

10 April 2013

Professor Jill McKeough
Lead Commissioner, Copyright
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2000

Via email: copyright@alrc.gov.au

Dear Commissioner

Screenrights' submission in response to the Issues Paper

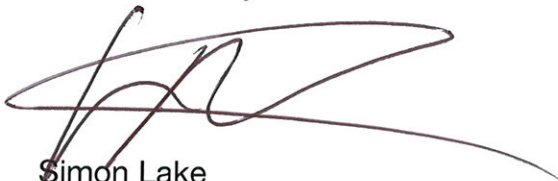
I have attached a supplementary submission to the ALRC concerning the Part VC licence and the exclusion of retransmissions over the internet from these provisions.

As discussed during our meeting of 18 March, Screenrights will also be making a further supplementary submission on the difficulties of relying on voluntary licences for the use of broadcast material by educational institutions.

Screenrights appreciates the opportunity to make these additional submissions and the opportunity for ongoing consultation with the ALRC as part of its review process.

Please do not hesitate to get in touch if you would like further information or have any questions about our submissions.

Yours sincerely



Simon Lake
Chief Executive

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**COPYRIGHT AND THE DIGITAL ECONOMY ISSUES
PAPER**

screenrights

Supplementary submission by Screenrights

10 April 2013

PART VC AND RETRANSMISSION OVER THE INTERNET

Thank you for the opportunity to provide the Australian Law Reform Commission (ALRC) with additional information concerning the Part VC licence and retransmission of audiovisual content over the internet.

In its previous submission, Screenrights highlighted its concerns regarding the exclusion of retransmissions of free to air broadcasts over the internet from the Part VC statutory licence under s135ZZJA of the Copyright Act.

The Part VC licence allows retransmitters to carry the free to air channels as part of their service provided they pay a fee to Screenrights, the declared collecting society administering these provisions.

Currently retransmissions over the internet are excluded from the statutory licence. Screenrights' concern is that some television services over the internet can rely on the licence, while others can't. For example, our understanding is that Foxtel is not provided over the internet to a Foxtel set top box but it is provided over the internet to the Foxtel Xbox service. Similarly, IPTV services such as Fetch TV and Telstra TBox are also impossible to distinguish but one happens to be over the internet, while the other is not.

This gives some providers of IPTV services a clear competitive advantage over others, as they are able to rely on the retransmission licence in Part VC to carry free to air channels, while others cannot do so, despite their service being identical to the end-consumer.

While our concern about this anomaly remains, we also recognise that addressing this issue by removing the internet exclusion from the Part VC licence (subject to appropriate geoblocking) raises new concerns. These concerns relate to retransmissions that are of a different nature to an ongoing retransmission of all free to air channels by a service such as IPTV, and have a different commercial value. We mentioned some of these in our previous submission, including:

- retransmitters cherry picking broadcasts of major events (such as the Olympics) and making them available over the internet for the statutory licence fee (which would be significantly lower than the commercial fee for these rights).
- simulcasts of free to air channels over the web by broadcasters or their related entities. Our understanding is that these arrangements are currently the subject of voluntary licences, and rightsholders in retransmitted content would not want this situation to change.

Since we made our original submission in 2012, we have had the opportunity to read submissions on this issue from major rightsholders such as the MPA, Cricket Australia, AFL, NRL and the Coalition of Major Professional and Participation Sports. These submissions express similar concerns about extending Part VC to include retransmission over the internet. Such an extension would have a detrimental impact on the ability of rightsholders to license valuable rights. Voluntary licensing of internet retransmission rights for events such as sport is an important market for rightsholders

and replacing it with a statutory licence may provide insufficient compensation from internet retransmitters.

In conclusion, Screenrights believes that this anomaly is problematic, however we also recognise that including internet retransmissions in Part VC (subject to geoblocking) would only create more problematic issues for rightsholders by seriously undermining their capacity to enter voluntary agreements for internet retransmission.