

28 January 2011

Convergence Review Secretariat
Department of Broadband, Communications and the Digital Economy
GPO Box 2154
Canberra ACT 2601

By email: convergence@dbcde.gov.au
Total number of pages: 3

Dear Sir/Madam

Convergence Review – Proposed Terms of Reference

Screenrights is a copyright collecting society representing rights holders in film, television and radio. We administer a number of statutory licences in the Copyright Act, 1968, offer voluntary licences and provide other services on behalf of our members.

Screenrights welcomes the Convergence Review. It is very timely that there be a thorough consideration of the impact on the communication and media sectors of the plethora of new technologies. This is particularly apt in the light of the roll out of the National Broadband Network. Screenrights' members are especially interested in the review as these issues are central to the content creation industries, particularly the audio visual sector.

Firstly, Screenrights notes the acknowledgement in the questions and answers provided with the Terms of Reference that there will be some areas of overlap between issues addressed by the Review and copyright law and policy.

Screenrights notes that the government has suggested that there will be a review of emerging and existing copyright issues within the purview of the Attorney-General. Screenrights submits that the Terms of Reference should include an acknowledgement of this review to minimise overlap and to ensure that any copyright issues implicated in the Review are dealt with by the copyright review.

The shared definition of "broadcast" between the Copyright Act 1968 and the Broadcasting Services Act 1992 is an example of this overlap.

Screenrights also notes another potential area of overlap in the operation of the statutory licence in Part VC of the Copyright Act 1968, which facilitates the retransmission of free-to-air broadcasts via other services such as subscription television or mobile phones. Screenrights accepts that this Review is not the place for a comprehensive review of copyright law and policy.

However, Screenrights suggests that the Terms of Reference might usefully be amended to request the Committee to identify specific issues arising from the interaction between the Copyright and Broadcasting Services Acts which may assist the Government with its consideration of the Review Committee's recommendations.

Secondly, whilst perhaps implicit in the thinking of government, we think the role of creators of and investors in digital content need to be explicitly considered.

Section 1.c of the proposed Terms of Reference refers to "industry, consumers and the community". Screenrights submits that, as a minimum, the term "creators" should be included with industry, so that 1.c refers to "industry and creators, consumers and the community". Screenrights submits that this will assist the Committee by ensuring that they take a broad view of industry, and not be limited to the communications sector, and ignore the creative sector.

Finally, it is clear from the Background Paper that a primary concern for the Review is the impact of convergence on the ability of the Australian public to have access to Australian content telling Australian stories. Technologies such as the NBN will vastly accelerate online access to audio visual content produced around the world, enable new distribution channels for Australian content, and provide the means for Australian creators to reach new audiences. However, new technologies also create a risk that Australian content will be swamped and lost in this new communications environment – an outcome which would surely be an unintended consequence of the investment into new communications infrastructure.


The Terms of Reference refer to many of the issues relevant to this concern. There is, however, only indirect reference at best to the need for proper incentives to exist for creators in this environment. Screenrights suggestion on the proposed Terms of Reference is that they would benefit from a more direct reference to such incentives. In particular it occurred to us that this could be logically inserted into existing paragraph 5(a) of the proposed Terms of Reference as follows:

- 5) Without limiting its scope, in conducting the review the Committee is to take into account the following policy parameters:
 - a) the development and maintenance of a diverse, efficient and effective communications and media market that operates within an appropriately competitive environment, which provides proper incentives for the creation of new content, and in the best interest of the Australian public.

We believe that our suggested addition will give the Committee a clearer focus on the market for the creation of the content, in addition to the existing emphasis on the communication of that content. We believe this will strengthen the Review's ability to ensure Australian content continues to be created and seen by the Australian public.

Thank you again for the opportunity to comment on the proposed Terms of Reference. We hope that is of assistance to the Department in the formulation of this important Review. I look forward to participating in the Review on behalf of Screenrights and our members.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'SL', with a large, sweeping flourish above the letters.

Simon Lake
Chief Executive