

## **SINGTEL OPTUS PTY LTD V NATIONAL RUGBY LEAGUE INVESTMENTS PTY LTD CASE**

Optus has recently created a service called “TV Now” by which Optus Mobile subscribers are, according to the Statement of Claim from Optus “subject to certain limitations and conditions, able to schedule, record and play back free-to-air television from and to certain compatible mobile devices or personal computers”.

Optus sought a declaration from the Federal Court to prevent the NRL and AFL from making threats to sue for infringement of copyright. Optus have argued that their service does not infringe the AFL or NRL’s copyright. They are relying on s111 of the Copyright Act to argue that they are not liable for any copying or reproduction.

### **SCREENRIGHTS INTEREST IN THIS CASE**

Screenrights has been granted a statutory responsibility to administer the retransmission scheme and has to ensure on behalf of Screenrights’ stakeholders, including its members, it actively defends any threats to the scheme.

The Optus “TV NOW” service is not relying on the retransmission provisions of the Copyright Act and so there is no payment to Screenrights on behalf of the rights owners. However, the service could effectively provide a very similar result to retransmission.

Screenrights wants the court to be aware of the remunerated exception for retransmission. It is highly unlikely that the parties to this litigation will make the court aware of the operation of Part VC if Screenrights does not itself do so.

Screenrights proposes to seek leave to be a “friend of the court” or ‘amicus curiae’ to inform the court of the inconsistency of Optus’ view that the free exception in s111 is broader than the Part VC exception. This will be a matter for consideration of the court in determining whether Optus’s interpretation is correct.

### **WHAT IS RETRANSMISSION?**

Retransmission royalties are generated when free to air television or radio broadcasts are retransmitted across a different network. This is because provisions in the Australian Copyright Act allow broadcasts of copyright material to be retransmitted in Australia provided the retransmitter pays a royalty to the copyright owners.

Screenrights has been appointed by the Australian Government to administer these provisions, with royalties payable to rightsholders in programs that are retransmitted from 4 March 2001.

### **TIMING**

Screenrights has decided to intervene in the proceedings and has on 16 December 2011 filed its application, submission and supporting evidence.

Statement dated 16 December 2011