Film competitions

Entering a film competition creates a binding contract between the film maker and the competition organiser and it is important to understand the competition's terms and conditions.

Introduction

If film competitions are a good way of getting publicity about a film or obtaining a material gain, it's important to understand the impact of the terms and conditions that might govern a competition on the entrant's rights. This information sheet provides basic information on this matter. For further information about film competitions, see Arts Law's *Short Film Competition: Producer's Guide*. Arts Law also reviews various prizes and competitions as part of our advocacy work.

Intellectual property rights in films

In order to understand the impact of terms and conditions of entry into film competitions, some basic understanding of intellectual property, in particular copyright, as well as contract law is required.

Copyright

Copyright is a bundle of economic rights that give their owner the exclusive right to do certain things in connection with the creative works and subject-matters they protect. A film is protected by copyright as are the script and the soundtrack. A film maker should not enter a film in a competition unless all relevant copyright permissions have been obtained.

Under the *Copyright Act 1968* (Cth), copyright protects 'works' and 'subject-matters other than works':

- Works include literary works (such as scripts and screen plays), dramatic works, musical works, and artistic works including works of artistic craftsmanship;
- Subject matters other than works include films, sound recordings, broadcasts, and published editions.

Copyright does not protect information, ideas, concepts, styles and methods. In addition, works must be original. This second requirement refers to the contribution by the author to the work. The work must be attributable to the author's skill and labour, and not copied from elsewhere.

Under these conditions, the creator benefits from copyright protection automatically. There is no need to register a work in an official register in order to obtain copyright protection.

Nature of copyright

Copyright content depends on the type of creative work concerned:

- Owners of copyright in literary, dramatic, artistic and musical works have the exclusive right to reproduce the work, make the work public for the first time and communicate the work to the public;
- Owners of copyright in literary, dramatic and musical works have two additional exclusive rights: the rights to perform the work to the public and to make adaptations of the work;
- Owners of copyright in films, sound recordings and broadcasts have the exclusive rights to copy the material, show or present them in public, transmit them to the public using any form of technology and to rebroadcast television and sound broadcasts.

Copyright ownership

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Ownership of copyright can be complex, especially in cases involving works such as films where there are likely to be different elements or components (separate works) contributing to the whole. Generally, unless there is an agreement to the contrary, the copyright owner of artistic works (e.g. paintings, photographs, posters, animations, illustrations, maps, etc.), literary works (e.g. a novel or a script) and musical works is the creator of the work. It is common for the owner of copyright in a film not to own the copyright in the material (or "underlying works") that make up the film (for instance, the music or the screenplay). As a result, for most films, there can be several owners of copyright involved.

If a film is 'commissioned', then the commissioner (the person who pays someone else to produce or make the film) will own the copyright in the film. This can be varied by contract.

Otherwise the copyright owner is the 'maker' of the film. For films made before 19 December 2005, the 'maker' is the person who has made all arrangements concerning the film's production – usually the producer or production company. However, for films made after 19 December 2005, the maker is both the person making the production arrangements (usually the producer) and the director or directors of the film (or their employer if the director/s work on the film under a contract of employment) for the purposes of copyright ownership. In practice, most film producers should ensure that each director has transferred any copyright to the producer in order to simplify future negotiations with film distributors.

Film makers also need to take special care (even in the context of entering competitions) to ensure that all clearances (or permissions) are obtained from the various copyright owners of the creative components or underlying works that they want to use in their film. This is dealt with in more detail below. As a result, in addition to the owners of copyright in the film, the ownership of copyright in the film's underlying works such as the script (a literary or dramatic work) and the soundtrack (a sound recording of a musical work) need to be considered. For further information on copyright generally, see Arts Law's information sheet *Copyright*.

Moral rights

Creators of copyright material have certain personal rights in relation to their work called "moral rights". Moral rights must be respected whenever a film is copied, screened in public or communicated to the public. Moral rights are the rights:

- to be attributed as the creator of one's work;
- not to have one's work falsely attributed to someone else; and
- not to have one's worked submitted to derogatory treatment, meaning not have one's work altered or otherwise treated in a manner that is prejudicial to the author's reputation or honour.

Moral rights must be respected whenever a film is copied, screened in public or communicated to the public.

The principal director, principal producer (so long as the producer is a person rather than a company), and the principal screenwriters of a film all have moral rights. In the context of a film, there are also likely to be moral rights in the underlying works which need to be respected, such as the moral rights of any screenwriter, or composer of the score. Usually the moral rights of attribution and against false attribution are respected by correctly naming the various contributors in the film credits.

It is legally possible for the maker of a film (or a creator whose work will be included in a film) is able to give a broad consent to an infringement of moral rights. It may be that such consent is sought in the terms and conditions of a film competition.

There are circumstances in which the alteration or treatment of a film will not amount to derogatory treatment (and thus a breach of moral rights) if it is "reasonable" in the circumstances. In the context of a film competition, a scenario might arise where a competition organiser might 'cut and paste' several entries into a 'short' for advertising purposes. While this might be considered derogatory treatment in other circumstances, it might be considered reasonable if the filmmaker knew the film could be used in advertising for the competition.

For further information on moral rights generally, see Arts Law's information sheet *Moral rights*.

Clearing rights of copyright in your film

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As mentioned above, films are complex creatures in terms of copyright law as not only is the audio visual recording itself protected, but copyright protection also covers underlying works which are incorporated into the film and which may belong to different copyright owners. For example, a dramatic film is usually based on a script or underlying literary work. A film might also contain music, artistic works or existing footage. Each creator of these components owns copyright and must agree to the proposed use of their work in the film.

Because only the copyright owner has the right to authorise the use of their work, anyone else using those works in any of the ways protected by copyright without the owner's permission will infringe copyright. For example, without the permission of the owner of the copyright in old footage, that footage cannot legally be incorporated into a new film. This problem is often faced by documentary makers. If copyright has been infringed, the owner is entitled to start an action in court. Various remedies may be awarded.

There is an exception for the "incidental" inclusion of an artistic work in a film or broadcast such as an artwork which hangs on the wall in the background of a particular scene. In this case, the permission of the owner of the copyright in the artwork is not required. There is no similar exception for the inclusion of other types of work, in particular music.

Making or showing a film incorporating third party copyright materials without having sought permission for their use from the copyright owners could be an infringement. **It may also place you in breach of the terms of entry for the competition and could disentitle you to any prize you might otherwise have won!** You should ensure that you have the permission of each copyright owner to use their material in your film and otherwise secure all the rights you need in order to exploit the film. This process is referred to as "clearing" rights. Clearances can be by way of assignment (i.e. transfer) or licence (a permission to use) of copyright. The relevant contract between each relevant copyright owner and yourself should be in writing and ought to include:

- whether it is an assignment or a licence (exclusive licence, sole licence, non-exclusive licence);
- the relevant geographic territory;
- the duration of the contract (it can be for the duration of copyright or for a shorter period);
- the permitted uses; and
- fees

A general sample *Copyright Licensing Agreement* is available from Arts Law. Other Arts Law sample agreements for specific types of copyright material include:

- Music:*Music Licence for Film*;
- You may choose to commission a composer to write an original music, lyrics or sounds recordings specifically for your film. In this case, you should conclude a written commission agreement including a synchronisation licence. A sample *Music Commission Agreement* is available from Arts Law;
- Artistic work :*Artwork Reproduction Licence*;

Works in which copyright has expired

Generally, copyright lasts for 70 years after the death of the author of the work. In the case of subject-matters other than works, copyright generally lasts for:

- 70 years from the year of first publication of a sound recording or film;
- 50 years from the year a television or sound broadcast was made; and
- 25 years from the year of first publication of a published edition of a work.

Copyright lapses after the relevant time and the work is then in the "public domain". This means that anyone can use it without having to request for permission from the – former – copyright owner.

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For further information about duration, see the Australian Copyright Council's information sheet *Duration of Copyright*.

Are there other permissions to obtain?

While the focus of most competition terms and conditions is on copyright clearance, there are still other issues which could compromise your ability to submit your film into a competition and are best clearly addressed at the outset. You don't want to be dealing with these unresolved issues if you have just won a film competition and international distributors are leaving messages for you!

- If your film includes interviews, it is prudent to obtain a release from the interviewee prior to filming. A sample *Interviewee's Release* is available from Arts Law
- You should have a written agreement with any actor or performer who appears in your film and any film crew members who work on your film (such as camera or sound crew, set or costume design, etc). Depending on your budget, this agreement could be with or without deferred fees. A sample *Cast & Crew Agreement (without deferred fees)* and a *Cast & Crew Agreement (with deferred fees)* are available from Arts Law.

Terms and conditions

What are they and what do they say?

Each film competition usually has its own set of terms and conditions that represents a binding contract between each entrant and the competition organisers. Before submitting your film in any competition, you should carefully check the terms and conditions of entry and make sure you understand them and can comply with them. If you are unsure about their meaning, seek legal advice, for example through Arts Law's document review service. If you disagree with those conditions, you could try to contact the organisers to attempt to have them amended before you submit your entry. It is often difficult however to get terms and conditions changed, and you should always be prepared to 'walk away' if the terms are too onerous or you cannot comply with them. In most cases, submitting your film has the legal consequence that you agree to, and accept, all the terms and conditions – even if you didn't read them or understand them.

What are you giving up?

This is the single most important issue to be considered when you read the terms and conditions – what rights to your film are you giving the competition organisers by submitting it into the competition?

In many cases, the competition organisers will not acquire any rights in the films entered in the competition. However, some terms and conditions operate to give the competition organisers a copyright licence (or, even worse, an assignment of copyright). In some cases, this may only apply to winning films. In some cases, it may apply to all entries. It is not uncommon for competitions to obtain a short term licence to use films for a period after the competition for promotional purposes. This could mean that during that period the film is ineligible for entry into other competitions which require films to be free of licensing restrictions.

Warranties

Most film competition terms and conditions require the entrant to give certain warranties. Warranties represent an assurance where one party promises that a certain fact is true and can be held responsible if that fact turns out not to be true. A typical warranty relating to film might be "the producer warrants that all necessary copyright clearances have been obtained" or "the producer warrants that this film has never previously been shown publicly". They may be express (in the written terms and conditions) or implied. Warranties are often coupled with an indemnity that requires the entrant to compensate the competition organiser for any loss or damage it suffers. For example, if the film organisers held a public screening of a winning film and were sued for copyright infringement by the copyright owner of the soundtrack music because his

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permission had never been obtained for the use of his musical composition, the competition organisers would rely on the warranty and indemnity clause in the competition terms and conditions to make the competition entrant (the filmmaker) reimburse them for all their losses arising out of the dispute with the composer. As well as the financial burden, such an outcome would be likely to cause considerable damage to the filmmaker's reputation as well.

There are two types of warranties relevant to film competitions: the warranties for the filmmaker's benefit and the warranties for the competition organiser's benefit.

Warranties can provide some security for you. The producer has to clear copyright for all elements of his/her film. Any assignment or licence agreement used to clear copyright will normally include a "Warranties" clause in which the copyright owner warrants that:

- they are the sole copyright owner of the work included in the film;
- they have all the relevant rights to enter into the agreement with the filmmaker;
- there is no current or imminent litigation with respect to the use, validity or ownership of the copyright; and
- the filmmaker's use of the work in the film won't infringe any intellectual property rights or any other rights of any third person.

Warranties also provide security for the competition organisers. The organisers want to be assured that when they screen the film or arrange its distribution, they will not be infringing copyright. Obtaining a warranty from the filmmaker gives them some comfort that the filmmaker is financially 'on the line' if all copyright clearances aren't in order. Such warranties form part of the binding contract the entrant agrees to when submitting their film into the competition.

Film/Video Sample Agreements Pack

A full set of samples agreements for filmmakers is available for purchase from the Arts Law Centre as *Film/Video Sample Agreements Pack*. It includes:

- Artwork Reproduction Licence for Film
- Film Location Release
- Film/Video Partnership Deed
- Music Commission
- Music Licence for Film
- Option and Purchase Agreement
- Producer and Cast/Crew Agreement (Deferred Fees)
- Producer and Cast/Crew Agreement (Without Deferred Fees)
- Producer and Director Agreement
- Video Production Agreement

Further Information

Australian Copyright Council Information Sheets:

- Competitions
- Film & Copyright

Thinking of holding a competition?

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If you are considering holding a competition as part of a festival or exhibition you are holding or to promote a private organisation, you may be required to purchase a permit. You can find further information on the regulation of competitions in each of the states and territories at the links below:

- New South Wales
- Victoria
- Queensland
- Australian Capital Territory
- Tasmania
- South Australia
- Western Australia
- Northern Territory

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (Arts Law) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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