

**Department of Communications and the Arts  
Copyright modernisation consultation**

**screenrights**

Submission by Screenrights

4 July 2018

Screenrights is the trading name of Audio-Visual Copyright Society Limited ABN 76 003 912 310  
ADDRESS: Level 1, 140 Myrtle Street, Chippendale NSW 2008, Australia WEBSITE: [www.screenrights.org](http://www.screenrights.org)  
POSTAL: PO Box 853, Broadway NSW 2007 Australia TELEPHONE: +61 2 9904 0133  
NEW ZEALAND: FreePhone: 0800 44 2348 FreeFax: 0800 44 7006

## EXECUTIVE SUMMARY

Screenrights is a not-for-profit copyright society representing rightsholders in film, television and radio. Screenrights has 4,244 members in 66 countries.

Screenrights submits that the starting point for these consultations, being the ALRC Report recommendations, is unfortunate as it ignores the criticisms of the ALRC Report particularly

- the lack of economic evidence to support fair use or extended fair dealings; and,
- the ALRC’s flawed comparison of Australian and US exceptions which ignored the effect of Australian remunerated exceptions.

Screenrights submits that Australia’s regime of exceptions has expanded significantly in the past fifteen years alongside enormous growth in licensed access to content for consumers.

Screenrights submits that where Australia’s exceptions are well drafted, they are flexible and responsive to new uses without the need for legislative intervention.

Screenrights submits that there are other instances where exceptions could be updated.

Question	Response
<p><b>Question 1</b> To what extent do you support introducing:</p> <ul style="list-style-type: none"> <li>• additional fair dealing exceptions? What additional purposes should be introduced and what factors should be considered in determining fairness?</li> <li>• a ‘fair use’ exception? What illustrative purposes should be included and what factors should be considered in determining fairness?</li> </ul>	<p>Screenrights does not support fair use.</p> <p>Screenrights does not support new exceptions for government use given the comprehensive coverage of s183.</p> <p>Screenrights submits that the declared society provisions relating to s183 should be modernised and simplified.</p> <p>Screenrights does not support a new exception for education.</p> <p>Screenrights supports the <i>Australian Copyright Council’s</i> submission on quotations noting particularly the need to restrict the exception to defined purposes.</p> <p>Screenrights supports the submission of the <i>Australian Film &amp; Television</i></p>

	<i>Bodies</i> rejecting the need for an exception for technical and incidental use.
<p><b>Question 2</b> What related changes, if any, to other copyright exceptions do you feel are necessary? For example, consider changes to:</p> <ul style="list-style-type: none"> <li>• section 200AB</li> <li>• specific exceptions relating to galleries, libraries, archives and museums.</li> </ul>	Screenrights supports a review of the drafting of section 200AB to make it more “user friendly” <u>provided</u> that it does not apply where licences are available or when the statutory licences apply.
<p><b>Question 3</b> Which current and proposed copyright exceptions should be protected against contracting out?</p>	Screenrights supports the submission of the <i>Australian Film &amp; Television Bodies</i> for a narrowly defined limitation on contracting out.
<p><b>Question 4</b> To what extent do you support amending the Copyright Act to make unenforceable contracting out of:</p> <ul style="list-style-type: none"> <li>• only prescribed purpose copyright exceptions?</li> <li>• all copyright exceptions?</li> </ul>	Screenrights supports the submission of the <i>Australian Film &amp; Television Bodies</i> .
<p><b>Question 5</b> To what extent do you support each option and why?</p> <ul style="list-style-type: none"> <li>• statutory exception</li> <li>• limitation of remedies</li> <li>• a combination of the above.</li> </ul>	Screenrights supports a limitation on remedies for orphan works.
<p><b>Question 6</b> In terms of limitation of remedies for the use of orphan works, what do you consider is the best way to limit liability?</p>	Screenrights makes no submission on this question.
<p><b>Question 7</b> Do you support a separate approach for collecting and cultural institutions, including a direct exception or other mechanism to legalise the non-commercial use of orphaned material by this sector?</p>	Screenrights does not support a separate approach for collecting and cultural institutions. We note that many are covered by s183 and s200AB already.

## **ABOUT SCREENRIGHTS**

Audio-Visual Copyright Society Ltd trading as Screenrights is a copyright society representing rightsholders in film, television and radio. Screenrights has 4,244 members in 66 countries.

Screenrights was established in 1990, and is a not-for-profit company limited by guarantee.

Screenrights administers statutory licences in the *Copyright Act 1968* (“the Act”) for educational copying and communication of broadcasts, retransmission of free to air broadcasts and government copying of audiovisual works.

Screenrights provides voluntary services for members including international registrations of their rights and disbursements of commercial revenue and offers voluntary educational licences in New Zealand.

## **INTRODUCTION**

Screenrights is grateful for the opportunity to contribute to the Department’s consultations and to make this submission.

The consultation arises from the Government’s response to the Productivity Commission Inquiry into Australia’s Intellectual Property Arrangements (“PC Report”). In its response, the Government undertook to have further public consultation on the three areas covered in the paper: flexible exceptions, contracting out and orphan works.

This submission focuses primarily on the issue of flexible exceptions. As the body responsible for administering certain remunerated exceptions in the Act, Screenrights has relevant expertise and a unique perspective on the issues relating to exceptions, particularly with regard to the areas which relate to Screenrights’ responsibilities including education and government use.

## **Background**

In 2016, the PC Report recommended Australia introduce a fair use exception into the Act, similar to that in the United States. This recommendation essentially adopted the Australian Law Reform Commission’s recommendation dating back to 2013 (“ALRC Report”). The Productivity Commission uncritically accepted the approach taken by the ALRC. Screenrights submits that in doing so the PC Report incorporated all the problems of the ALRC’s approach into its report.

Therefore, in considering the PC Report and responding to this consultation it is necessary to refer back to the ALRC Report as the genesis of this enquiry.

## **The ALRC Report**

The greatest criticism of the ALRC's approach is that it recommended a fundamental reconstruction of copyright law without reliable economic evidence to support the case for change. The ALRC accepted that it did not have the evidence to support the recommendation and instead operated on a purely theoretical basis. *"The ALRC considers that, given it is unlikely that reliable empirical evidence will become available in the near future, law reform should proceed, based on a hypothesis-driven approach."*<sup>1</sup>

To clarify the economic case for fair use, the Department commissioned a cost-benefit analysis from Ernst&Young ("EY Report"). The EY Report was no more successful in identifying reliable economic evidence to support fair use. In the end the EY Report concluded meekly that the ALRC's proposed recommendations *"should be beneficial, albeit not substantially in some areas."*<sup>2</sup>

Screenrights submits:

- i. that the ALRC Report failed to make an economic case for extended fair dealings much less fair use;
- ii. that this failure was reiterated in the PC Report; and,
- iii. that the EY Report's cost-benefit analysis of the ALRC recommendations is wholly inadequate to support such a fundamental shift in the creative sector's property rights.

## **Analysis of exceptions**

Beyond the economic hole in the ALRC Report, Screenrights was especially concerned by the analysis of exceptions conducted for the purposes of the review.

The premise behind the recommendations for fair use or additional fair dealings was that exceptions were wider under the US system. However, when remunerated exceptions are included in the analysis, Australian copyright users have far greater access to content than is available under the US fair use system.

For example, considering educational use of broadcasts, the Australian statutory licence provides access to audiovisual material which is not possible in the US. By comparison with the broadcast educational exception in s113P of the Copyright Act, the rights to use content under fair use do not even match the most basic use of the statutory licence.

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<sup>1</sup> (2013) ALRC Report 122, "Copyright and the Digital Economy", p 21.

<sup>2</sup> (2016) Ernst&Young, "Cost benefit analysis of changes to the Copyright Act 1968", Key Findings: page x.

The table in Appendix 1 includes several examples from the PC Report which illustrate the much wider rights available to educational institutions in Australia.

### **Productivity Commission recommendations**

Screenrights submits that the ALRC's analysis of the Australian regime was fundamentally flawed by its failure to consider the remunerated exceptions in the Copyright Act, which are a feature of Australian law that the US does not enjoy. As the body charged with administering three of these provisions, this is of particular relevance to Screenrights. It is a very significant concern that the role of statutory licences in providing access to users was ignored by the ALRC and subsequently by the Productivity Commission which adopted its approach.

Screenrights accepts that the task given to the Productivity Commission was immense, in that it was obliged to consider not only copyright but the whole of Australia's intellectual property arrangements of which copyright is only a small part. However, this does not excuse the Productivity Commission for its failure to properly review the ALRC's approach or take into account the criticisms made against the ALRC.

Screenrights submits that the Productivity Commission's recommendation 6.1 was without economic foundation and was based on a fundamental misunderstanding of Australia's regime of exceptions. The recommendation should be rejected.

Screenrights respectfully submits that the Government's response to *note* the Productivity Commission's recommendation and consult on more flexible exceptions is appropriate. However, it should not be misunderstood or misconstrued to be a backhanded endorsement of fair use. Further, any adjustment to exceptions, including fair dealings, needs to be very carefully weighed and assessed on its merits.

Notwithstanding that, Screenrights does not take the view that the Act is perfect, or unable to be improved upon. In this paper, we propose a number of areas where we feel useful reform of copyright exceptions could be achieved.

## **FLEXIBLE EXCEPTIONS**

### **What is the copyright problem?**

The consultation paper posits the policy problem to be that "without continued evolution of exceptions, copyright law may fail to ensure that emerging activities

and outcomes... can be achieved.”<sup>3</sup> The paper then acknowledges that copyright exceptions have been proposed, added and amended over time.

### *The expansion of exceptions*

In fact, since 2001 when the right of communication was introduced, there have been a wide range of new exceptions and expansions of existing exceptions to copyright. For example, when the right of communication itself was introduced, many exceptions were expanded to encompass it, including the statutory licences. In 2006 a new fair dealing for parody and satire was created along with a flexible exception for various purposes. As recently as 2017, new provisions for disability access were enacted.

By contrast, rightsholders’ rights have not increased since the extension in term in 2004 which was a consequence of the US Australia Free Trade Agreement and is of limited practical impact on copyright value.

The conclusion from the past two decades must not be that copyright is out of balance, nor that copyright law is static and inflexible, but rather that Australian copyright law has adapted and changed along with society and technology.

This expansion of exceptions in copyright law has occurred at a time when there has been an explosion in new licensed uses which have created ever greater access to copyright material for consumers.

### *Adaptable exceptions*

In Screenrights’ direct experience where copyright exceptions are well drafted they are inherently flexible and adaptable to change.

A good example of a well drafted flexible exception is the statutory licence for educational use of broadcasts.<sup>4</sup> This provision was originally enacted in 1989 at the request of rightsholders and the education sector alike to reflect teachers’ practice of copying broadcasts to bring into class. In those days, the widespread adoption of Video Cassette Recorders had created the technical means to use broadcast television for educational purposes in new ways, but there was not a licence to do so. The statutory licence created an exception to copy the broadcast for teaching in return for the payment of equitable remuneration (a fair fee).

The thought of teachers wrangling tapes into rickety VCRs now seems quaint in these days of online video on demand. Yet for the past thirty years the statutory licence has grown and adapted with the technology, taking in its stride CD, DVDs, PVRs and even cloud based streaming services. Indeed, the educational streaming services like Clickview and TV4Education which operated under the

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<sup>3</sup> Consultation paper, p 9.

<sup>4</sup> Originally Part VA of the Copyright Act; in 2017 re-enacted in Division 4 of Part IVA

statutory licence have libraries of content that dwarf any commercial service such as Netflix or iView.

All of this has been possible because the original provisions were well drafted. They were technology neutral and agnostic as to the means that the content was copied provided the educational purpose and fair fee were maintained.

Another example is the retransmission statutory licence in Part VC of the Act. Again this was drafted in 2000 in a largely technology neutral way. It now covers not only the pay television retransmission of free to air broadcasts familiar to subscribers of FOXTEL, but also a range of services not thought of at the time including Fibre To The Premises retransmission, hospital services and retransmission to remote mining camps.

*Not all exceptions are so adaptable*

By contrast, another statutory licence Screenrights administers has been less adaptable. The use of copyright for government purposes is excepted from copyright infringement in section 183 of the Copyright Act. There is a corresponding obligation to pay rightsholders equitable remuneration for that use. In 1998, provisions were introduced for declared copyright collecting societies to act on behalf of rightsholders for the purpose of collecting for government copies made under section 183.<sup>5</sup>

However, the declared copyright society provisions were limited in scope and have not adapted well over time. In hindsight, they were drafted with a narrow view of the use of copyright material which was focussed on photocopying. They did not consider how audiovisual works may be used even at that time, and they were not updated when the right of communication was created. As a result, the provisions are now in urgent need of modernisation.

Screenrights submits that where copyright exceptions are well drafted in a technology neutral way focussed on the intended purpose then they are inherently flexible and adaptable to change. This is largely the case in the Act. However, there are instances in the Act where the drafting is too narrow, and these are a useful subject of modernisation.

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<sup>5</sup> Sections 183A – 183F of the Act

### *What are the reform options?*

The paper answers this question with two familiar options: adding new fair dealing exceptions or replacing fair dealing with a fair use provision based on US law.

Radically, the consultation paper also proposes a means of adding (amending or removing) fair dealings based on legislating a power for the Minister to change the fair dealings by Regulation. Screenrights does not support such an approach. In particular, we are concerned that it would serve to inflame the already heated advocacy on these issues which has been an obstacle to constructive reform over the past decade.

It is worth noting that the Attorney-General had a similar power from 1968 regarding rate setting for the statutory licence covering recordings of musical works. The Ministerial power was so problematic that it was abolished in 1980. The Attorney-General, the Hon., Lionel Bowen AC, identified that this was an “inappropriate role for government” and noted that the matter was “very controversial” in the second reading speech of the Bill which took away the power from his office and transferred it to the Copyright Tribunal.

A third option was recently published in *The Australian Intellectual Property Journal*. This option takes inspiration from a Ministerial provision but places the power to determine exceptions in the hands of the Copyright Tribunal, subject to a public interest test.<sup>6</sup>

While the paper concentrates on the constitutional questions relating to giving the Tribunal such a power, of more interest to Screenrights is the proposal that any such exception would not apply if or to the extent that licences were available for the purpose. This “use it or lose it” approach is common in UK and NZ copyright law for exceptions. It has the merit of ensuring access to content for appropriate purposes while minimising the impact on markets for the content.

Without commenting on the substance of the flexible public interest exception proposed in the paper, Screenrights strongly supports consideration of the inclusion of a use it or lose it approach to any new exception.

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<sup>6</sup> (2018) Dr David Brennan, “The Copyright Tribunal as Exception-maker: are both flexibility and certainty achievable?”, 28 AIPJ 83

## QUESTION 1

To what extent do you support introducing:

- additional fair dealing exceptions? What additional purposes should be introduced and what factors should be considered in determining fairness?
- a 'fair use' exception? What illustrative purposes should be included and what factors should be considered in determining fairness?

### **“Fair use”**

Screenrights does not support a “fair use” exception.

As outlined above, the economic case for fair use has never been satisfactorily made. The ALRC did not attempt to make an economic case and the EY Report was only able to identify very weak benefits. Recent attempts to shore up the economic case include a report by Deloitte which was prepared for Google, leading advocates of fair use whose interest lies in reducing the licence fees they pay for copyright material. This report has been roundly criticised by a leading Australian copyright economic expert, Dr George Barker, who points out the fundamental flaws in the report, particularly in its misconception of copyright and the role of licensing.<sup>7</sup>

The potential costs of “fair use” relate to increased costs from litigation, increased transaction costs and the dampening economic impact of an uncertain regime. Even in the US, where “fair use” is long established it has been found to have uncertain outcomes with decisions regularly being reversed back and forth as they are appealed through the courts. In Australia, with no equivalent judicial history, and lacking the US constitutional underpinnings of fair use, it is likely to be highly unpredictable. This risk is exacerbated by the low number of copyright cases in Australia compared with the US.

Finally, in the specific areas that Screenrights administers, such as educational use of broadcasts, the exceptions are far greater in Australia than under “fair use” and the case for fair use is reversed.

### **Additional fair dealing exceptions**

At the roundtable consultations a number of additional fair dealing exceptions were considered. Screenrights responds to those proposals in this section.

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<sup>7</sup> (2018) Dr George Barker, “More unfair claims about fair use in Australia”, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3184614](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3184614)

### *Certain government uses*

The first roundtable considered certain government uses and proposed new exceptions based on a list derived from the ALRC Report.

As noted above, Screenrights considers that the ALRC Report was fundamentally flawed by a narrow consideration of the current exceptions in the Act. This is illustrated by the recommendation regarding certain government uses.

Screenrights acknowledges that a case can be mounted that all such uses should be the subject of copyright exception. Indeed they are currently covered by s183 of the Act which creates an exception for uses of copyright for the services of the Commonwealth, a State or a Territory. Section 183 is extraordinarily broad in scope, with minimal corresponding obligations for reporting and payment of a fair fee. If there is doubt whether these purposes are covered by the existing exception, then this should be clarified.

In the context of this comprehensive exception, it is redundant to propose further new exceptions for government use of copyright. Furthermore, the final two purposes proposed by the ALRC and considered in the consultations are particularly problematic. The first of these, “where statutes require local, state or Commonwealth governments to provide public access to copyright material” clearly runs the risk of self serving outcomes. The “use of correspondence and other material, sent to government, excluding uses that make previously published material publicly available” could be prejudicial to copyright owners given the range of material affected. For example, it cover government use of survey plans which have been the subject of Copyright Tribunal proceedings in the past which determined a rate of equitable remuneration to be paid for some copies of plans and nil remuneration for others.

This Tribunal determination demonstrates the flexibility of the current arrangement, and the inappropriateness of a blanket exception as proposed.

At the consultation, it was discussed whether uses under section 183 could be agreed to be free by rightsholders, or by copyright collecting societies standing in for rightsholders. Screenrights accepts as a matter of principle that uses under section 183 can have equitable remuneration of nil, and as a matter of practice Screenrights incorporates such provisions within all its agreements with the jurisdictions.

Over many years, Screenrights has repeatedly proposed that particular uses of copyright material under section 183 could have different rates depending on the purpose of copying and use of the material by the government. Screenrights continues to be open to proposals from government on such rates including potentially nil rates.

Screenrights submits that this issue does not require legislative intervention to resolve, but merely agreement between the parties which is within the various

governments' remit to seek. Screenrights notes that the Copyright Tribunal would have authority to determine the matter if the parties were unable to agree.

Screenrights notes further that some of the questions that could arise in such a discussion may be the subject of the current Copyright Tribunal proceedings between the State of New South Wales and Copyright Agency Limited. In Screenrights' view it would be improper to intervene while that matter was on foot.

As mentioned earlier, there is another issue relating to the section 183 provision: the outdated basis of the declaration provisions which are in urgent need of modernisation and simplification.

Screenrights submits that the declared society provisions relating to government use of copyright material should be reformed. The goal should be to make the provisions technology neutral and flexible; to simplify them reducing regulation and red tape; and, to clarify that they include local government.

Screenrights submits that such a process could be undertaken between the relevant parties with the Department's encouragement in a manner similar to that which led to the simplification of the educational statutory licences in 2016. In Screenrights' view this would likely produce a ready reform of the government copying provisions of benefit to both rightsholders and copyright users alike.

#### *Certain educational uses*

Screenrights also participated in the Department's roundtable on certain educational uses.

The education sector has made two claims to support its submissions for an additional educational exception (with fair use being their preferred approach).

The first claim is that they state they are paying for uses of copyright material under the statutory licences which should be free particularly "freely available material on the internet".

We are not party to the discussions between the educational administering bodies and Copyright Agency, but just on simple legal principles we can not see how this could occur. The educational statutory licences operate in return for compensation specified in the Act as "equitable remuneration" i.e. a fair fee. The parties agree that the amount paid is equitable or, if they don't agree, then the Copyright Tribunal has power to determine the amount on application by either party. In such an application it would be open to the education sector to argue that certain content should have nil remuneration.

Screenrights' understanding is that the education sector and Copyright Agency operate under agreed rates. By definition, therefore, the amount paid by the educational institutions is equitable. On this basis, Screenrights fails to understand the claim that the education sector is overpaying as this would not be equitable remuneration and the agreement would not have been reached.

Screenrights submits that the education sector's claim of overpayment has no basis, and there is no case made for a new fair dealing for education or for illustration for instruction.

The second claim by the education sector is that certain uses of copyright material for teaching purposes are not covered by an exception and educators and students are thus denied use of the content.

As mentioned above, the Act was amended in 2006 to include a flexible provision intended as a catchall where other exceptions or licences are unavailable. Section 200AB covers *Use of works and other subject-matter for certain purposes*. At subsection (3) it includes educational institutions using copyright material for educational purposes.

Section 200AB is relied upon by educational institutions as a flexible provision. The National Copyright Unit on behalf of the Schools and TAFE Copyright Advisory Groups have developed guidelines for teachers looking to use the section headed *Flexible Fair Dealing*.<sup>8</sup> These guidelines provide a tool for teachers and others to apply the flexible provision.

Screenrights is aware of submissions that the operation of section 200AB has been limited by its slightly unusual drafting in which it incorporates the three step test. At the roundtable, the point was also made that section 200AB's application was less useful because it only applied to educational institutions, and so, for example, academics can not rely on it to present material at conferences.

Screenrights submits that careful amendment of the current flexible provision for educational purposes in section 200AB could overcome some of the practical concerns that have been raised about access to content for teaching purposes.

Screenrights submits that reform of section 200AB should not be used to undermine either commercial licences or the statutory licences for education. The tests for normal exploitation of the work and the legitimate interests of the copyright owner need to be maintained in essence along with the exclusion of statutory licences and other exceptions from the operation of the provision.

### *Quotation*

Screenrights also participated in the roundtable on quotation.

A concerning aspect of the discussion at the roundtable was the proposition that the purpose of a quotation was free speech or freedom of expression. Screenrights supports both these principles, but they do not amount to a purpose for a copyright exception. If freedom of expression was a suitable purpose for a

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<sup>8</sup> <http://www.smartcopying.edu.au/faqs/flexible-fair-dealing>

quotation exception, then it could lead to quoting of entire works, and the undermining of copyright altogether.

Screenrights supports the submission of the *Australian Copyright Council* on quotation.

#### *Incidental and technical use*

Screenrights supports the submission of *The Australian Film & TV Bodies* on incidental and technical use.

Screenrights supports also the submission of the *Australian Copyright Council* concerning text and data mining including that existing exceptions and licensing arrangements are available and that if such a provision was to be considered, it would be critical to ensure that it was targeted to areas of specific need which are of the highest public interest.

## **QUESTION 2**

What related changes, if any, to other copyright exceptions do you feel are necessary? For example, consider changes to:

- section 200AB
- specific exceptions relating to galleries, libraries, archives and museums.

### **Section 200AB**

As noted above, Screenrights is aware of concerns expressed by some beneficiaries of section 200AB as to the drafting of the provision which may unintentionally restrict its application.

Screenrights submits that a careful review of the drafting of section 200AB may be a useful prospect for reform, subject to preserving the commercial harm tests, and the exclusion of the section from the statutory licences.

### **Galleries, libraries, archives and museums**

Screenrights supports the submission of the *Australian Copyright Council* including the proposal that key cultural institutions could perhaps be included within the scope of an amended section 200AB.

## **CONTRACTING OUT**

### **QUESTIONS 3 AND 4**

Which current and proposed copyright exceptions should be protected against contracting out?

To what extent do you support amending the Copyright Act to make unenforceable contracting out of:

- only prescribed purpose copyright exceptions?
- all copyright exceptions?

Screenrights supports the submissions of *The Australian Film & TV Bodies* on contracting out.

## **ACCESS TO ORPHAN WORKS**

### **QUESTION 5**

To what extent do you support each option and why?

- statutory exception
- limitation of remedies
- a combination of the above.

Screenrights supports a limitation of remedies for orphan works.

### **QUESTION 6**

In terms of limitation of remedies for the use of orphan works, what do you consider is the best way to limit liability? Suggested options include:

- restricting liability to a right to injunctive relief and reasonable compensation in lieu of damages (such as for non-commercial uses)
- capping liability to a standard commercial licence fee
- allowing for an account of profits for commercial use.

Screenrights makes no submission on this question.

### **QUESTION 7**

Do you support a separate approach for collecting and cultural institutions, including a direct exception or other mechanism to legalise the non-commercial use of orphaned material by this sector?

Screenrights does not support a separate approach for collecting and cultural institutions, noting that many of them are already covered by section 183 and / or section 200AB.

We understand that while there were initially concerns about the use of s200AB, that over time cultural institutions have become more comfortable with the provision and regularly rely on it including with regard to orphan works. As with educational institutions, if there are practical difficulties with the application of s200AB in its intended way, then these could be addressed through careful reform of the section.

## **MORE INFORMATION**

James Dickinson  
Head of Licensing & Regulatory Affairs

[licensing@screenrights.org](mailto:licensing@screenrights.org)

tel 02 9904 0133

## APPENDIX ONE – COMPARISON OF EDUCATIONAL EXCEPTIONS

<i>Illustrative scenario (Based on the Productivity Commission Report Table 6.1)</i>	<i>Australian statutory licence (paid) exception</i>	<i>US fair use</i>
A teacher wants to record a specific TV or radio news program for use in class <sup>9</sup>	✓	Possibly. This qualifies as fair use <u>only</u> if the source is a free-to-air broadcast and <u>only</u> for class room use during the first ten consecutive school days after the recording is made. <sup>10</sup>
A school librarian wants to digitise the school's library of copies of television and radio and share it online with staff and students <sup>11</sup>	✓	✗
A university wants to supply DVD copies of television programs to every student in a course <sup>12</sup>	✓	✗
A teacher wants to access an online archive of 30,000 television programs available streamed on demand to students and teachers across the country <sup>13</sup>	✓	✗
A school librarian wants to share copies of television over a peer-to-peer network allowing schools to upload copies of television and radio programs for download and use by other schools <sup>14</sup>	✓	✗
A university researcher wants to find television news stories from an online archive of copies of every television news item in the past nine years indexed by story subject matter and viewable on demand by staff and students <sup>15</sup>	✓	✗

<sup>9</sup> This is the most basic day to day operation of the Screenrights administered statutory licence

<sup>10</sup> Qualifies for fair use under the *Guidelines for Off-Air Recording of Broadcast Programming for educational Purposes* (which form part of US Congressional records)

<sup>11</sup> DigitalVideoCommander is an Australian designed and manufactured audiovisual server created to provide this functionality for schools with a Screenrights licence.

<sup>12</sup> An Australian university did precisely this in 2014, providing copies of television to thousands of students under the Screenrights licence

<sup>13</sup> EnhanceTV offers an archive of over 30,000 copies of television programs with over 100 hours added each week from free to air and pay television

<sup>14</sup> Clickview Exchange is a peer to peer system for librarians in schools and other institutions with a Screenrights licence

<sup>15</sup> InfoRMIT News Media is an archive of thousands of television news and current affairs stories indexed by subject matter and available streamed on demand to students and staff