

# 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 2,800 members from 54 countries.

May 2009

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**02**

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**05**

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**06**

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**06**

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**07**

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You can subscribe to **Off the air** by emailing [ota@screenrights.org](mailto:ota@screenrights.org)

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## Feature: Loglines, taglines and copylines – when does copyright step in?

Depending on who you read, there are only 3, 7, 20 or 36 basic plots available to filmmakers, all of which can be reduced to a few words. **Ian McDonald**, Senior Lawyer with the Australian Copyright Council looks at copyright protection for loglines, taglines and copylines, explaining what's covered and what isn't.

In one version of "the seven main plots", the plots include "man/woman v machine" and "man/woman v nature", and so on. In a more detailed list, what are referred to as "plots" could more aptly be referred to as themes – things like "supplication", "daring enterprise" and "enigma", "all sacrificed for passion", "fatal imprudence" and "erroneous judgment".

Are these protected by copyright?

The answer in these cases is a clear "no" – we're just talking about a "story" stripped to its elemental bones or themes, and courts have always been very clear that mere ideas are not protected by copyright.

All of this becomes relevant in relation to a question put to me some time ago: "Are my loglines protected by copyright"?

For me this raised the issue as to when copyright law starts applying to the various materials developed during the process of writing, making and marketing a movie. These materials aren't necessarily produced sequentially, of course, but each of these can have their own commercial value.

There is no doubt that synopses, treatments and each version of a script for a film (not only the final version, but each of the drafts) will be protected by copyright – either as a literary or a dramatic work, depending on whether it is written as narrative or in a dramatic form. In terms of copyright protection, nothing turns on this distinction.

But what about a logline or hook – the one sentence summary of a movie, often used to grab the attention of a potential producer or investor? (The hook for the movie **Alien** was apparently "**Jaws** in space" ...).

Similarly, what about a tag line or copyline – that bit of advertising copy used to get a potential audience's attention – things like "in space, no one can hear you scream" (**Alien** again), or "just when you thought it was safe to go back in the water" (**Jaws II**).

Copyright generally protects text as a "literary work". However, this will only be the case if the text is sufficiently original and of enough substance in its own right, separately from any copyright in the related scripts, treatments



Ian McDonald, Senior Lawyer with the Australian Copyright Council

May 2009

or synopses.

One can "never say never", but here are some examples where courts held that the relevant bit of text was **not** a literary work:

"GOOD SIGHT IS YOUR  
MOST VALUABLE ASSET  
Avoid the Predicament of being without  
Your Glasses  
LET US MAKE YOU A SPARE PAIR  
Broken Lenses Promptly  
And Accurately Replaced" (*Kirk v Fleming Ltd* [1928-1935] MacG Cop Cas 44 (Ch D))

and

"Somewhere in the Whitsundays" and "The Resort that Offers Precious Little" (*Sullivan v FNH Investments Pty Ltd* (2003) 57 IPR 63)

and

"Youthful appearances are social necessities not luxuries" (*Sinanide v La Maison Kosmea* (1928) 44 TLR 674 (CA))

Similarly, in one case it was held that a film entitled **The Man who Broke the Bank at Monte Carlo** did not infringe copyright in a song of the same name. (*Francis Day & Hunter Ltd v Twentieth Century Fox Corp Ltd* [1940] AC 112).

In these cases, the courts held that the phrases just did not have both the requisite originality and substance to be protected. Courts have even found that entirely made up words don't constitute "literary works". One example is "Exxon" (*Exxon Corporation v Exxon Insurance Consultants International Ltd* [1982] RPC 69 (CA)).

So, while one can never rule out the possibility, it's highly unlikely that a tagline, copyline or logline would be protected by copyright.

So, what legal protection do these have?

The answer is going to lie under other areas of law – particularly under the areas of law dealing with confidential information, "passing off" and trade practices legislation.

The pitch you make to a producer or investor will in many cases be protected by the law of confidential information. In broad terms, an obligation of confidence will arise if each of the following elements is present:

- the information itself has a confidential nature; and
- it is communicated in circumstances where the person receiving it should be aware that they are receiving it in confidence.

The person who gives the information to the other person can then take action if there is (or is likely to be) unauthorised use or disclosure of the information.

May 2009

One Australian example relates to a film producer who went to a TV network with an idea for a series of TV programmes on how selected millionaires had made their money, and how these people could then provide an example and inspiration to viewers. (*Talbot v General Television Corporation Pty Ltd* [1980 VR 224; [1981] RPC 1). The TV station went ahead with its own series using essentially the same idea, and the film producer successfully sued for breach of confidential information.

The law concerning confidential information won't, however, be relevant to taglines and copylines – the advertising promo lines used to flog a film. At this point, everything is public, so there is no confidentiality in these or in the ideas they embody. However, if you were to try to market your film using something that is similar to the lines used for another film – or, indeed, another product – you are likely to run into trade practices or passing off issues. Under these areas of law, the important issue is whether or not you are marketing your product in a way that might mislead the public into thinking there is some connection with the other film (or with the producers of another film) that doesn't exist.

In practical terms, if you are sending loglines to producers or investors, make sure your covering letter states clearly that the information is provided in confidence. As an additional precaution, perhaps keep a careful diary note of people to whom you show or discuss your ideas – and don't give the ideas away if you're just idly chatting to a stranger on the bus or to friends at a party, as these situations are unlikely to impose any obligations of confidentiality.

Second, if you are choosing copylines or taglines, make sure you choose something that won't be confused with someone else's film and if you feel that someone else has copied yours, or is using something too close to yours, get legal advice!

The Copyright Council's website contains information relevant to filmmakers. See <http://www.copyright.org.au/screen-content/wp0001>

May 2009

## EnhanceTV Community – A guide to using this link to educators

With the new EnhanceTV Community up and running, filmmakers are urged to help make this link with educators a success by posting contributions that provide a genuine insight into how to use programs in class.

EnhanceTV Project Manager Jamie LeHuray said the site was established to allow for an exchange of information about using audiovisual material in teaching.

"Teachers want to find out what works in class, what doesn't and why. They can find advertising or promotional material about films elsewhere, so we are actively discouraging the posting of this kind of material," he said. "Whether or not the site grows as a genuine community that benefits both teachers and the film industry will depend on how its used. We're always happy to talk to filmmakers about the kind of postings that work and we also encourage potential contributors to have a look at our blogging tips."

These have recently been amended to provide special information for filmmakers wanting to be an active member of the community.

The recent addition states:

**Note for Filmmakers:** please make your content relevant, interesting and useful to educators. They are a special audience, and can already read about your program and broadcast details in mass media and the EnhanceTV newsletters. Blogs are the place to give them more insight into your program from an educational point of view. How can you help them teach with your program in class? Do you have lesson plans, behind the scenes footage, background material that is not already available to the general public through your mass advertising? Are there interesting facts, interviews, study guides associated with your program? EnhanceTV Community connects you to educators, but you must share! Blogs that don't "share" won't feature on the main page. We know this might sound blunt, but the whole concept of a Community won't work otherwise.

Content on the site (<http://community.enhancetv.com.au>) is open for anyone to view. However, to contribute, it's necessary to become a member. This is free. Visit the site now and find out more about how it can work for you.

May 2009

## Entries open for EnhanceTV ATOM Awards

Entries are now open for the 2009 EnhanceTV ATOM Awards.

The awards recognise and celebrate excellence in film, television, animation, multimedia and interactive games, with 36 awards across three categories – student, educational/vocational and general.

Entry forms can be downloaded from [www.atomawards.org](http://www.atomawards.org). Entries close on 15 June with finalists announced in August.

## Screenrights royalties – are your registrations up to date?

With \$3.6million distributed during March and April, Screenrights' members should continue to make sure their registrations are up to date, so that any royalties owing to them can be paid as efficiently as possible.

As CEO of Fury Productions, a Brisbane based independent production company, Veronica Fury is always busy developing and producing a large slate of factual television programs.

**The Glamour Game**, a two-part series offering a unique and in-depth look at Australia's beauty and fashion industry, was broadcast on SBS earlier this year.

"When Screenrights first approached me regarding the **The Glamour Game** they found me exceptionally hard to pin down," Veronica said. "I'm almost embarrassed by it now but at the time Screenrights was something I simply couldn't find the time to explore. I just didn't make the time to complete the form while we were in production. Screenrights finally cornered me after an AIDC pitching session. I am thankful now that they tracked me down and I am delighted with the recoupment."

Since then, Fury Productions has registered a number of other programs with Screenrights.

Members who would like to check on the status of their registrations or register further titles can do so by contacting Member Services. Email: [memberservices@screenrights.org](mailto:memberservices@screenrights.org)

May 2009

## Deadline for 2003 royalties

The deadline for distributing 2003 Australian and New Zealand educational royalties is 30 June. Members who believe they might have a claim to educational royalties from that year should contact Screenrights as soon as possible.

Under its Articles of Association, Screenrights has six years in which to distribute the educational royalties it collects. After the expiration of this period, any undistributed money is rolled over into the next year's distribution pool.

To date, there is only 2.05% of Australian educational royalties left to distribute, and 3.63% of New Zealand royalties.

Member Services Officer Marc Carter said this was already below the company target of 4%.

"However, we would still like to see this go below 2% for each distribution pool," he said.

Members who are contacted with a potential claim to this money should try to ensure that they respond as speedily as possible, and if you believe you may have royalties owing from this period, email [marc@screenrights.org](mailto:marc@screenrights.org)