

## **Copyright and the Sequel: What Happens Next?**

**Ian Eagles**

**Faculty of Law, University of Auckland**

### **Abstract**

Given the economic importance of the sequel and its resonance in popular culture it may seem counter-intuitive to argue that copyright owners might not (and perhaps should not) have the exclusive right to authorise the future production of sequels or prequels to the narratives embodied in works they already own. That, however, is the thesis advanced in this paper. To the extent that sequels and prequels have attracted academic or judicial attention in common law jurisdictions they are generally seen as the accidental beneficiaries of a more narrowly framed debate on the copyright status of the fictional characters on which financially successful sequelisation often (but not always) depends. This focus on purloined characters is unfortunate, not only because of its limited focus but also because it is in itself incapable of principled resolution. This is due not only to the inability of courts and commentators to distinguish clearly between subsistence and infringement in their search for the protectable character but also a widely shared starting assumption that any resulting uncertainty is a lacuna which copyright law is obliged to fill in favour of copyright owners by importing into the analysis notions of consumer confusion and misappropriation of goodwill more properly belonging to the law of trade marks and passing off. This paper seeks to offer a corrective to these viewpoints by: (1) widening the discussion to encompass the fictional world which characters inhabit rather than using the latter as a surrogate for protecting the former; (2) identifying the potential winners and losers in this wider debate; and (3) assessing the consequences for the future of copyright law of favouring one set of stakeholders or one mode of protection (or indeed no protection) over the alternatives. The question posed throughout is not so much what copyright can do for the sequel but rather what the sequel might do to copyright.