



10 August 2010

Ms Catherine Corser
Clerk of Committee
Office of the Clerk of the House of Representatives
Te Tari o te Manahautū o te Whare Māngai

Via Email: catherine.corser@parliament.govt.nz

Dear Catherine

About Screenrights

Screenrights is a non-profit copyright collecting society that licenses the use of audiovisual material in circumstances where individual administration of rights is either difficult or impossible.

The licences Screenrights administers include an educational licence under section 48 of the New Zealand Copyright Act. This licence enables educational institutions to copy from television and radio and to copy audiovisual material legally made available online. The licence also enables educational institutions to communicate these copies. Institutions must pay a licence fee and Screenrights distributes this money to the rightsholders in copied and communicated programmes.

Screenrights currently has 3,145 members from 57 countries, including broadcasters, producers, distributors, writers, music copyright owners and other rightsholders in audiovisual material. Of these members, 270 are from New Zealand.

Proposed Part 4A of the Television New Zealand Act 2003

Screenrights is writing to express its concerns about the proposed Part 4A of the Television New Zealand Act 2003 (the Scheme). Although we recognise the difficulties that sometimes can be involved in obtaining permission from rightsholders to use certain older broadcasts, we are concerned that the proposed scheme may contravene minimum standards set by TRIPS and the WIPO Copyright Treaty.

Our initial concerns are that the free exception and the remunerated exception established under the Scheme may give rise to issues under:

- Article 5(2) of the Berne Convention (inscribed into TRIPS by TRIPS Article 9) by requiring the rightsholder to register an interest in the programme as these Articles state that the 'enjoyment and exercise of the rights shall not be subject to any formality'.

- TRIPS article 13 which requires that limitations or exceptions to exclusive rights must be confined to special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightsholder.
- Article 11 *bis* (2) of the Berne Convention (also inscribed into TRIPS by TRIPS Article 9) which provides that any national exception to copyright allowing the exploitation of copyright for broadcasting must not prejudice the rightsholder's right to obtain equitable remuneration. As the remuneration under the proposed scheme is fixed and would appear not to be a fair market value, it would arguably not be equitable.
- Articles 8 and 10 of the WIPO Copyright Treaty, which state that any exception to the right of communication to the public must comply with the three-step test (ie must be confined to special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightsholder).


We will be commissioning an international law expert to look further at these issues.

Other approaches

There are approaches to using orphan works that are more limited. In the United States, a proposal has been made to limit copyright remedies after an effort has been made to locate a rightsholder. In Canada, the Copyright Board can create ad hoc compulsory licences in relation to orphan works. Screenrights believes these more limited approaches should be considered further in relation to problems that can arise in obtaining permission to broadcast certain older archived works.

Thank you for the opportunity to present this submission.

Yours sincerely



Simon Lake
Chief Executive

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