

Continuing Problems with Film Copyright

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It has long been acknowledged that there is no international consensus as to how films are to be treated as a species of copyright subject matter. This has resulted in significant differences between national laws on authorship, ownership and exploitation of film copyright. In many cases, these national laws betray fundamental uncertainties as to why and how films ought to be protected - in particular, whether creative contributions to the making of the film, or economic investment in the production of the film, or some combination of the two, ought to be recognised with the grant of legal rights. The problem is especially pronounced in considering Anglo-Australian copyright law, where films were initially protected as a type of original artistic or dramatic work, then later were afforded only neighbouring-rights-style protection. It might have been expected that the UK's current, 'hybrid' treatment of film copyright, following its questionable implementation of the Duration and Rental Rights Directives and the Court of Appeal's decision in *Norowzian v Arks [No 2]*, would not have been a model for other countries considering reform of their film copyright laws. However, as I will suggest in this paper, following recent legislative amendments to the Australian *Copyright Act*, as well as some judicial interpretation of that Act, it appears that Australia has also adopted an equally problematic 'hybrid' model of film copyright protection. I will suggest that these developments reflect an approach based more on misguided pragmatism than a sound conceptual understanding of both the nature of neighbouring rights and the peculiar nature of film as a species of copyright subject matter. I will also question the validity of the widespread assumption that irrespective of the way in which films are categorised for the purposes of national copyright laws, the issue is of little practical importance because of the fact that ownership and related issues are generally dealt with by contract law. I will argue that there are a number of problems with such an assumption that suggest that attention perhaps needs to be re-focused on the way in which film copyright is dealt with at a legislative level.