New Media – Issues for creators working across multiple platforms

This information sheet addresses the legal issues that can arise for artists, and especially filmmakers, creating multi-platform works and provides necessary information concerning what steps can/should be taken by multi-platform creators to protect and secure their rights.

Introduction

The explosion of new media platforms in recent years has created a vast range of opportunities for artists across all mediums to express their ideas, create works, fund their projects, distribute and exploit their work, and interact with their audience. New media provides artists with alternate and multiple ways to deliver their works to and communicate with their audiences – think official websites, Facebook, YouTube and Twitter. New media also provides audiences with alternate ways of receiving, consuming and interacting with those works – think mobile apps, tablets and internet TV. This is especially so for filmmakers where distribution of films was previously limited to traditional avenues of cinema, television and/or DVD release and also for musicians who traditionally worked through a record label and a physical format (compact disc, LP or single record or cassette).

New media has fundamentally changed the traditional media landscape. When we talk about new media platforms, we are thinking of:

Media Platform	**Examples**
Online platforms	Websites, online music downloading services such as iTunes, e-books, video games, blogs and podcasts.
Mobile platforms	Mobile apps, smart phones, tablets and e-readers.
Social media	Facebook, Twitter, YouTube, Pinterest, Myspace, Google+, Flickr, Tumblr and other social media platforms.
Internet TV and Radio	ABC iView, SBS On Demand and other ‘catch-up’ services; music streaming websites such as Google Play Music, iTunes Radio, MOG, Pandora, Spotify, Tidal and Vevo.
Interactive TV	Beamly TV (Zeebox) and other social networking and social television platforms available for mobile devices and tablets; on demand/pay per view services and e-commerce applications delivered via the internet to your smart TV, mobile phones and tablets.

The growth in new media is so dynamic that if we were to write the same list in a year, it is almost inevitable that there would be half a dozen new entries and others may have fallen from sight. Indeed the impact of new media platforms is not simply that they provide a range of alternate ways in which ideas may be expressed and works may be produced, distributed and exploited – it is also that different elements of new media interact with each other in increasingly complex ways, often shaping the work itself.

It is now common for works to be produced for, consumed, distributed and exploited across different media platforms simultaneously and non-sequentially. These may be called ‘multi-platform’ works. Think, for example, of the increasing use of social media, websites and interactive TV (often accessed via mobile platforms) to influence and shape the content of TV programs in real time.

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However, with multiple media platforms come multiple rights issues. Although artists generally understand they hold certain rights in respect of their works i.e. copyright, they may be less aware of:

- The rights that they hold to exploit their works in or via other media platforms;
- The rights that other people involved in the development, creation and distribution of the artist's work may hold in relation to that work; and
- The legal issues that can arise when the boundaries between these two sets of rights are blurred.

This information sheet addresses the legal issues that can arise for artists, and especially filmmakers, creating multi-platform works and provides necessary information concerning what steps can/should be taken by multi-platform creators to protect and secure their rights.

Producing creative content across multiple platforms

Producing creative content across multiple platforms is also sometimes described as a method of engaging in 360 degree storytelling. The idea is to enhance the narrative by providing meaningful interactions for users across several relevant platforms.

> Australian Chamber Orchestra (ACO) Virtual is an interactive new media experience that allows the audience to take, engage and play with the musicians of the ACO.
> Each musician appears as a projected image on either walls or screens within a 360 degree cinema installation into the centre of which visitors are invited to step. Each musician's musical performance was separately recorded and is broadcast from the direction of their image. A touch screen app located in the centre of the room allows visitors to bring in, or remove, certain performers and spotlight sounds and visuals. They can either highlight one musician, a section of instruments or their own mix of players. The musical score for each instrument can be displayed underneath each musician's image enabling a visiting violinist, for example, to 'play along' with the orchestra using his or her own instrument.
>
> A smartphone app enhances the experience and ensures a take-home experience by way of a track of each piece of music that has been featured in the work.
>
> Legal issues relevant to this multimedia multiplatform installation include securing licences or assignments of copyright from the composers and arrangers of the musical works (unless the copyright has expired) and from the designers of the software code that drives the 'experience'. For more information see Arts Law's information sheet Computer Games – legal issues for creative designers

Using multiple platforms enables the creator not only to engage the audience across multiple platforms – such as in a gallery or cinema installation space as well as online and by smartphone app – it also enables the creator to engage the audience as a participant in the artistic collaboration. Crowdsourcing is the operation of an open invitation for participants to submit work for inclusion in a communal collaborative artistic work such as a film or a music video. By using the process of an open call online, the creator brings together a community of contributors with differing backgrounds, skills and interpretations to represent a particular artistic vision. Using the web as a platform for contribution, the scope of participants is worldwide and almost limitless.

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‘The Strange Calls’ is a television show revolving around the investigation of strange paranormal events by the main characters. While the show is scripted, it is supported by a sophisticated interactive website which invites viewers to leave voicemails reporting events to be investigated and to add case reports (text, image or video) of their own paranormal experiences on the website map. The hosts respond to viewers’ reports through the website which also contains Vlogs and recordings of past viewer messages.
Legal issues include how to create a contractual framework (such as by using Creative Commons) which secures permission from the participating audience to use and incorporate their contributions into the show so that there is no argument that the show infringes audience copyright, and ensuring that the moral rights of the audience contributors are not breached.

Legal issues for new media creators

Copyright and new media

There is no specific legislation regulating new media. Instead there are various different laws which apply – very few of which were enacted specifically with new media in mind. The most obvious legal issue for content in new media is copyright.

Copyright is the bundle of economic rights that allows a creator to control the use of their creative and artistic output. This area of law is governed by the *Copyright Act 1968* (Cth) and applies to specific types of creative content such as visual artworks, music, literary works, dramatic works, sound recordings and films. Many new media works don’t fit neatly into those categories but may be a composite of several types of content in which copyright exists.

There is a common misconception that anything published on the internet is in the public domain. In fact, visual images, sound recordings, text and film appearing on the internet are likely to constitute works or subject matter to which rights of copyright are attached. For further info, refer to Arts Law’s information sheet – Copyright.

Copyright protection is automatic. Despite this it is a good idea to use the copyright notice © to alert anyone seeing your material to the fact that it is copyright protected and to let them know that it is you who is claiming the rights. The notice is simply the symbol © (or the word copyright), the author’s name, and the year of creation or first publication; for example, © John Smith 2014. For sound recordings, use the letter ‘P’ in brackets instead of the ©.

Copyright depends on the law of individual countries and there are differences between the copyright law of different countries. Yet the internet is a global platform which ignores national boundaries. This is another challenge both in terms of managing rights and enforcing them. As a result of international treaties, Australian copyright holders are protected in most other countries and vice versa. For further info, refer to Arts Law’s information sheet – Putting your film or photo online.

This raises two issues – first, if you upload content, is it protected by copyright, who owns the copyright, what type of licence are you giving to those who may access it online and what type of safeguards do you have in place to ensure that your content is not at risk of appropriation and misuse? Second, if you access content online, how do you ascertain who owns it and what rights you have to reuse it?

Multi-platform works are likely to contain a number of copyrights, each of which may have a different owner.

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The Johnny Cash Project (JCP) is a "global collective art project" creating an interactive music video for Cash's haunting song "Ain't No Grave". The website provides the public with a template image for each frame of a video, as well as a custom online drawing tool. Participants choose a template and use it as the basis for their own personalised drawing which they upload to the site. JCP then collates the submitted drawings in the correct sequence to form a moving image which is synchronised with the sound recording and accessed through YouTube. As there are many drawings for each frame, the final 'work' is constantly evolving and changing.
The 'idea' of crowdsourcing content to make a music video is NOT protected by copyright. However, the individual frames uploaded by the contributors are each separate artistic works with separate copyright owners, and there is a separate copyright in the music, the lyrics, the sound recording, the resulting music video, the text of the website and the software used to operate it. The challenge for the creative producer is how to manage all those rights in order to realise the artistic vision of the project.

Moral rights

In addition to copyright, the individual creators of an artistic work, dramatic work, musical work, literary work, sound recording or film may have moral rights. This includes creators who contribute content through crowdsourcing or as third party contractors to a final multimedia product. Moral rights are personal rights that connect authors to their work and are distinct from the economic rights included in copyright. The moral right of integrity impacts on the extent to which third party content can be transformed or altered into a new work. The moral right of attribution requires proper attribution of the creator when the work of any third party is incorporated or used. Only individuals can hold moral rights. 'Corporate' creators do not have moral rights.

In the Johnny Cash Project mentioned above, moral rights are respected by giving credit to each of the individual video directors, producers, graphic designers, web designers, software engineers and of course the Johnny Cash himself. Each video also credits every one of the authors of the crowdsourced drawings which combine to 'create' that video.

For further info, refer to Arts Law's information sheets – Moral Rights and Performers Rights. See also the Australian Copyright Council website**.**

Third party content

Using third party content (even if found online) as part of a new media project is likely to involve using the copyright in that image, film clip, sound recording or text. That requires the permission of the copyright owner. For example, scanning an existing image to produce a digitised version for use in a new media project equals the making of a *reproduction* which is one of the exclusive rights of copyright. The subsequent use of that image by either uploading it to a website or including it within another work involves the *communication* of that image. Altering or adding to an image to create a new image also requires the permission of the copyright owner if an important part of the first image is recognisable in the new image. The same analysis applies to text, music, audio and video material. Both reproduction and communication of a copyright-protected work are specific rights of the copyright owner. Permission must be obtained to scan, alter, upload, or use, protected material in any way.

For crowdsourced collaborative works this is normally achieved through the terms and conditions of the interactive website which facilitates the audience engagement in the creative process. Those terms and conditions effect a contract between the project producer operating the interactive website and the participant allowing the producer to use, adapt, alter and publish the third party content to realise the project. In addition, the fact that a participant has willingly responded to a crowdsourcing invitation by providing content itself implies a degree of permission. That is not the case where third party content is gathered from the internet or elsewhere to create a new media work without the permission of the copyright owner. Unless the third party content was available for use and/or transformative use under a Creative Commons licence, there is a risk of copyright infringement. For further information refer to Arts Law's information sheet – Creative Commons.

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The fact that a practice is widespread and commonplace does not change the position. For example, mashups are now a widely acknowledged musical form (layering two different sound recordings to create a new musical work usually by overlaying the vocal track of one song seamlessly over the instrumental track of another) and many bands don't object because they view mashups as a form of fan recognition which adds to their own reputation. Nevertheless there are several notable cases where the 'creators' of a mashup have faced the threat of legal action for copyright infringement. For further information refer to Australian Copyright Council's information sheet – Mashups & Copyright.

The other way that third party content is used in multimedia projects is through subcontracting specific design components needed to create the whole new media 'experience'. For example, a game producer may need to contract with visual artists, web designers and software engineers. If a spin-off app for iPad or smartphones is required, that may involve specialist expertise that is outsourced. It is important to recognise that the third party's contribution may be protected by its own copyright and that contracts need to reflect appropriate assignments and licences so that the final new media work can be produced and distributed to the public across all platforms.

For more information on outsourcing for website development see Arts Law's information sheet Website Development.

For more information on outsourcing for game development, see Arts Law's information sheet Computer Games, legal issues for creative designers.

Using new media to finance creative projects – crowd-funding

What are the legal issues?

Arts Law's information sheet Crowdfunding, discusses legal issues that are created by the use of fan fund/crowdfunding websites to access an international pool of potential supporters of a project.

Although the Australian Securities and Investment Commission has said "crowdfunding, as a discrete activity, is not prohibited in Australia, nor is it generally regulated by ASIC" it is clear that some types of crowdfunding could involve offering a financial product, fundraising through securities, or a managed investment scheme all of which are regulated by ASIC and non-compliance can involve substantial penalties (up to two years imprisonment for operating a managed investment scheme without a licence). It is possible to have a crowdfunding rewards program that complies with the *Corporations Act*. Thus, a promise to deliver a specific product or service as the reward is outside the regulatory scope of the *Corporations Act*; for example, including a character that looks like the pledgor or contributor, receiving a copy of the finished game, or invitations to the game's launch party. However, the offering of shares, or direct financial rewards or profit sharing may be viewed differently.

The guides to successful crowdfunding draw attention to the advantages of offering 'rewards' or 'perks' linked to the project as a way of enhancing the attraction of a request for crowdfunding. Indeed some crowdfunding websites encourage users to be creative in rewarding supporters of the project. A major advantage in addition to generating funds is that crowdfunding can also build audience and market buzz for the finished product.

Australian creators using crowdfunding need to comply with Australian law, including:

- **Corporations Law**: The Australian Securities and Investment Commission (ASIC) have provided guidance as to how donating money to crowdfunded projects is regulated by ASIC under the *Corporations Act 2001* (12-196MR ASIC guidance on crowdfunding).
- **Tax Law**: Game developers should be aware that any financial contributions they receive through crowdfunding may be subject to income tax as assessable income. This will depend whether their game development activities are considered to be part of a business they are carrying on, as distinct from merely a hobby. To assist you work out if you are operating a business or not, see the Australian Taxation Office website.

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- **Australian Consumer Law**: See the Arts Law information sheet Australian Consumer Law and creators).
- **Privacy Law**: See the later discussion of the **Privacy Act: the collection, storage and use of 'personal information'**.

Using crowdfunding necessarily involves posting a short description or treatment of the game project requiring financing. Few crowdfunding sites offer copyright or intellectual property protection so there is always the risk that ideas for games might be copied or exploited by others. For more information on the risks in putting up a teaser video, see Arts Law's information sheet Putting your film or photo online.

Arts Law recommends that you read the terms and conditions of each crowdfunding website carefully in order to understand which platform is the best to use for your particular project. There are fundamental differences in the services provided by many crowdfunding platforms.

Regulation of software products and smartphone 'apps'

Software products or smartphone and tablet apps may have to meet regulatory guidelines because of the intended audience of the app (such as games designed for children) or because the app may have a functional purpose which is subject to a regulatory regime (such as medical software and mobile medical apps) or because it collects 'personal information' and is subject to the *Privacy Act 1988* (Cth).

Australian Consumer Law: in-app purchases & in-app advertising

The Australian Competition and Consumer Commission (ACCC) has worked with consumer protection agencies around the world to identify smartphone and tablet apps that may mislead young children into making unauthorised in-app purchases. The investigation focused on games apps that are presented as being free (as they may be free to download), but do not disclose that in-app purchases will be necessary for the user to obtain the full experience provided by the games app.

The Office of Fair Trading (OFT) of the United Kingdom has published The OFT's Principles for online and app based games (OFT1519), which set out guidelines for the implementation of in-app purchases that developers can follow to avoid breaching consumer protection law of the United Kingdom. The ACCC has endorsed the OFT's statement of principles, which include:

- Consumers should be told upfront about any possible in-game costs or in-game advertising;
- Consumers should be told upfront whether their personal data is to be shared with other parties for marketing purposes;
- Important terms should be prominently disclosed prior to download;
- An account holder, such as a parent, needs to give his or her express, informed consent to payments – otherwise the payments are not authorised.

Mobile medical 'apps'

A software product or app that is designed for the purpose of the diagnosis, monitoring, treatment, alleviation of disease, injury or disability or is related to compensation for an injury or disability or control of conception may be considered a 'medical device' within the definition in section 41BD of the *Therapeutic Goods Act 1989* (Cth). Examples are smartphone apps that measure blood glucose levels, patient body temperature or assist in the control of conception.

The Therapeutic Goods Administration (TGA) has published guidelines about Australia's regulation of medical software and mobile medical 'apps', when software of apps are required to conform to the requirements of the therapeutic goods legislation and when medical device software or apps are required to be included on the Australian Register of Therapeutic Goods (ARTG).

Privacy Act: the collection, storage and use of 'personal information'

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With effect from 12 March 2014, the *Privacy Act 1988 (Cth)* includes a set of new privacy principles which consolidate the previous National Privacy Principles (NPPs) and Information Privacy Principles (IPPs) into 13 new Australian Privacy Principles (APPs) that regulate the collection, use, storage and disclosure of personal information by some businesses and government agencies.

'Personal information' includes any form of data that has the ability to identify an individual. For example, it would include information like a person's phone number, email address, postal address, income bracket, marital status, name of partner and name of any dependants or children, as long as such information can be linked to an identifiable individual.

The Act, however, specifically exempts organisations with an annual turnover of $3 million or less. Small businesses who aren't covered by the Act, but who wish to be treated as an organisation for the purposes of the Act can choose to "opt-in" to the private sector provisions.

A software product or app that collects personal information will be subject to the Australian Privacy Principles (APP) when the product or app has a link to Australia, such as the entity that collects the personal information is incorporated in Australia or the personal information is stored on a computer server in Australia. A software product or app that is marketed in other countries may also be subject to any privacy regime that may exist in those markets, such as the European Union's *Data Protection Directive*.

The *Privacy Act 1988* (Cth) creates obligations as to the collection, storage and use of personal information and requires disclosure, when the personal information is collected, as to how the information is to be used. Attention should be directed to ensuring that informed consent is obtained when personal information is collected. APP 1 requires entities that are subject to the Privacy Act to have a clearly expressed privacy policy about how they manage personal information, including setting out:

- who you are and how users can contact you
- what kinds of personal information your app collects and stores
- how your apps collects personal information, and where it will be stored (on the device or elsewhere)
- the purposes for which your app collects the personal information
- how personal information will be used and disclosed
- how users may access their personal information, and correct it or ask to have it corrected
- how users may complain about a breach of the APPs, and how you will deal with complaints
- whether you are likely to disclose the information outside Australia and, if it is practicable, which countries you are likely to disclose the information to

The Office of the Australian Information Commissioner (OAIC) issues guidelines to assist agencies and organisations to comply with the Privacy Act including Mobile privacy: a better practice guide for mobile app developers and a Guide to information security.

Your actual practice in dealing with personal information must be consistent with your published privacy policy. Promising something in a privacy policy and then failing to deliver may be misleading or deceptive conduct and breach section 18 of the Australian Consumer Law.

For more information see Arts Law's information sheet Privacy and the private sector.

Using digital platforms to promote creative content

Not so long ago, the 'big break' for musicians meant being signed up to a label, for filmmakers it meant being signed to a major studio/production company and for authors it was having a manuscript accepted by a publisher. Today, those business models still exist but entrepreneurial creatives can also create their own buzz and build market share by savvy use of online

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media and digital platforms which reach a global audience. Now, the fastest way to musical success is not sending endless CDs to remote music executives but uploading a music video on YouTube which goes viral.

> One of the earliest examples of promotion via new media was **The Blair Witch Project**, a low-budget mock doco about 3 students searching for a legendary witch in Maryland.
> Without any budget for promotion or major backer, filmmakers Myrick and Sanchez of Haxan Films created hype for more than a year before the film's release through intense internet promotion. They created an official Blair Witch Project website on which they posted fictional "evidence" such as interviews, "discovered" footage and police reports attempting to authenticate the upcoming film's story and blur the line between fiction and reality. This promotional strategy fooled many, including the press, into believing the story was true and sparked public debate in anticipation of the film's release.
>
> The promotional campaign also included fan sites (probably initially generated by the filmmakers and their production circle pretending to be genuine fans), a web ring, a Usenet group, and reports posted on movie sites. The film cost all of $60,000 to make and it grossed $1.5 million in its opening weekend, playing on just 27 screens.

Building a Website

Using the internet provides instant access to a global audience and all their friends. Using your own website is one option. That involves obtaining a domain name, and building and maintaining the site and a website. The greatest challenge may be directing enough traffic to the website to get the desired audience traction. For further information refer to Art's Law information sheet – Website Development.

Social Media

The alternative to your own website is using social media. Social media is a type of online digital platform operated and maintained by a third party which provides services on the internet that allow you to interact with others – either individually or in communities – pursuant to standardised terms and conditions of membership. They allow sharing and creation of content through those networks. The benefits of social media include that the platform is already operational and in existence and has an existing membership of user traffic. The disadvantage can be the operation of terms and conditions that don't suit you or which dilute your ownership rights in your intellectual property.

The Johnny Cash Project described above is distributed through YouTube and is subject to its terms and conditions. For more information on YouTube see the Australian Copyright Council information sheet YouTube & Copyright.

The Terms and Conditions of Facebook provide that, subject to the Privacy settings you have in place on your account, you grant Facebook a non-exclusive, transferable, sub-licensable, royalty-free, worldwide licence to use any intellectual property content that you post. You will need to read the Facebook Data Use Policy and Platform Page to fully understand the implications of this.

If you violate the letter or spirit of the agreement with Facebook, or Facebook considers that you have created any risk or possible legal exposure for it, Facebook may delete your account and all of your access. This could impact significantly on your access to your fans and your brand. It could damage your relationships with your audience and negate the time and work you have put into establishing yourself in that space.

For further info regarding Social Media Terms and Conditions generally refer to Arts Law's information sheet – Social Media.

Advantages of promotion using digital platforms

The internet is a vehicle with the potential to create and maintain a community of followers all over the world. New media provides the opportunity to exercise direct control over the manner and means of communication with your fan base and

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audience.

Sophisticated search engines and social media mean that your target audience can readily find your content, talk about it and share it. You can engage directly with your community of fans and audience members and engage in valuable dialogue. Social media is low cost compared to traditional media such as television or print advertising. Effective use of social media can build a substantial fan base of followers which has flow on benefits in that it demonstrates influence to potential investors and backers.

For further information on the risks of uploading content to the internet generally, see Arts Law's information sheet 'How do you protect your work on the internet' (In Progress) and 'Uploading your work on to a website' (In Progress)

Protecting your ideas in cyberspace

It's important to remember that everything posted online can become the material which inspires others. There are no secrets on the internet and once something leaks, it's everywhere instantaneously. If promoting an embryonic project online to test interest or gather support, the chances that someone else will see and adapt that idea go up exponentially. As there's no copyright in ideas or information, sharing them on social media means just that – sharing with everyone.

If your project is still in development, think carefully before trying to generate interest by online promotion. It may be preferable to protect the project concept by pitching it to selected third parties under the protection of a confidentiality agreement. The law of confidential information is the legal means available to protect secrets, including ideas. For further information refer to Arts Law's information sheet – Protecting your ideas.

Operation of a Comments Page

If someone makes comments on your blog or webpage (whether on social media or your own website), you need to think carefully about your rights to that material and your responsibilities. Insofar as your rights are concerned, you need to assume that it is protected by copyright unless you can confirm otherwise. The copyright will generally be owned by a third party (hopefully the person posting) and they are probably giving you an implied licence at least for display on your comments page, and any other incidental reproduction or associated copying. Don't assume you have rights beyond that. For further information refer to Arts Law's information sheet – Legal issues for bloggers.

For clarification you could add a Creative Commons licence to your comments page stipulating that in posting comments the poster agrees to licence them to you. For further information refer to Arts Law's information sheet – Creative Commons and the Creative Commons website.

Defamation

Defamation is a communication to at least one person that lowers the reputation of an identifiable third person, where the communicator has no legal defence. The laws governing defamation on the internet are the same as those that govern defamation in other types of publications. You are legally the 'publisher' of the content on your webpage – including any material posted on your page by third parties. You may be responsible for any defamatory remarks which you publish including defamatory material posted by others on your blog/media.

The internet is borderless. You could be liable for defamation (depending on the laws of the country) anywhere in the world where your blog/media is accessed. For further information refer to Arts Law's information sheet – See the Arts Law information sheet Defamation law – online publication & Defamation Law (for material published after January 2006).

Linking, inlining and framing websites

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'Linking' is the creation of hyperlinks from one website to another that allows web users to click from one website to another; 'inline linking' or 'inlining' is the displaying of a graphic file on one website that originates at another website; and 'framing' involves the presentation on a website of material that comes from a different website though an automatic hyperlink that sources the material, with the result that the material appears to be an integral part of the website on which it is 'framed'- that is, the material appears in a window inside a web browser. Litigation in the U.S. and European courts leads to the conclusion that framing material exposes the operator of the website to liability when it is misleading and deceptive practice. That is, when the framing implies there is some connection between the website that is implementing the framing and the website from which the material is sourced. Therefore liability may arise under Australian Consumer Law for misleading and deceptive conduct if the relationship between your site and the site that has been framed has not been made clear to users. See the Arts Law information sheet Australian Consumer Law and creators.

The use of a trade mark or brand name when linking or inlining is a risky practice as it can result in arguments that there is a breach of the Trade Marks Act or the use of the trade mark or brand name is misleading or deceptive conduct.

Linking or hyperlinking upsets some website operators. In particular where there is 'deep linking', through which the web user is linked to a page other than the 'home page' of a website, as the operator of the website being linked to may consider they are being deprived of advertising revenue that is generated by the number of links to their home page and related advertising that may appear on the home page. U.S. courts have considered the argument that linking results in an unauthorised reproduction of the copyright material on the computer screen of the web user. However the U.S. courts accept that the operation of HTML does not result in the person implementing the hyperlink infringing copyright – the technical explanation is that the HTML merely gives the address of the image to the web user's browser. The browser then interacts with the computer that stores the infringing image. It is this interaction that causes an infringing image to appear on the web user's computer screen – but that does not make the person implementing the hyperlink a direct infringer of the copyright.

Linking can result in copyright liability where the person setting up the hyperlinks is viewed as authorising the infringement that is being carried out by web users. In one of the peer-to-peer (P2P) networking cases, an Australian court accepted that there was liability as the result of creating hyperlinks on a website. The people responsible for creating the hyperlinks were liable for authorising internet users in Australia to copy, and operators of remote websites to communicate to the public, music files in breach of the copyright of the owners of those sound recordings.

While there are some situations in which linking can result in copyright infringement, generally hyperlinking can be implemented – provide no misrepresentation as to an association or connection between the two websites is made as the result of the linking. Where you want to be very safe then you could seek permission to link to another website. If you don't want to ask for permission it is safest to link to the homepage of the third party website rather than linking directly to the specific content of the site. Due to the higher risk of liability associated with framing – as the result of the risk of misleading and deceptive conduct – it should be avoided where no agreement exists between you and the third party website.

New media and multi-platform distribution

Distribution is the process through which your work is made available to an audience. New distribution channels and strategies are evolving rapidly. Traditionally, distribution was achieved through cinema release and home entertainment release (DVD/Blu-Ray or TV) for film or radio and CD release for music and was dependant on negotiating third party contracts for supply with distribution agents. Increasingly, digital distribution occurs in addition to mainstream methods or as a stand-alone distribution method.

New Media Distribution Methods

Legitimate online movie and music stores – Sites such as iTunes and Telstra Bigpond enable content to be sold and distributed by download from the internet. Payment confers a licence upon the user to use the digital file in a particular way – generally personal entertainment. The terms of the licence will outline how many times the music or movie can be copied or

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burned to a CD, DVD, computer or a portable media device, and for what purpose. Copying or sharing the item in a manner that is different from the terms of the licence may result in an infringement of copyright.

Portable Media Devices – New media audio, video and games content can be designed specifically for distribution via smartphones, tablets and other portable media devices. Consideration must be taken in the design process regarding which distribution channel the work is being designed for e.g. devices with small screens.

Internet – Video and audio can be embedded into your own website for audiences to watch directly. This means that the audience can watch and listen to the work on your website without downloading it. This can give you more control over your product as it can only be accessed via the nominated website.

Live Streaming – this is where live events are shared with global audiences in real time. This can be facilitated by sites such as ustream.tv or livestream.com.

Podcasting – allows users to subscribe to and download digital audio files onto their computer and portable media devices. If you are podcasting material, the audio content you use must not infringe the copyright owned by someone else. Copyright infringement will occur if you use audio content in which you do not own the copyright or you have not obtained permission to use. This can happen when you include, for example, in your podcast a song ripped from a CD without permission from the copyright owner of the track and sound recording.

Guerilla Distribution – this is where you arrange a screening somewhere like at home or in a local hall. Specially created sites help you to promote the event.

BitTorrent – is a file transfer protocol which enables users to upload and download large files on the internet in the form of software, games, film, video, music etc. from other users rather than from a central server.

VODO – helps promote and distribute new creative works all over the world and enables those enjoying shared media to make donations to creators.

Netflix – Netflix, Inc. is an American provider of on-demand internet streaming media available to North and South America, the Caribbean, United Kingdom, Ireland, Sweden, Denmark, Norway, Finland and flat rate DVD-by-mail in the United States. In 2013, Netflix became a “streaming TV network service” that plans to compete with cable television and network television and went on to earn Primetime Emmy Award nominations for three of its web series, Arrested Development, Hemlock Grove, and House of Cards. House of Cards was nominated for Outstanding Drama Series, making it the first web series to earn a Primetime Emmy Award nomination for Outstanding Series (comedy or drama). On March 13, 2013, Netflix announced it was adding a Facebook sharing feature to the Netflix interface, letting subscribers in the U.S. see “Watched by your friends” and “Friends’ Favorites” once they agree to share.

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The Tunnel is a 2011 feature length horror movie that raised some of its production funding through crowd-funding. The film was made available for free legal download over BitTorrent after a long development process and significant attention from 'viral' social media and word of mouth. The project, by Distracted Media and Zapruder's Other Films, is being distributed and promoted through BitTorrent — the torrent carrier service widely used to distribute illegal copies of movies, TV shows and other content in addition to being sold on DVD.
Instead of following a traditional publishing model with a screening release across Australian and international cinemas, The Tunnel was released simultaneously as a torrent — using peer-to-peer file sharing technology that lets users download content from many different 'seeds' at once, allowing fast download speeds and the rapid proliferation of data — as well as on DVD and on the Showtime movie channel on Foxtel and Austar. It can also be viewed via SMH.tv, Qantas and Virgin inflight entertainment, and ABC iView. The download is facilitated by VODO Download. There was also a limited release in cinema.

In terms of legal issues, each different distribution method involves a contract with different terms and conditions and different risks and rewards.

See an interview by SBS with producer Enzo Tedeschi here.

Pros and Cons of using digital distribution methods

Pros

Just as it has revolutionized music distribution digital distribution will, inevitably change the paradigm of 35mm print logistics in the film industry. With the possibility for the distributor to send feature film files electronically, via broadband networks, dependence upon physical transportation is eliminated and the cost of providing multiple 35mm prints may be excised. The resulting music, movie or image file can be emailed, downloaded, posted on a website or blog, posted on a social networking site or made available to a peer to peer (p2p) network. Digital distribution channels provide greater flexibility and audience reach – the audience no longer needs to live near or attend a cinema while the film is 'on release'.

Digital channels also provide greater opportunity for distributors to create cohesive campaigns for cinema and DVD release. See Arts Law's information sheet – Digital music distribution (in progress).

Cons

The internet is difficult to police and online content can usually be accessed and made freely available. Copying and sharing digital content has become relatively easy due to greater download speeds and technological advancements. A music track on a CD can be ripped and converted into an MP3 (or other) file on your computer, images from websites can be copied and manipulated and republished and DVDs, movies and TV programmes can be downloaded and viewed using p2p sharing methods. The expectation of no cost access makes it difficult to monetise your creative project online.

If you have engaged in self-managed digital distribution of your content, which may impact your ability to negotiate a third party traditional distribution deal. Many third party distributors look for add-on digital distribution rights and content already available online may be seen as less attractive.

The future

Watch this space……

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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The Arts Law Centre of Australia has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body.