

# Off the air

screenrights

The Audio-Visual Copyright Society

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## ttn brings new news to schools

The Ten Network has launched a new national news program for primary schools – ttn (The Total News).

Speaking at the launch of the program in Sydney in January, Australian Primary Principals' Association President **Tom Croker** said: "ttn provides a valuable learning resource for both students and teachers allowing them to access and understand the media and world news, and provides an opportunity for them to participate meaningfully in the news."

ttn runs for 30 minutes each week and is aimed at children aged 9 to 14. It explains the main news stories of the week in a format school-age children can relate to. It also goes behind the news, linking the topics to related subject matter.

In partnership with the program, News Limited newspapers across Australia will publish assignments and exercises to be

used in conjunction with ttn. These resources will be published on the day the program goes to air. There will also be website links, giving teachers and students the opportunity to interact with each other via News Limited and Ten's websites.

The program was officially launched at Lane Cove Public School in Sydney by the Federal Minister for Education, Science and Training, **Dr Brendan Nelson**. ■



*ttn presenters Emily Barker, Scott Beveridge and Emma Dallimore*



*ttn launch at Lane Cove Public School*

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# Government ownership of copyright

If you are a filmmaker who has made a film for or with a government department or instrumentality, you may wish to consider making a submission to the Copyright Law Review Committee's review into government ownership of copyright.

Under Australia's current copyright laws, copyright in material that is made by or on behalf of a government department or instrumentality is owned by the government, unless there is an agreement to the contrary.

This is an exception to the normal rules of copyright ownership, that state the creator of the work is usually the first copyright owner.

The CLRC has published an Issues Paper relating to government ownership of copyright and is calling for submissions by 26 March. The Issues Paper is available at [www.ag.gov.au/clrc](http://www.ag.gov.au/clrc) Guidelines on the preparation of submissions are also available at this site. ■

## Date set for retransmission case

The Copyright Tribunal has set a date to hear Screenrights' application for a rate of remuneration for the retransmission of free to air broadcasts. The full Tribunal will commence hearing the case on 11 October.

Under the Australian Copyright Act, pay television operators are entitled to retransmit the free to air channels as part of their service without having to obtain permission from copyright owners. However, the Act requires them to pay a fee for this. The Tribunal has been asked to establish this rate. ■

## 4.7 million sets new distribution record

Screenrights distribution team has set a new record, distributing \$4.7 million to copyright owners in film, television and radio in two months.

The team distributed this amount to members between 1 November and 31 December 2003. By way of comparison, \$3.5 million was distributed in the equivalent period in 2002. ■

## OZ dramas OS

Australian producers who are interested in making landmark telemovies and miniseries need to attract overseas partners, according to a report commissioned by the Australian Film Finance Corporation (FFC).

However, as the report states, finding suitable international co-production partners and distributors for Australian telemovies and miniseries is not an easy task

The report, *Opportunities for Australian Television Drama in International Markets*, identifies some of the difficulties producers can face in finding international financing for their projects. These include the fact that overseas peak time slots are often taken up with local production, with foreign made miniseries and telemovies shifted to less prestigious transmission times. This in turn means that distributors are not as interested in becoming involved as their profits are less.

However, the news is not all bad. According to the report, specific networks still want miniseries and telemovies to carve out a clear identity in a deregulated market. The demand is for a high level of sophistication and originality, with well-known faces a definite bonus for international appeal.

The author of the report, **Tony Virgo**, identifies potential co-production partners in both the UK and the States, and the kind of programming that interests them. Virgo conducted interviews with over 15 international distributors and broadcasters, identifying what they have done and what they are looking for from Australian producers. For a copy of the report, visit the FFC website: [www.ffc.gov.au](http://www.ffc.gov.au) ■

# Member profile: Nick Murray, independent producer of the year

For independent producer Nick Murray, one of the most frustrating aspects of running a television production company is the very limited amount of time he gets to celebrate its successes.

"You can work for months and months developing a project and then you only get one day when all the finances come together and you can finally go 'whoopie'," he said.

Murray set up Jigsaw Entertainment in 1999, intending to make comedy for the networks.

He had previously been CEO of the newly established Comedy Channel, and prior to that was General Manager at Artist Services.

However, in the year 2000, the networks were suddenly no longer interested in comedy, and the company had to diversify into other areas.

"It seems to be the way it is here. If one network drops a particular genre, then they all do," he said.

Despite the fact that the initial premise behind establishing the company wasn't sustainable, four years down the track Murray was awarded independent producer of the year at the 2003 SPAA Conference.



*Blackjack, a Jigsaw Entertainment production*

He is passionate about the importance of television and frustrated with the way in which it is so often seen as a poor second to film.

"When we do a film for television, we are using all the skills you use to make a feature, but because we are making it for TV the work that the cast and crew do will actually be seen by about 2 million people. In the case of a feature, maybe only about 50,000 would actually see the end result."

He also believes in the importance of high quality drama being made by the Australian industry for Australian TV.

"Australia isn't America and the bulk of high-end drama production needs to be subsidised. It's important for our culture that this continues. It's also very important that the government is committed to Australian content on our screens. The problem with the Free Trade Agreement with the US is that Australia will lose the flexibility for new technologies to be appropriately regulated in the future."

With a production slate that has ranged from science shows (*Aftershocks*) to high-end drama (*Blackjack*), Murray has learnt how to survive in the risky world of television production.

"It's a question of finding a balance between keeping your overheads low while still maintaining a presence," he said.

"It's also been very important for us to be careful with new development expenditure. The networks want you to develop a project a long way in and this can be a trap. In our first year and a half of operations we spent every dollar we made on development and it's simply too risky, too speculative."

"In those lean times, it was actually Screenrights money that covered the rent," Murray said. *Aftershocks* was a success with educational institutions, and the program earned substantial copying royalties.

"The royalties were incredibly useful at a difficult time," Murray said. "I always advise people to negotiate to retain this money if they can." ■

## Last print issue for *Off the air*

This is the last print issue for *Off the air*. In future, Screenrights will deliver monthly electronic updates, with all the latest Screenrights news and information as well as regularly changing features.

To make sure you don't miss out, make sure Screenrights has your current email address. Email it now to [info@screen.org](mailto:info@screen.org) or complete the details on the back of this issue and return it to us by fax. ■

# Indigenous Communal

The Federal Government is currently working on amendments to the Copyright Act that will provide “moral rights” style protection for material embodying the traditional culture and wisdom of Indigenous communities. Ian McDonald, Senior Legal Officer with the Australian Copyright Council, explains how these rights could impact upon filmmakers.

The Copyright Act deals with a range of rights: copyright rights; performers’ rights; and moral rights.

Copyright rights are economic in nature: they give a copyright owner the legal ability to control activities such as making copies; posting to the Net; broadcasting; and screening in public. Performers’ rights are very narrow in scope, but they essentially enable people such as actors and musicians to control when their performances are recorded or broadcast, and on what terms. Moral rights, on the other hand, protect the interests of individual creators, including film producers, screenwriters and directors, by creating obligations on people using their work to credit them for their work, and not to use their work in ways that damage their reputation or honour.

Over the past year, the Federal Government has been working on amendments to the Copyright Act which will create an additional set of rights: rights for Indigenous communities. These rights are generally referred to as “Indigenous Communal Moral Rights” (ICMR), and are likely to exist in copyright material which embodies an Indigenous community’s “traditional culture and wisdom”.

## Why is there a need for these rights?

There have been a number of studies and reports over the years documenting the concerns of Indigenous communities over the misrepresentation, misuse or hijacking of their culture. See, for example, the report *Our Culture: Our Future* by Terri Janke (Michael Frankel & Co, Sydney, 1998).

Sometimes hurt and cultural damage results from misunderstandings or ignorance; in other cases, people who

use Indigenous cultural material may have no regard for the way in which their use of that material is perceived by the communities from which it is derived. Whatever the cause, the end result is the same: uses of Indigenous cultural traditions or knowledge that are deeply resented as cultural misappropriation.

## What the Government has proposed

On 19 May 2003, **Senator Alston**, together with the then Attorney-General and the then Minister for Indigenous Affairs announced in a media release that “Indigenous communities [would] get new protection for creative works” —ICMR.

The media release emphasised that the proposed communal rights would “mirror the nature and scope of authors’ moral rights as far as possible”. Indigenous communities would have the right to be attributed (and also not to be falsely attributed) when material embodying their “traditional culture and wisdom” is, for example, reproduced, performed in public or displayed. An Indigenous community would also be able to take action if its material is subjected to “inappropriate, derogatory or culturally insensitive use”.

In addition to this, the release indicated that communal rights would be exercisable independently of the copyright in the relevant material and also of the moral rights exercisable by the individual creator of the material. Although we understand that the Government was keen to introduce a Bill amending the Copyright Act as soon as possible (initially planned for the 2003 winter sitting of Parliament), it has continued to consult “in fine-tuning the new provisions”.

## What effect might ICMR have on filmmakers?

Depending on the circumstances, filmmakers might need to consider each of the following when including Indigenous cultural material in their films:

- whether a copyright clearance is required;
- how moral rights will impact on the use of the material;
- whether there are any performers’ rights issues; and
- whether the use of the material raises issues relating to an Indigenous community’s ICMR.

While the intention behind the proposed ICMR is to give Indigenous communities protection against “inappropriate, derogatory and culturally insensitive use of copyright material”, filmmakers will have a degree of choice as to whether they will create or be bound by any ICMR when making a film incorporating an aspect of Indigenous culture.

This is because, under the current proposal, ICMR would be “based on an agreement between the author/artist [or filmmaker] and the Indigenous community”. In other words, if a filmmaker incorporates an aspect of Indigenous culture into his or her film without reaching an agreement with the relevant community, there won’t be any ICMR rights in the film.

In some cases, however, the “choice” that a filmmaker would otherwise have as to whether ICMR will be created in a film might depend on factors such as who they are dealing with, where they want to film, or what pre-existing footage they want to include in the film.

For example, under the current proposal, while it might be culturally

# Moral Rights

inappropriate, there would be nothing to stop a filmmaker including shots of a woman playing the didgeridoo, using a Dreamtime story as a plot, or having a set painted up with "X-ray" style koalas (this is seen as inappropriate because "X ray" style comes from areas of Australia that don't have koalas). However, if a filmmaker wants the co-operation or endorsement of an Indigenous community, or wants access to something such as Indigenous controlled land, then the terms or conditions of the co-operation, endorsement or access may include the creation of ICMR in the resulting film.

This will particularly be the case in relation to any areas of Australia which are subject to regulation under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999. These regulations mean that just about any commercial filming in these areas or use of existing footage needs consent from the Director of Parks Australia. We understand that, at least in relation to Uluru Kata Juta National Park, consents are handled locally, with considerable input from the relevant Indigenous communities.

Of course, while ICMR are not currently legal rights under the Copyright Act, and while respect for Indigenous culture will not be compulsory under the proposed amendments, filmmakers can still handle cultural issues sensitively.

In particular, filmmakers can follow the range of protocols across various arts-related fields which were published by the Australia Council in 2003 (available at [www.ozco.gov.au](http://www.ozco.gov.au)). There are also protocols and guides that have been or are being developed for filmmakers, including the issues paper, *Toward a Protocol for Filmmakers Working with Indigenous Content and Indigenous Communities*, published in February 2003 by the Australian Film Commission; **Lester Bostock's** *The Greater Perspective*; and **Darlene Johnson's** *Indigenous Protocol* for SBS Television. ■

# Documentary data

There are around 270 producers, 240 directors and 200 writers currently making documentaries in Australia, according to a comprehensive survey of the industry released at the Australian International Documentary Conference (AIDC) in February.

The survey was completed by the Australian Film Commission (AFC) with the support of other film

agencies. The data includes figures on the annual production costs of the industry (\$53 million), the average budget (over half of the documentaries made between 1996/7 and 2001/02 had budgets of less than \$200,000) and the success of the Australian industry overseas.

A summary of the comprehensive statistics is accessible through Get the Picture Online on the AFC website [www.afc.gov.au/gtp/docs](http://www.afc.gov.au/gtp/docs) ■

## Free Trade Agreement revealed

With details of the Free Trade Agreement now revealed, the word from the Australian production industry is that the FTA brings no joy to Australian content creators.

The government has agreed to the following local content quotas:

- 55% of free to air tv programming
- 25% of radio programming
- 55% of programming on two free to air commercial TV multichannels or 20% of programming across the total number of channels, whichever is greater.
- pay TV must spend 10% of its budget for documentary, drama, arts, children's and education formats on Australian programs. Spending on local drama may be increased to 20%, following consultation with affected parties, including the US.

The agreement also states that:

- Local content quota for free to air TV can only be lowered - ie if the government decides to lower the quota, it cannot later be increased.
- A number of conditions must be met before the Government can regulate new media, with new media defined as interactive audio and/or visual services.
- Tax concessions for Australian film and TV production have been maintained.

In effect, the agreement gives the US a seat at the negotiating table when Australia considers raising local content quota for pay TV drama, or imposing local content quota on interactive services.

Further information about the Australian film industry's reaction to the details of the deal can be found by visiting the Screen Producers' Association of Australia website: [www.spaa.org.au](http://www.spaa.org.au)

Australia has also made a commitment to make various changes to its copyright laws under the FTA, including extending the term of protection.

For literary, dramatic, musical and artistic works this will mean protection for the life of the author plus 70, rather than 50, years.

For films and sound recordings, protection will be extended from 50 years after first publication to 70 years after first publication.

The Agreement also requires Australia to impose greater obligations on Internet Service Providers, to increase civil and criminal protection against the unlawful decoding of encrypted satellite TV signals and to provide tighter controls on circumventing technological protection measures. ■



# BaseClimb:

## extreme sports hit the spot for educators

It's always pleasing to hear of Screenrights educational royalties being put to good use. For Dr Glenn Singleman, the money will help his wife make her second attempt to conquer his own world record in altitude base jumping.

**Dr Singleman** believes in extreme measures for confronting fear, so much so that he happily encouraged his wife, **Heather Swan**, to take up the sport.

"She's not adventurous," he told *Off the air*, "and she took up one of the most extreme sports in the world."

**Swan's** initial attempt to beat his record is the subject of his very successful documentary *BaseClimb 2*.

"She started learning in 2000," he said. "And then the whole project was put on hold when she had a bungy jumping accident and perforated her bowel, but she's very determined. She wanted to overcome fear and that's what extreme sport is all about. You can build up pathways in your brain that inhibit fear and this spreads through the rest of your life. The documentary is all about the impact that this attempt to beat my record had on her life."

The documentary was made with an ABC presale and international distribution guarantee.

"We then did a deal with the FFC," Dr Singleman said.

"The film has now sold to more than 140 cable channels and over 20 free to airs, and that's mostly other national broadcasters. We were delighted it's done so well."

The documentary has also been popular in educational institutions.

"It's the personal development angle," **Dr Singleman** said. "My wife and I give a lot of lectures to community and school groups about overcoming fear. Kids get into our story because it's got great visuals, but it's also got many more levels. It becomes a springboard for discussion on personal development issues."

As for **Swan's** first attempt, it was stymied "by an accident and world history"

The pair reached the summit of a mountain on the border of Afghanistan, ready to undertake the jump, when a freak avalanche made them turn back.

"We decided to go back the next day," **Dr Singleman** said.

The next day, however, was September 11, 2001.

"Our insurance company called us," Dr Singleman said, "and basically told us that the United States was going to invade Afghanistan and that we should get out."

The pair are now trying to raise finance for the documentation of **Swan's** second attempt.

The Screenrights royalties they have received "help make the FFC happy," **Dr Singleman** said. "And if they're happy, it's much easier to get them to return your calls." ■



*Base Climb 2*

# Deadline

## for 1998 educational royalties

With the deadline for claiming 1998 educational royalties at the end of June this year. Screenrights Member Services team is asking rightsholders with potential claims from this period to assist in processing these as quickly as possible.

The deadline applies to royalties collected for programs broadcast on Australian television or radio between 1 July 1997 and 30 June 1998.

Under Screenrights distribution policy, educational copying royalties are held in trust for six years. After this period, any undistributed payments are rolled over into the next year's collections.

In order to claim copying royalties, you must own or control the right to copy the program from radio or television in Australia. This right is separate to other rights such as

the right to broadcast, exhibit or sell or hire video cassettes of the program.

If your program was broadcast during the 1997 to 1998 financial year and you believe you may have a potential claim to educational copying royalties, email Marc Carter, [marc@screen.org](mailto:marc@screen.org)

If you are contacted concerning a potential claim, you will need to complete a warranty to state that you are entitled to these royalties and return it to Screenrights as soon as possible. ■

## Digital Agenda Review

The Digital Agenda Amendments to the Copyright Act have now been reviewed by an external consultant and the Government is currently considering their report.

The Amendments were enacted in 2001 to bring the law into line with technological change, and at the time of their enactment, the Government promised to review the amendments in three years.

Law firm Phillips Fox was selected to conduct a major part of this review and released issues papers and conducted public consultations as part of this process.

The Phillips Fox report is being considered by government as part of the broader review process. For more information, visit

[www.ag.gov.au/DARReviewNews](http://www.ag.gov.au/DARReviewNews) ■

## Amendments to distribution policy for *artistic works*

The Screenrights Board has amended its distribution policy in relation to the manner in which Screenrights distributes royalties allocated to artistic works. The amendment follows the Board's preliminary view of 19 November 2003.

The amendment incorporates both a change to the existing policy under the Educational Services and a new policy to be implemented under the Retransmission Service. The proposed amendment is designed to improve administrative efficiency and ensure the timely distribution of a royalties to rightsholders through a two step process:

- The use of reciprocal arrangements with international artistic works collection societies, to ensure efficient distribution to rightsholders in programs produced in those territories (due to the availability of local production information to the societies and their involvement in direct licensing of artistic works to programs in that territory); followed by

- The use of a registration system through which rightsholders and their representatives will be encouraged to claim.

The rate of remuneration for rightsholders in artistic works was determined by the Board on 11 September 2002. The relevant allocation is 1.9% under the Australian Educational and Retransmission Service and 1.85% under the New Zealand Educational Service. The amendments do not vary this allocation, only the manner in which it is distributed.

If you would like further details of the amendments, visit our website ([www.screen.org](http://www.screen.org)) to view our full distribution policy. ■

# 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



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The Audio-Visual Copyright Society

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