

**House of Representatives Standing Committee
on Employment, Education and Training**

**Inquiry into innovation and creativity:
workforce for the new economy**

screenrights

Submission by Screenrights

22 December 2016

BACKGROUND

1. Screenrights is a non-profit copyright society representing rightsholders in film, television and radio. Screenrights has 3,974 members in 63 countries. Screenrights administers several statutory licences in Australia and voluntary licences in New Zealand, as well as offering additional services to members.
2. Since its creation in 1990, Screenrights has been declared by the Commonwealth Government to administer the provisions in Part VA of the Copyright Act, 1968, which allow educational institutions to copy (and since 2001, to communicate) television and radio broadcasts. As a result, Screenrights has extensive experience in licensing educational institutions including tertiary institutions for their use of copyright material.
3. This submission focuses on point 3 in the Terms of Reference:

factors that discourage closer partnerships between industry; in particular small and medium enterprises, the research sector and education providers; including but not limited to: intellectual property; technology transfer; doctoral training practices; and rapid commercialisation....

THE ROLE OF INTELLECTUAL PROPERTY IN FILM AND TELEVISION

4. The film and television sector is a large contributor to the Australian economy and a substantial employer.
5. A 2015 report by Deloitte Access Economics found that the film and television sector generated over \$3billion in gross operating surplus contribution to GDP and employed over 46,000 full time equivalent staff.¹

Table i: Total economic contribution of film and television, \$M, 2012-13

Sector	Gross operating surplus	Labour income	Value added*	Employment (FTE)
Direct	2,462	2,517	4,853	39,025
Production	263	859	996	13,098
Distribution	479	180	659	2,145
Free-to-air TV	877	662	1,538	6,608
Pay TV	516	394	910	4,570
Exhibition	178	213	391	6,180
Retail	79	145	224	4,484
Rental	60	62	122	1,905
Online	9	4	13	35
Indirect	636	322	958	7,607
Total	3,098	2,840	5,812	46,632

¹ Deloitte Access Economics: *Economic contribution of the film and television industry in Australia*. February 2015 p. iv.

6. The report shows the existing substantial labour force employed directly and indirectly in the film and television sector, which by definition, is focussed on innovation and creativity. If Australia is to expand and grow this labour force, then it must have the legal structures to support those industries which employ that labour force. A strong intellectual property system is critical.
7. Copyright is the fundamental legal support structure for the creative sector. At every level, rightsholders who create and invest in film and television rely on copyright laws to establish the economic value of their works and to enable trade in their works through licensing.
8. Screenrights' members are filmmakers and other rightsholders who daily generate and trade in copyright through the creation of new works. Without a strong copyright system, the economic basis for creativity is undermined and incentives for production and ultimately employment are lost.
9. The strategic importance of the film and television sector's role in a future economy based on innovation and creativity is seen in the Government's priorities in promoting the creative industries, in particular screen production capabilities internationally.²

PARTNERSHIPS

10. The terms of reference question the role of intellectual property and whether it discourages partnerships between industry, the research sector and education providers.
11. There currently exist very strong links between the tertiary education sector and the film and television industries. These are visible in specific private and public tertiary institutions dedicated to film and television careers skills (such as the Australian Film, Television and Radio School and myriad private providers) and in the many film schools and media faculties within universities. These institutions train the labour force that then finds employment in the film and television sector.
12. An essential element of that employment is a respect for copyright. Filmmakers routinely license third party content as part of the production process, from adaptations and scripts through to music and artistic works. Workers in the creative sectors need to understand and respect the role of copyright in the production process and it is important that the education sector respect and reflect this.

² <http://www.austrade.gov.au/ArticleDocuments/1358/screen-production-icr.pdf.aspx?Embed=Y>

13. In practice, partnerships between the education sector and the production sector built around strong intellectual property foundations are commonplace, valuable and enduring. They are at the heart of innovation and creativity, and a driver for a strong creative sector.

SCREENRIGHTS' EDUCATIONAL LICENCE

14. Screenrights administers the provisions in Part VA of the Copyright Act, 1968, which permit educational institutions to copy and communicate copies of television and radio broadcasts for educational purposes.

Australia's copyright exceptions for education are the widest in the world

15. Part VA is part of a unique set of copyright exceptions in Australian law, which provide extremely wide access to copyright material in return for the payment of a fair fee. Part VA provides Australian educational institutions with access to audiovisual content that is the greatest in the world, with the exception only of New Zealand (where Screenrights also offers an educational licence).
16. The Australian system of access for educational purposes is a global leader. A recent World Intellectual Property Organisation report reviewed educational exceptions from copyright in the 189 member countries. Australia was in first place with the most copyright exceptions for educational purposes in the world.³

The Screenrights licence has been a driver for innovation

17. The Screenrights licence in Part VA has been able to adapt seamlessly to changes in technology due to the careful drafting of the provision.
18. At the time the provision was first enacted in 1989, the copying technology was limited to VHS recorders and the like. Due to the technologically neutral drafting of Part VA, as new copying technologies have been developed, the provision has encompassed them without any need for amendment. Over the past 26 years, Part VA has moved from video-cassettes to DVDs to computers. Today, most copying is done in cloud-based systems.
19. Accordingly, the provisions have fostered innovation, as educational institutions and third party service providers have been able to develop new technologies to allow greater and better use of the content.
20. Screenrights has also licensed third party "resource centres" which have developed a range of new services under the licence which are unique to Australia.

³ WIPO Standing Committee on Copyright and Related Rights: *Study on copyright limitations and exceptions for educational activities*; p. 27.

21. For example, InfoRMIT, a division of RMIT University, has created an online archive of news and current affairs segments available for streaming anywhere to staff and students to all universities in Australia.
22. The resource centres themselves have been recognised as innovators. ClickView Pty Ltd is an Australian company created for the purpose of providing services to educational institutions looking to get the greatest value from their Screenrights licences. ClickView's services have grown and developed with the technological changes of the past decade. In 2012, ClickView was judged by Business Review Weekly to be the most innovative company in Australia,⁴ and Microsoft Education's Partner of the Year.⁵

Fair use

23. Australia's copyright system is built around a series of specific exceptions for specific purposes. Some exceptions are free (such as private study and research or performing copyright works in class for teaching purposes) and some are remunerated (such as the Screenrights licence in Part VA). Together they provide a comprehensive framework which guarantees access to copyright material for educational purposes. This approach of purpose based exceptions is typical around the world.
24. An alternative model is so-called "fair use", a system which developed in the United States (US) and which has been adopted in four other countries.⁶ The fair use approach replaces the certainty of a specific exception with the flexibility of a principles based exception. This potential for greater adaptability has led to calls from some sectors for fair use to be introduced in Australia.
25. However, the calls for fair use in Australia fail to recognise the greater educational access to content available under the Australian copyright system. The reports selectively focus on the difference between fair dealing in Australia and fair use in the United States, without recognising the enormous scope for access under the remunerated exceptions in Australia. This access is not matched by fair use, there is no equivalent provision in US copyright law, and US educational institutions are unable to use material in the same way as their Australian counterparts.
26. Screenrights' licence far exceeds what is possible in the United States under fair use, as demonstrated in the table below.

⁴ <http://www.afr.com/business/clickview-australias-most-innovative-company-20121205-jypys>

⁵ <https://blogs.msdn.microsoft.com/education/2012/09/05/2012-microsoft-australia-education-partner-of-the-year/>

⁶ The Philippines, South Korea, Israel and Singapore.

<i>Illustrative statutory licence exceptions uses of copyright works that are not covered by fair use in the US</i>		
<i>Illustrative scenario</i>	<i>Australian statutory licence exception</i>	<i>US fair use</i>
A teacher wants to record a specific TV or radio news program for use in class ⁷	✓	This presumptively qualifies as fair use under the <i>Guidelines for Off-Air Recording of Broadcast Programming for educational Purposes</i> (which form part of US Congressional records) only if the source is a free-to-air broadcast and only for class room use during the first ten consecutive school days after the recording is made.
A school librarian wants to digitise the school's library of copies of television and radio and share it online with staff and students ⁸	✓	✗
A university wants to supply DVD copies of television programs to every student in a course ⁹	✓	✗
A teacher wants to access an online archive of 30,000 television programs available streamed on demand to students and teachers across the country ¹⁰	✓	✗
A school librarian wants to share copies of television over a peer-to-peer network allowing schools to upload copies of television and radio programs for download and use by other schools ¹¹	✓	✗
A university researcher wants to find television news stories from an online archive of copies of every television news item in the past nine years indexed by story subject matter and viewable on demand by staff and students ¹²	✓	✗

⁷ This is the most basic day to day operation of the Screenrights administered statutory licence

⁸ DigitalVideoCommander is an Australian designed and manufactured audiovisual server created to provide this functionality for schools with a Screenrights licence.

⁹ An Australian university did precisely this in 2014, providing copies of television to thousands of students

¹⁰ EnhanceTV offers an archive of over 30,000 copies of television programs with over 100 hours added each week from free to air and pay television

¹¹ Clickview Exchange is a peer to peer system for librarians in schools and other institutions with a Screenrights licence

¹² InfoRMIT News Media is an archive of thousands of television news and current affairs stories indexed by subject matter and available streamed on demand to students and staff

A better model for copyright reform

27. The calls for fair use, led by US based multinational technology companies, ignore Australia's tradition of wide remunerated exceptions, and tradition of consensus driven copyright reform. Part VA was originally introduced into the Australian copyright law at the request of both the educational system and copyright owners who jointly promoted the remunerated exception as a compromise between the extreme positions adopted elsewhere.
28. Since the original legislation in 1989, the provision has been amended from time to time to expand its scope and improve its operation, most notably through the inclusion of communication in 2001. Each time, this has been achieved through negotiated compromise between the education sector and copyright sector leading to consensus submissions and bipartisan support.
29. This tradition has continued recently, with the development of simplified educational statutory licences. This provision was jointly agreed between representatives of the schools and TAFE sectors, the universities, Copyright Agency and Screenrights. The resulting legislation was included in a copyright amendment bill, released by the Government as an Exposure Draft in December 2015.
30. Screenrights submits that this consensus driven reform approach is more productive than the contentious reviews, which have recently dominated copyright debate. The approach of negotiated compromise continues to provide a faster and more reliable approach for reform of copyright.
31. If Australia can maintain this tradition of consensus driven reform, then we will be best placed to have a copyright system that continues to foster the creative industries, and grows to employ an even larger labour force focused on innovation and creativity.

MORE INFORMATION

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