

screenrights

11 February 2009

Mr Roger Coogan
Department of Broadband, Communications
and the Digital Economy
GPO Box 2154
Canberra, ACT 2601

Dear Mr Coogan,

Re: Digital Economy Future Directions Consultation Paper

Screenrights greatly appreciates the opportunity to comment on the Digital Economy Future Directions Consultation Paper.

Please see attached Screenrights' submission regarding the paper. In preparing our submission we have focussed on the potential negative impact of open access for publicly funded content on television production and distribution markets. In addition, we comment briefly on the negative impact of online piracy of content and the barriers this raises to further innovation.

Please do not hesitate to contact us should you require any further information in respect of this submission.

Yours sincerely,



Simon Lake
Chief Executive Officer

SCREENRIGHTS SUBMISSION

Digital Economy Future Directions Consultation Paper

A. Screenrights

1. Screenrights is a non-profit copyright collecting society for producers, distributors, script writers, music copyright owners, rights owners in artistic works and sound recordings and other rightsholders in film, television and radio programs. Screenrights licenses the use of film, television and radio under provisions in the Australian and New Zealand Copyright Acts, collecting royalties and distributing this money to the relevant rightsholders.
2. Screenrights has over 2,800 rightsholder members in fifty-four countries worldwide.
3. The licences that Screenrights administers include the educational copying and communication provisions in Part VA and Part VB of the Australian Copyright Act, and the provisions that allow for retransmission of free to air broadcasts under Part VC of the Australian Copyright Act. In the case of each of these licences, Screenrights administers these provisions under declaration from the Attorney-General. Screenrights also administers the government copying licence in s183 of the Copyright Act under declaration from the Copyright Tribunal.
4. As a declared society, our operations are overseen by the Attorney-General who tables our Annual Report. Screenrights also adheres to the voluntary Code of Conduct for Collecting Societies.

B. Open Access to Public Sector Information

What categories of Public Sector Information (PSI) are most useful to industry and other stakeholders to enable innovation and promote the digital economy?

5. This question can usefully be considered in the negative: are there categories of PSI which if provided under so called "open access" would run counter to the objectives of enabling innovation and promoting the digital economy? It is possible to identify at least one category of PSI which rather than being useful to industry is potentially destructive if given away, that is PSI which competes with commercially produced information.
6. For example, under a very broad interpretation of PSI, government funded media content could be included in the term. The consultation paper perhaps suggests this by reference to "publicly funded cultural ... collections".¹ This could be expansively interpreted to include television and radio programs produced and / or commissioned by public broadcasters such as the ABC and SBS.
7. If open access was made a condition of funding or commission, then the free availability of this material would be highly prejudicial to the commercial markets for the production and delivery of similar competing content.

¹ Consultation Paper, p5.

8. Online audio visual services are a key driver for the development of the digital economy, and would be negatively affected by mandated free access for public broadcaster content.
9. If open access obligations are to be more widely imposed, Government should carefully define criteria which will determine what PSI will be made subject to open access regimes. A criteria that should preclude PSI being amenable to open access obligations is where so doing would prejudice existing or prospective commercial supply in the same market.
10. This does not mean that such material must be unavailable or “locked up” by copyright laws. There are existing innovative online uses of public broadcaster content (see below).

Should licensing terms distinguish between commercial uses and non-commercial uses and reuses?

11. Screenrights submits that there is often a false distinction made between commercial and “non-commercial” uses of material. For example, many of the statutory licences which Screenrights administers may relate to uses which on their face are non-commercial. The education sector would probably argue that education was a non-commercial use.
12. Screenrights submits that while education is a very worthwhile use and a special case which entitles it to exceptions from ordinary application of copyright law, it is false to consider it a non-commercial use. For example, balance of trade considerations which reveal education to be a major source of foreign income well illustrate this point. However, even in regard to domestic education, while the supply of education per se may usually be non-commercial, there are myriad industries which deliver resources to the education sector which are unequivocally commercial.
13. For example, the supply of media resources to schools and other educational institutions is a functioning commercial market with a multitude of competing suppliers.
14. Any evaluation of what PSI should be subject to open access obligations must take into account the underlying commercial markets which support and enable the production of the PSI higher up the supply chain. Any proposal to allow open access to PSI does not inhibit or undermine the commercial development of those markets.

Are there other examples of innovative, online uses of PSI?

15. This is not to say that PSI can not be made available in other innovative, online ways. Indeed, Screenrights’ experience comes through administering precisely such a use.
16. As stated above, Screenrights administers provisions in the Copyright Act which allow educational institutions to use television and radio broadcasts for educational purposes. Critically, this statutory licence is in return for the payment of “equitable remuneration” ie a fair fee.

17. This payment for use means that the statutory licence, while providing very broad access to the material (both commercially produced and publicly funded) does not replace the market, but rather may supplement it. Screenrights' experience is that the statutory licence has lead directly to the establishment of innovative online uses of material.
18. For example, under the licence, educational institutions are doing all of the following.
 - a. Making copies of broadcasts available to staff and students over computer networks both around campuses, and for remote access from home.²
 - b. Sharing copies between institutions via a peer to peer system.³
 - c. Downloading copies of broadcasts from central servers covering all free to air channels and supplying the educational sector.⁴
 - d. Accessing enhanced content designed for classroom use which has been commercially produced by rightsholders for the purpose of maximising returns under the statutory licence.⁵
 - e. Downloading content from broadcasters' websites.⁶
19. All of the above uses ultimately rely and depend upon the payment of a fair fee for such uses. At the same time, commercial providers have developed parallel direct licensed online services which are able to flourish in the same market as the statutory licensed material because they operate equally. Without the payment for use, it is dubious that the commercial services could compete in the market with the (then free) statutory use.
20. Screenrights submits that innovative, online uses of PSI are facilitated through the statutory licence because of the payment of a fair fee.

² <http://commandsystems.com.au/?q=node/7>

³ <http://www.clickview.com.au/exchange/>

⁴ http://informit.com.au/media_TVNEWS.html

⁵ <http://www.enhancetv.com.au/index.php>

⁶ <http://www.abc.net.au/services/podcasting/help.htm>

C. Digital confidence

What more can industry and other stakeholders do to address concerns about consumer privacy and online safety?

21. While Screenrights agrees that privacy is an important interest in respect of many online activities, it considers this to be an opportune point to make one observation about the limits of the privacy interest.
22. When content is made available online to the public, the fact of that making available, and the identity of the person making the content available, should not ever fall within the privacy interest. This is a public act, and where that public act is also an unlawful act, the legal system should ensure that the injured party has means of redress against the wrong-doer.

What evidence shows the possible barriers preventing greater online content offerings? What can be done to address these?

23. Screenrights submits that the most important barrier to greater online content offerings is online piracy. Evidence of online piracy is overwhelming, with numerous studies showing that the majority of Internet traffic measured in bytes is peer to peer transfer of content.⁷
24. Screenrights supports the submissions of the Australian Federation Against Copyright Theft Limited on this matter.

D. Developing Australia's knowledge and skills base

What can industry and other stakeholders do to assist the Government's existing efforts to develop the digital and media literacy skills of Australians?

25. Screenrights strongly endorses the Consultation Paper's comments on digital and media literacy.
26. The educational statutory licence to copy broadcasts which is administered by Screenrights is a key resource for digital and media literacy. Access to broadcast media for educational purposes is vital to teaching media literacy. Access to broadcast content is the core function of the licence.
27. Critically, the access to the content is in exchange for a fair fee. This has allowed a market to develop around the production and delivery of the content under the licence, as outlined in Part B above. This enhanced ancillary material and services depend on the payment for use. Examples of this material include study guides for selected Australian feature films and documentaries, feature articles, compilations of themed material and email based educational television guides to assist teachers in identifying and copying useful resources as they are broadcast.
28. For example, Screenrights provides such services through its subsidiary company EnhanceTV Pty Ltd. Since the launch of its website in 2002 growth in usage has been very strong. Since July 2006, there have been

⁷ <http://www.ipoque.com/resources/internet-studies/internet-study-2007>

over 30,000 downloads of study guides. Currently there are over 1 million page views per month and over 12,000 individuals receive the weekly email education guide. Support for EnhanceTV from rights holders who create the ancillary material is dependent upon the payment for the subsequent use of the television and radio content.

29. Furthermore, the licence ties closely with the Government's Digital Education Revolution. An oft heard comment on the Digital Education Revolution is that the computers in the classrooms will only be as useful as the resources able to be accessed through those computers. The Screenrights licence includes the ability to make copies of broadcasts available over school computer networks enabling extraordinary new uses for the material in the classroom and remotely.
30. Australian commercial technology providers such as Clickview Pty Ltd and Command Systems Pty Ltd have developed Learning Management Systems which do exactly this. Screenrights has worked with the technology companies to ensure that they meet the requirements of the statutory licence. Commercial suppliers will continue to develop their systems in this competitive environment with constantly innovative uses.

E. Ensuring Australia's regulatory framework enables the digital economy

Should the existing copyright safe harbour scheme for carriage service providers be broadened?

31. Screenrights supports the submissions of the Australian Federation Against Copyright Theft Limited on this matter.

F. Measuring the digital economy and its impacts

What, if any, additional datasets should government collect to improve the benchmarking of Australia's digital economy?

32. The copyright industries are fundamental components of the digital economy, and yet, remarkably the Australian government does not currently collect data on the contribution of the copyright industries to the economy. This contrasts with our trading partners such as the United States of America and New Zealand that routinely collect and publish such data.
33. To fill the gap, the Australian Copyright Council recently commissioned an independent report from Pricewaterhouse Coopers. The Council reports that "the findings include that in 2006/07 Australia's copyright industries:
 - employed more than 837,000 people (8 percent of the nation's workforce) – up 21 percent since 1996;
 - generated \$97.7 billion in economic activity (10.3 percent of GDP) – up 66 percent since 1996; and

- accounted for \$6.8 billion in exports (4.1 percent of all exports) – up 6.3 percent since 1996.”⁸
34. Independent, regular and reliable reporting is critical to the proper recognition of the role of the copyright industries in the economy generally and the digital economy particularly. Such data is an essential requirement for responsible policy development.
 35. While we congratulate the Australian Copyright Council for their work, Screenrights submits that that government should be collecting this information in part at least for the purpose of benchmarking the digital economy.

⁸ <http://www.copyright.org.au/policy-research/research/economy>