Department of Communications and the Arts: Proposed reform of the *Copyright Act 1968*

Submission by Screenrights

12 February 2016

Screenrights is the trading name of Audio-Visual Copyright Society Limited ABN 76 003 912 310
ADDRESS: Level 1, 140 Myrtle Street, Chippendale NSW 2008, Australia WEBSITE: www.screenrights.org
POSTAL: PO Box 853, Broadway NSW 2007 Australia TELEPHONE: +61 2 9904 0133 FACSIMILE: +61 2 9904 0498
NEW ZEALAND: FreePhone: 0800 44 2348 FreeFax: 0800 44 7006

EXECUTIVE SUMMARY

I. Screenrights is a copyright society representing rightsholders in film, television and radio. Screenrights has 3,864 members in 61 countries.

II. In regard to the educational statutory licences, Screenrights has separately made a joint submission with Copyright Agency, the Copyright Advisory Group for schools and TAFEs, and Universities Australia. The joint submission supports the proposed new statutory licences and suggests some amendments to improve and clarify their operation.

III. Screenrights submits that the collaborative model facilitated by government in the development of the statutory licence provisions has been a successful and productive approach to copyright reform.

IV. Screenrights notes that the Exposure Draft changes the definition of *relevant right holder* for the purposes of the broadcast statutory licence for education. The effect would be that owners of the broadcast signal copyright would be included in future distributions for the statutory licence.

V. Screenrights supports the submissions of the Australian Copyright Council in regard to the disability access provisions, preservation copying and term of protection.

VI. Screenrights notes and supports the submissions of numerous rights holder representatives expressing their concern at the proposed amendments to the Safe Harbour regime. Screenrights submits that the Safe Harbour should not be widened until the limitations of the authorisation provisions and other matters are rectified.

BACKGROUND

1. Screenrights, The Audio-Visual Copyright Society Limited, is a non-profit copyright society representing rightsholders in the audio-visual sector including film, television and radio. Screenrights has 3,864 members in 61 countries.

2. Screenrights administers a range of collective licences that enable access to audiovisual material, including educational use of broadcasts (Part VA of the Act), government copying of broadcasts and audiovisual material on the internet (Part VII, Div 2 of the Act), and the retransmission of free to air broadcasts (Part VC of the Act). These licences operate as remunerated exceptions to copyright.

JOINT SUBMISSION ON EDUCATIONAL STATUTORY LICENCES

3. Separate to this submission, Screenrights is a signatory to a joint submission with Copyright Agency Ltd, Universities Australia and the Copyright Advisory Group on behalf of schools and TAFEs. The joint submission represents the parties' response to the proposed amendments to the educational statutory licences in Division 4 of the Exposure Draft.

4. This submission covers matters in addition to those covered in the joint submission referred to above.

DISABILITY ACCESS

Q 1: Do you think the proposed provisions are sufficiently clear and will operate effectively to meet the objective of ensuring access to accessible format copies of works?

Q 2: Do you prefer the terminology 'organisation assisting a person with a disability'?

Q 3: Will the proposed exception allow providers of print disability radio to continue operating as they currently do?

5. Screenrights' declarations under Part VA and VB relate in part to "institutions assisting persons with an intellectual disability".[1] The effect of the proposed amendments would be to transfer uses of our members works from the remunerated exceptions covered by Screenrights' declarations into the proposed new free exception.

[1] S135A definition of "institution" in Part VA and s135ZB definition of "institution" in Part VB.

6. Notwithstanding this shift from a remunerated to a free exception, Screenrights supports the proposed amendments and supports the implementation of the Marrakesh Treaty.

7. Screenrights notes the submission of the Australian Copyright Council in regard to the proposed amendments and supports the submissions of the Council.

PRESERVATION COPYING

Q 4: Should the proposed preservation provisions apply to a library or archives that forms part of an educational (or other type of) institution if its collection is not available to the public?

8. Screenrights supports the primary view of the Australian Copyright Council on this question: the provisions should only apply to libraries and archives that make their holdings accessible to the public in some manner.

EDUCATIONAL MEASURES

9. Screenrights refers to the joint submission it made along with Copyright Agency Ltd, Universities Australia and the Copyright Advisory Group in regard to the proposed educational statutory licence. In addition to the comments in the joint submission, Screenrights makes the following submissions.

Reform process

10. We note that the proposal in the Exposure Draft was developed with extensive consultation with the parties to the joint submission. The Government's encouragement for the parties to work together to propose amendments to the current Part VA and Part VB provisions was instrumental in achieving the very significant simplification of the Act which the Exposure Draft represents.

11. Screenrights submits that the collaborative approach which the Government facilitated is a model for efficient and productive copyright reform.

12. Screenrights has been able to work with copyright user interests to develop mutual proposals which have led to significant reforms to the benefit of both copyright users and creators. Screenrights submits that this collaborative model is the better approach to copyright reform than adversarial formal enquiries, as demonstrated by the successful reconstruction of the statutory licences in the Exposure Draft.

Relevant right holder

13. The Exposure Draft defines a *relevant right holder* to be "the owner of the copyright in copyright material…." [2] In the case of the broadcast statutory licence this would include the owner of the broadcast signal copyright in addition to the owners of the underlying rights.

14. Screenrights notes that this is a change to the position in Part VA where the owner of the broadcast signal copyright is not currently a relevant right holder.[3]

15. The effect of the change is that, if it was enacted, Screenrights would need to amend its Distribution Policy to include broadcast signal copyright in the allocation for equitable remuneration collected through the statutory licence.

16. Screenrights makes no comment on the change. We have notified key copyright owner groups of the change to allow them to make submissions on this matter, if they wish.

Q 5: Does the proposed statutory licence appropriately extend the coverage of broadcasts to the types of broadcast content used by educational institutions?

17. The proposed licence extends the coverage of broadcasts to include simultaneous online transmissions of broadcasts. The extension is relatively minor, consistent with the long-standing policy objectives, and maintains the relevance of the statutory licence while avoiding confusion for teachers having to determine whether a transmission was a broadcast or not. The latter question is becoming increasingly complex with modern IPTV services. The proposed statutory licence ensures there is no inadvertent infringement of copyright by educational institutions while protecting copyright owners' right to be remunerated for the use of their works.

Q 6: Does the Copyright Tribunal have adequate jurisdiction to determine all necessary matters?

18. Proposed ss113P(4) properly provides jurisdiction for the Copyright Tribunal to determine any matter relating to the statutory licence where the parties are unable to agree.

19. Screenrights respectfully submits that the drafting of ss113P(4) is appropriate. The Tribunal's jurisdiction should not be constrained or limited to certain matters.

20. Screenrights submits that it is essential to the operation of a statutory licence that all matters be subject to the Tribunal's jurisdiction. Without this judicial

---

2 See proposed s113W(2) in the Exposure Draft

3 See s135A of the Act

review, copyright owners would not be able to protect their rights, as the statutory licence takes away their ability to refuse a licence.

21. In the joint submission, the parties note that consequential amendments to the Copyright Tribunal provisions in Part VI are not included in the Exposure Draft and future drafting remains to be considered.

22. Screenrights submits that a further matter that should be covered in the statutory licence is for a mechanism to be inserted – including jurisdiction to be conferred on the Federal Court of Australia – to facilitate payments to be made to the collecting society as currently exists in Part VA.[4]

Q 7: Will the proposed statutory licence reduce the administrative burden on parties to the licence?

23. The overall thrust of the simplified statutory licence will reduce the administrative burden on parties and will be a welcomed implementation of a recommendation of the ALRC report.

Q 8: Do the proposed transitional provisions adequately protect current arrangements for the life of their term?

24. Screenrights believes that the transitional provisions are adequate. However, we note that if the revised indicative drafting put by way of joint submission with Copyright Agency Ltd, Universities Australia and the Copyright Advisory Group is accepted then the reference to 113P(2)(d)(i) in item 73(3) should be substituted with 113P(2)(c)(i) and the reference to 113P(2)(d) in item 73(4) should be substituted with 113P(2)(c). These suggestions have been inserted into the indicative draft.

Q 9: While the transitional provisions provide that existing notices, agreements and determinations will continue, the new provisions would govern these existing arrangements. Are there any arrangements that the new provisions should not apply to?

25. Screenrights submits that the transitional provisions are appropriate, subject to the consequential matters noted above at 24 and included in the indicative draft.

SAFE HARBOUR

26. Screenrights notes that while the other provisions in the Exposure Draft are relatively uncontroversial and, in the case at least of the statutory licences, the result of extensive consultation, the proposed Safe Harbour are highly controversial and unexpected.

[4] See s135N of the Act.

27. Over several years, rightsholders have expressed concern about the push to widen the safe harbour provision in view of the weakening of authorisation liability in Australian copyright law arising from the High Court's decision in the *iiNet* case.

28. Screenrights considers it anomalous that the Act is being amended to widen the safe harbour provisions without addressing rightsholders' legitimate concerns about the current limitations of authorisation liability.

29. Screenrights notes and supports the submissions on this point made by rightsholders from both the film and music industries. Screenrights notes that a number of alternative proposals are suggested in these submissions to resolve the issues identified. Screenrights submits that the safe harbour provisions should not be amended without addressing these important concerns.

TERM OF PROTECTION

30. Screenrights supports the submissions of the Australian Copyright Council on this matter.

MORE INFORMATION

James Dickinson
Head of Licensing & Regulatory Affairs

licensing@screenrights.org

tel 02 9904 0133