

LEGAL EYE

by Michael Bergman

Whose script is it anyway?

The talisman of the small circle with the little c in it is the charm that is supposed to ward off the evil spirits of plagiarism.

Copyright is a branch of that area of the law dealing with industrial and intellectual property or, more simply, rights in the creation of ideas. It protects ownership, originality and regulates the possible format for the use of protected ideas.

In a script the ideas protected are the reduction into words of a dramatic piece of writing, the screenplay. The point at which pen meets paper is the time to think of copyright protection. This is because of the anticipated use of the screenplay as a writing which will circulate and have value in money; it is part of prudent legal planning.

The odd thing about copyright is its seeming informality. Theoretically nothing has to be done. The author of an original work is the owner and has copyright in his material, a claim which he may press against all comers. This ownership extends into all possible uses of the material, whether literary or dramatic and by whatever medium.

This informality is the root of an important problem. Since the permutations and combinations of human ideas, not to mention human greed, are infinite, proving ownership and originality against other claimants with similar works can be difficult. It is for this purpose of eliminating evidential problems that copyright legislation provides for a system of registration by which a presumption is created of ownership in favour of the registrant. The registration process is simple in Canada requiring only the completion of a one-page form indicating the names of the author and the name of the owner of the work (not always the same) together with a \$25.00 fee which is sent to Ottawa in return for which an official Certificate of Registration is issued.

A careful examination of most treatments and screenplays would probably indicate, though, that few writers take the trouble to use it, relying instead on circles and c's on the front page of their work to scare off the bold. This regrettable practice probably only scares off the timid. Its consequences run deeper though. The registration of copyright will force parties dealing with the script to register the transfer of copyright or a licence thereby assuring even to the legally uncounselled some minimum

negotiation to obtain copyright transfer or a licence with the observance of proper legal niceties.

Copyright legislation is national; there are, however, international treaties which provide for the recognition of copyright held in one country as valid throughout the territories of the treaty signatories. As this international protection is limited to treaty countries, properly drafted agreements for use of a script worldwide should contain adequate provision to assure some sort of protection, at least financial, in

countries where the treaties or western copyright legislation do not apply.

Copyright need not be registered in the name of the author as owner. Indeed, the author may not be owner of his own work; an occurrence resulting from the operation of the law or a contract. Legally the material written by an employee as part of his employment belongs to the employer in the absence of an agreement

to the contrary. Writers must be alert to avoid commissions the terms of which are to effectively render the author an employee.

The author may not be owner where he has effectively transferred copyright to a third party. This can be as part of the author's manipulation of his personal affairs or a genuine contract of sale. There is no impediment to a writer indi-



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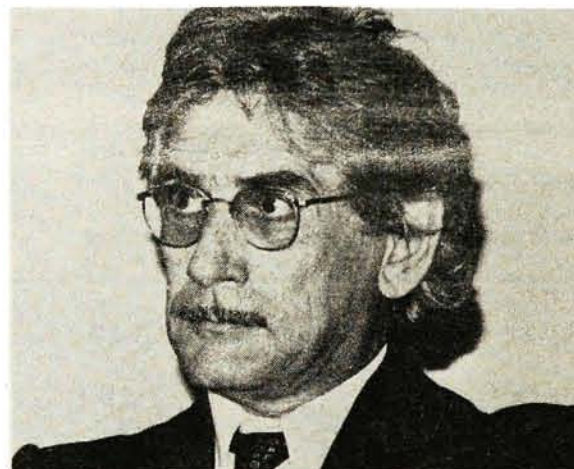
NEWS

NFB THEATRE

The National Film Board's new 155-seat theatre at Complexe Guy Favreau in Montreal is now open and offering a rich mix of documentaries and animation films, six evenings a week. Film programs will feature works by the National Film Board and by private sector filmmakers. Highlights of up-coming screenings include Peter Wintonick's award-winning *The New Cinema* February 1; *Crever à 20 ans*, directed by Michel Audy, February 2; new works in film and video from Montreal's Main Film co-op, in French February 6, in English, February 8; and an evening with Montreal storytellers, February 15. This program will present Kay Armatage's acclaimed film *Storytelling*, several animation shorts based on Canadian stories, and live performances by Montreal storytellers. For further information, contact the National Film Board, Complexe Guy Favreau, 200 Dorchester West, Montreal (514) 283-4753.

SILVER ANNIVERSARY

In celebration of twenty-five years of French Production the NFB is producing *Cinema, cinéma*. Hosted and directed by Gilles Carle and edited by veteran NFB editor Werner Nold, the film is a montage of highlights and rare footage from the most memorable French features, documentaries and animation films. Sauntering through the sets in the Film Board's Montreal Studio, Gilles Carle traces the his-



Gilles Carle directs *Cinéma, cinéma* - a nostalgic, entertaining look at 25 years of French production at the NFB.

tory of French Production with fondness, humor and occasional irreverence. Roger Frappier produced this important and entertaining chapter in the Board's history, which will be telecast nationally on Radio-Canada February 17.

CONVERGENCE ON TAPE

For those who missed the Convergence Forum held in Montreal, November 28 to December 2, ten key seminars on the impact of new technology on the film and video industry are now available on videocassette. Produced by Forum Video of Montreal Inc., the programs are distributed by the National Film Board for \$25.00 per copy and are available on Beta or VHS formats. As well, screenings of the programs are scheduled at the NFB's Montreal theatre, Complexe Guy Favreau, February 7 and 14 at 1:00 p.m. Admission to the NFB theatre is \$2.00. For further information on

titles and content, please contact the nearest National Film Board office.

NEW DIRECTORIES

The National Film Board's International Division has just released two reference books on media in developing countries: *The 1984 Directory of Film and TV Facilities in the Developing Countries*, and *Canadian Organizations Involved in Development Education in Canada, Development Projects Overseas, and Private Sector Production Abroad*. The directories were prepared as a special summer assignment by Maurice Vanthemsche and Ebenezer George, both students in communications. For further information, contact the National Film Board, International Division, Box 6100 Station A, Montreal, Québec, H3C 3H5 or telephone (514) 333-4500.

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→ cating that his service corporation is the owner of the work provided that he remembers, when contractually dealing with the work, that the copyright must in fact be transferred from himself personally to his corporate entity by written agreement. This precaution is particularly necessary considering that most contracts to purchase scripts include some kind of warranty by the owner that it has the legal right to sell the script.

Most important of all is the author's dealings with third parties. The writer might secure important advantages by the skillful use of the various modalities of copyright and licences granted thereto. Outright transfer of copyright effectively denudes the writer of all his legal interests in the script. It permits a producer to not only make a film but to translate the script into other media such as novels, without the writer's participation or remuneration. Holus bolus transfer of copyright should only be considered where adequate financial compensation has been devised in the contract; a difficult task since it is not always possible to adequately foresee the possible uses of a script. By far more preferable is the granting of a licence to use the script for a specified purpose, for example, the making of a film, to be used within a certain defined territory and for determined fees. Besides the advantage of dismembering the possible uses of the script into defined categories, some of which remain with the author so that they must by turn be purchased, the writer may take advantage of them himself, for example, writing a novel based on a script.

These licences must be properly defined as to their scope and use in adequately drafted instruments. The licence itself should be registered in a similar fashion as copyright.

Contracts dealing with copyright or licence necessarily tie up a script. While this is desirable so that the property may be commercially exploited, it is not in the interests of any party as the script may be tied up indefinitely when there is no

possibility of the objectives of commercial exploitation being attained. It is for this reason that the careful writer will initially enter into an option-agreement with the producer by a properly drafted instrument: an option to purchase the licence to produce the script under certain defined conditions for a limited duration and subject to a formally and properly drafted contract being

executed. Few realize the necessity that they contain certain minimum features; namely, the definition of a licence and its scope, the duration of the option and its method of exercise and its legal consequence, the role of the writer in future drafts, his credits and the basis of calculation of option fees, and the basis of determining a final contract on exercise of the option. These

minimum provisions serve to establish an adequate working basis from which a proper contract may be developed and structures the parties' thinking to respecting the writer's work.

Copyright may subsist in many other mediums. To a real extent the medium determines the contractual dealings with copyright as do the applicable union or guild collective agreements.

Copyright ultimately is the field by which a writer may protect artistic and creative respect and financial rewards. After all, it's not necessarily your script.

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