rage in Placid Lake* celebrating a double win.

McNamara won the Feature Film (Adaptation) category and capped off an event-filled evening by being presented with the 2003 Major Award.

A full list of AWGIE winners can be viewed at the Guild's website:

www.awg.com.au

Screenrights also sponsored the Academy of Film and Television Arts (AFTA) New Zealand Television Awards held in Auckland on Friday 22 August.

Screenrights sponsored the Best Director, Documentary Award, which was won by Dan Salmon for *2050 What if...Maori Gain Sovereignty – Tino Rangitiratanga*. ■



Screenrights Chief Executive Simon Lake with Dan Salmon

Hang on, that's my idea

PROTECTING TELEVISION FORMATS

By Jennifer Huby, Partner, and Emren Kara, Solicitor, Tress, Cocks and Maddox

If you create a successful television program format, you may be sitting on a goldmine. The Ten Network reportedly paid \$13 million for the rights to the first series of *Big Brother*, and upwards of \$26 million for the second series, after a bidding war erupted with Nine and Seven. Sydney-based production company McElroy Television has successfully sold the format rights to its *Going Home* program to Canada and the United States. Not surprisingly, there is a growing interest in protecting original and new television formats.

However, television viewers will notice that there are only so many new and exciting television formats before things begin to look remarkably the same: add home viewer voting to *Popstars* and you have *Australian Idol*, add a conspirator to *The Great Race* and you have *The Mole*, remove the voting-off of contestants from *Survivor* and you have *Castaway*.

In light of the vast amounts of money being bandied around for successful television formats and the “borrowing” of ideas from established programs, the million dollar question remains: how do I protect my television format goldmine? More specifically, will your television program format be adequately protected by copyright laws and, if not, what are the alternative avenues to obtain legal protection?

Australia

Copyright law does not protect ideas and concepts in their own right. An idea will only be protected under Australian copyright law if it is original, is sufficiently developed and detailed and has been reduced to a material (eg written) form.



Although there has been no copyright infringement proceedings brought in Australia in relation to television program formats, in *Universal City Studios v Zeccola* (1982) 67 FLR 225, the copyright owner of the film *Jaws*, brought copyright infringement proceedings against the producers of a film entitled *The Great White*, which had been screened in Melbourne. The premise behind both films was

similar: a violent shark terrorising a seaside community. The defendant argued that *Jaws* was simply a “genre” film and could not claim copyright in the idea of a savage shark causing havoc in a seaside community. The Court held that, whilst there can be no copyright in a general idea or theme of a story, however original it is, copyright subsists in the combination of situations, events and scenes which constitute a particular expression of the idea or theme for a film. In the end, the Court found that *The Great White* infringed the copyright in the book on which the *Jaws* film was based.

Although the decision in *Zeccola* provides some guidance as to whether television formats would be given copyright protection under Australian law, it is useful to consider how other jurisdictions have dealt with this issue.

United States

Every week, 125 million Americans tune into *Program A*, a reality television show where contestants are stranded in a hostile environment, utilising their survival skills and prowess to win challenges, with contestants being voted off one at a time until a winner is determined. One challenge requires contestants to complete a worm-eating challenge. The challenge is played seriously with one contestant shown throwing-up. The format rights to *Program A* are sold around the world.

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Now, switch to *Program B*, where celebrity contestants are stranded in a hostile environment, utilising their survival skills and prowess to win challenges, with contestants being voted off one at a time until a winner is determined. One challenge requires contestants to complete a worm-eating challenge, but this time the challenge is served on fine china and fine linen and one of the contestants is shown making jokes as he eats the worms.

It is clear that the formats of *Program A* and *Program B* have more than cursory similarities: the structure and content of both programs are identical. If *Program B* was produced and broadcast after *Program A*, you would expect copyright law to intervene to protect the format of *Program A*, right? Wrong, according to the recent US District Court decision in *CBS v ABC*.

The case concerned CBS program *Survivor* and its claims that the ABC's program, *I'm a Celebrity Get Me Out of Here*, was a copy of the *Survivor* format. CBS sought an injunction to prevent the program from going to air. According to US District Court Judge Preska, the two shows were not substantially similar. She stated that television programming is "a continual evolutionary process involving borrowing frequently from what has gone before" and *Celebrity* was different enough from *Survivor* that CBS would have difficulty in its underlying copyright infringement suit.

In the end, Judge Preska ruled in favour of *Celebrity* on the basis that the shows' "content and feeling" and "expression" were different. She referred to the worm-challenges, described above, as an example of the "content and feeling" of the shows being different. Whilst *Celebrity* was a light-hearted program, *Survivor* was serious. She also thought that the use of videotape in *Celebrity* conveyed a different image to the use of film in *Survivor*.

This ruling reinforces the basic rule of copyright law that copyright does not

protect general ideas, but can protect the manner in which ideas are expressed.

United Kingdom

In the case of *Green v Broadcasting Corp of New Zealand*, the plaintiff, Hughie Green – the much-loved author, producer and compare of a long-running British television game show *Opportunity Knocks* – brought proceedings against the Broadcasting Corporation of New Zealand for breach of copyright in relation to a program



television game show produced and broadcast in New Zealand also entitled *Opportunity Knocks*. In addition to having an identical title, the New Zealand program used several similar ideas and concepts from the British program, including an audience 'clap-o-meter' to measure the popularity of the acts with the audience, the use of sponsors to introduce contestants, 'make up your mind time' as well as a number of catchphrases, such as "This is your show folks" and "For you [contestant name], opportunity knocks".

The Court ruled that Hughie Green's scripts of his program were nothing more than a skeleton outline of the manner in which the program would be performed, including its various elements, and "did not do more than express a general idea for a talent quest, and hence were not the subject of copyright."

The rise and rise of television format disputes

The advent of reality television, and the vast amounts of money exchanging hands for successful original television formats, has seen the battle over television formats escalate worldwide. *Popstars* has already taken on *Pop Idol* in the United Kingdom. The creators and owners of the rights in *Who Wants to be a Millionaire?* brought proceedings against Radio Denmark in relation to its radio game-show *Double or Quits*. Earlier this year, television producer Gary Binkow brought legal proceedings against Ozzy Osbourne and his wife Sharon claiming that they stole the idea for their hugely successful reality series *The Osbournes*.

Closer to home, news reports indicate that Nixon Films Ltd, the producers of New Zealand program *Dream Homes*, are considering legal action against the hit reality series *The Block*.

The Dream Homes format originated in New Zealand and has been running successfully there on the TV2 network for five series. The Nine Network, after enjoying phenomenal success with *The Block* in Australia, are reported to have sold the format rights to the Fox network in the United States for \$A11.3 million. According to news reports, Nixon and Nine had entered into a licensing agreement for *Dream Homes*, which expired in March 2003 – a month before Nine announced *The Block* as part of its programming.

If they proceed, it is not known whether Nixon would attempt to show some breach of copyright or if their licensing agreement contained confidentiality clauses, a breach of confidentiality.

It is interesting to note that, in April 2000, television industry figures overseas created the Format Recognition and Protection Association (FRAPA), an informal television industry body to adjudicate in disputes involving television formats. FRAPA has created a "format registry" for members and aims to provide a fast, cheap and effective means of dispute resolution

between format owners, producers and broadcasters where format infringement is alleged. Their website is www.frapa.org

So, how do I protect my television format?

Budding television entrepreneurs should consider the following measures to protect their television formats:

- ensure that an idea is sufficiently developed and detailed as distinctive so as to merit copyright protection, including keeping written detail of the elements, sequencing, style and content of the program.

- if you are pitching your concept to a third party, ensure that there is a confidentiality agreement in place,

containing a strong non-disclosure clause and do not disclose your concept over the internet or in any other public forum

- register your format with FRAPA (website <www.frapa.org>).

- if your format is developed and produced with a distinctive name, register the name as a trade mark. ■

New CEO for *SPADA*

With a long and varied background in the arts, law and public relations, Penelope Borland brings a unique and valuable range of skills to her new position as CEO of New Zealand's Screen Production and Development Association (SPADA).

Off the air spoke to Penelope about her previous work, and the challenges and opportunities facing the New Zealand film and television industries, one week after starting her new role at SPADA.

"Prior to this I managed arts advocacy and communications with Creative New Zealand, which is the equivalent of the Australia Council," she said.

The job essentially involved "encouraging and facilitating the support and valuing of the arts", which included the development of partnerships with other government agencies as well as private organisations.

"And it wasn't just confined to the areas we funded, it crossed all art forms."

During her seven years with Creative New Zealand, Penelope saw a "marked change" in Government attitude to the arts.

"There's a real willingness by the current government to look at what's needed," she said.

And, according to Penelope, this willingness is particularly strong in relation to film.

"The screen industry is the new darling here - it's probably the most exciting sector in New Zealand at

the moment," she said.

However, alongside the many moves intended to support the industry, Penelope is wary of the potential for fragmentation in policy.

"There are a number of different Ministries and agencies looking at different issues," she said. "One of the strengths I bring to this role is the ability to help SPADA have a clear and robust industry voice, as well as a lot of experience in dealing with policy development."

Penelope also sees intellectual property rights as a major issue currently confronting the industry, particularly in relation to the international marketing, distribution and financing of productions, and the question of rights being retained by funding bodies.

She has worked as a lawyer specialising in intellectual property and entertainment law, so the issues are not new to her.

She also sees the tension between economics and culture as one of the more pressing dilemmas for the industry.

"It's a real balancing act to bring in effective policy moves to encourage



Penelope Borland

economic growth and to ensure that how the local industry works and what it will benefit from is understood."

In addressing these challenges, the industry has been recognising the need to unite.

"I've noticed that even in the last month or so there has been an increased recognition of the need to come together over particular issues," Penelope said.

"There is also a lot of confidence at the moment," she said. "And we have huge strengths and advantages in original content creation. Our ideas are really strong."

SPADA represents New Zealand's film and television producers and senior industry professionals. It has over 350 members and works to represent and strengthen the New Zealand independent screen industry on both a local and international level. For more information, visit www.spada.co.nz ■

Screenrights International

maintains competitive costs

Screenrights International has announced a 10.5% administrative charge for collecting royalties in the 2003/04 financial year. This is one of the most competitive in international collections.

The charge is calculated by the Screenrights Board as the actual expenses to collections ratio for the previous financial year. This allows Screenrights International to advise rightsholders as to the fee they will be charged for this service prior to the calculation of the actual expenses to collections ratio at the end of the 12 month period.

This 10.5% administrative fee is slightly lower than the 10.7% administrative fee charged in 2002/03 financial year, demonstrating that the department has once again collected overseas royalties for rightsholders in an efficient and cost-effective manner.

If you have not yet signed up for this service and would like Screenrights to access retransmission and private copying royalties from Europe, Canada and the United States on your behalf, email international@screen.org ■

Changes to distribution policy for communication royalties

The Screenrights Board has approved changes to the Distribution Policy for the distribution of communication royalties collected from Australian educational institutions.

The royalties are collected under provisions in the Copyright Act that allow schools, TAFEs and universities to communicate material they copy from television and radio by means of email, for example.

When these provisions came into effect in March 2001, Screenrights had survey systems in place in educational institutions to monitor the copying of material only. In the absence of data on communication practices within educational institutions, the Board resolved to allocate communication royalties to all programs identified as having been copied. These royalties were allocated equally regardless of the manner in which the program was communicated.

Screenrights has since implemented survey systems to monitor the communication of copied material within educational institutions across Australia. These systems not only identify the programs that are communicated but also the manner in which they are communicated.

Each recorded communication will have points allocated to it, with the amount of points dependent on the type of program and the manner in which it was communicated.

The number of points allocated to the program will then affect the amount of royalties paid to the copyright owners for this use of their work. This data is currently being collected and will affect the distribution of royalties from the start of next financial year. Full details of this new policy can be found on our website: www.screen.org ■

Ministerial changes

Screenrights would like to farewell Senator the Hon Richard Alston from his position as Minister for Communications, Information Technology and the Arts.

Screenrights has enjoyed a long and positive relationship with Senator Alston and has worked closely with his department across many areas of copyright reform. We are looking forward to working with the Hon. Daryl Williams MP QC, who is moving from his previous position as Attorney-General and replacing Richard Alston as the Minister for Communications, Information Technology and the Arts.

We would also like to welcome the Hon Philip Ruddock MP to his new position as Attorney-General. ■

Digital Agenda review

Screenrights has made a submission to the review of the Digital Agenda amendments to the Copyright Act 1968 (Cth), and attended the public forum held in Sydney to discuss issues arising from the review.

The Digital Agenda Bill received Royal Assent on 4 September 2000 and the amendments to the Copyright Act commenced on 4 March 2001. The review of those amendments, as foreshadowed by the Attorney-General, is being conducted by the Attorney-General's Department and is due to be completed in 2004.

The law firm Phillips Fox had been selected to conduct a major part of the Government's broader review.

Phillips Fox will analyse key aspects of the reforms from legal, economic and technical points of view. The Phillips Fox Digital

Agenda Review webpage is available at:


http://www.phillipsfox.com/whats_on/Australia/DigitalAgenda/DigitalAgenda.asp

Phillips Fox can be contacted about their part of the review by email: digital.review@phillipsfox.com.

For the latest information on the Review of the Copyright Digital Agenda reforms please go to:

<http://www.ag.gov.au/DARReviewNews.> ■

Report recommends copyright term extension



The Allen Consulting Group has released its report on Copyright Term Extension, recommending an extension of the term of protection to bring Australia's law into line with the law in the US and the EU.

For most copyright works this would mean an increase in the term from 'life plus 50 years' to 'life plus 70 years'. Protection for films would effectively increase from 50 years from the end of the year of first publication to 95 years from the end of the year of first publication.

The report was commissioned by the Motion Picture Association and supported by the Australasian Performing Right Association, Copyright Agency Limited and Screenrights.

A full copy of the report can be viewed on our website: www.screen.org ■

Help us to help you...

Fax to Screenrights on +61 2 9904 0498

Screenrights is updating its database and needs your contact details, in particular we want to ensure that we have all our members' email addresses. If you have not provided us with your latest address details, please complete the following form and fax it back to us.

Name

Position

Company

ABN

Address

Phone []

Fax []

Email

Website address



screenrights

The Audio-Visual Copyright Society

Off the air is the newsletter of Screenrights, the trading name of the Audio-Visual Copyright Society Ltd.

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