

# Final Report of the Digital Platforms Inquiry

The logo for Screenrights, featuring the word "screenrights" in white lowercase letters inside a red rounded rectangle.

## Submission by Screenrights

12 September 2019

## About Screenrights

The Audio-Visual Copyright Society Ltd trading as Screenrights is a non-profit copyright society representing rightsholders in the audio-visual sector including film, television and radio. Screenrights has 4,438 members in 66 countries.

Screenrights is the declared collecting society under the Copyright Act 1968 (Cth) (the “Act”) that administers statutory licences for educational copying and communication of broadcasts under Part IVA Division 4 of the Act, retransmission of free to air broadcasts under Part VC of the Act and government copying in respect of television, radio and internet broadcasts under s183 of the Act.

The statutory licences operate as remunerated exceptions to copyright. Screenrights’ experience in administering statutory licences for almost thirty years gives us a unique perspective on the operation of such remunerated exceptions in the Act, including how changes in the law would affect the scope of such exceptions.

Screenrights’ subsidiary EnhanceTV Pty Limited operates EnhanceTV, a video-on-demand service for educational institutions with a Screenrights licence to access broadcast content for teaching purposes.

In New Zealand, Screenrights also supplies an educational copyright licensing scheme for “communication works” under New Zealand copyright law, which is platform neutral in that it includes broadcasts and transmissions over the Internet.

## General Comments

This submission responds to the recommendations of the Final Report of the ACCC’s Digital Platforms Inquiry of 26 July 2019.

Screenrights is grateful for the opportunity to make this submission. The recommendations of the Final Report are of particular interest to Screenrights in our role of administering educational statutory licences under the Australian Copyright Act 1968 (the “Act”) for the copying and communication of broadcasts by educational institutions.

Further, in Australia, Screenrights has direct experience with operating a digital platform. Screenrights’ subsidiary EnhanceTV Pty Limited operates EnhanceTV, a video-on-demand service for educational institutions with a Screenrights licence to access broadcast content for teaching purposes. We refer to such services as a “resource centre.” Screenrights also licences other resource centres, such as Clickview, to provide similar services to the education sector.

In New Zealand, Screenrights licences a resource centre known as ETV, being a video-on-demand service for New Zealand educational institutions with a Screenrights licence. Screenrights supplies an educational copyright licensing scheme for “communication works” under New Zealand copyright law, which includes broadcasts and transmissions over the Internet.

Accordingly, in the broadcasting regulation context, where no broadcasting regulation applies to digital platforms, Screenrights has relevant experience with how digital platforms operate in Australia and New Zealand, specifically in the market for the delivery of educational content.

In terms of copyright regulation, a key finding of the Final Report was that digital platforms are currently regulated by Australian copyright law in a broadly similar way as media businesses performing comparable roles. Screenrights notes however that the Copyright Modernisation Review overseen by the Department of Communication and the Arts considered proposed expansions of copyright law exceptions which, if not carefully constructed, may allow digital platforms to unfairly exploit those exceptions. This would allow digital platforms to use the content of broadcasters and other content creators without permission or licence or compensation, which would be detrimental to the viability of ongoing content creation.

There are options for copyright modernisation that can be explored further which properly protect the interests of content creators. Screenrights has specific experience with such well-functioning platform neutral copyright laws in other territories such as New Zealand.

Screenrights has recently been engaging in discussions with the Department of Communications and the Arts on these issues and would welcome the opportunity to contribute our experience with digital platforms and platform neutral copyright laws to the proposed targeted consultation meetings.

We set out below our response in relation to specific recommendations in the Final Report.

***Recommendation 6: Process to implement harmonised media regulatory framework***

The Final Report recognised that given the lack of broadcasting regulations applicable to digital platforms that there is a significant regulatory imbalance between digital platforms like YouTube and broadcasters. This regulatory disparity can result in regulation being less effect in achieving its policy goals, such as the protection of children from inappropriate ads or content.

We note that Enhance TV, by its nature, with a business model that does not rely on advertising and with its content limited to broadcast content, is quite distinct from YouTube, which teachers also use to access content for educational purposes.

Accordingly, EnhanceTV's operations would likely integrate into a harmonised regulatory framework for advertising and content controls without any significant cost or resource implications.

We note Google's submission to the Inquiry that the guiding principle for regulation ought to be that companies engaged in the same activity should be consistently regulated in respect of that activity and that the review should account for differences among different types of online activities. However, digital platforms like Google and YouTube can't be considered mere intermediaries. YouTube for example, selects, ranks and curates content through its search functionality and accordingly should operate under the same level of regulatory restraints as media businesses comparable functions.

More generally, Screenrights agrees with the Final Report that there are clear benefits to removing obsolete or redundant regulations and updating remaining regulations for the new media and communications landscape. By way of example, Screenrights observes that there is no statutory definition of "Internet" and there may be value in

distinguishing between OTT (over the top) TV and radio which is delivered over an unmanaged network such as broadband internet and IPTV where the content is delivered to a display device via IP over an operator-managed network. We expect the latter would be considered a “broadcasting service” but there is arguably room for different interpretation. Screenrights has witnessed the inhibiting effect of this regulatory uncertainty, as potential new retransmitters have been unclear whether they can rely on the statutory licence which is prohibited from occurring over the (undefined) internet.

Screenrights provided a submission on the Review of the Alston Determination, which the Final Report suggests has created a widening gap in the regulation of online and offline content over time as online content grows in availability and popularity. In its submission, Screenrights noted that the debate about the ongoing utility of the Alston Determination traverses both communications law and copyright law, creating a tension between two separate policy objectives, which likely complicates the position for many stakeholders, including members of Screenrights. For this reason, Screenrights supported the remaking of the determination in the short term to allow the issues to be canvassed more thoroughly by Government, including in the context of the wider response to this Inquiry and the Australian and Children’s Screen Content Review.

In order to create a level playing field, Screenrights supports a regulatory framework being developed and implemented that is platform neutral to the extent that is possible to ensure effective and consistent regulatory oversight of all entities involved in content production or delivery in Australia including digital platforms. The framework should nonetheless preserve freedom of the press and retain the independence of public broadcasters.

With respect to international examples of platform neutral approaches to regulation, Screenrights also operates the New Zealand educational licensing scheme. Under the New Zealand provisions the educational exception to copyright infringement is not limited to broadcasting. Rather, it includes audio-visual content delivered over the Internet. These provisions represent a good example of a simple regulatory framework based on flexible, technology-neutral principles that can respond to technological change and adapt to new innovations.

Accordingly, Screenrights has considerable experience in administering such platform neutral provisions and would welcome providing further input to government in formulating future policy in this area.

***Recommendation 8: Mandatory ACMA take-down code to assist copyright enforcement on digital platforms***

A key benefit of resource centres like EnhanceTV is that educators can be assured that the content they are viewing does not infringe copyright as EnhanceTV copies the content under a Screenrights licence from broadcasts. That is not the case when educators access other digital platforms like YouTube where copyright-protected content produced by Australian media businesses and other individual content creators may easily be uploaded by any user to a global platform. This opens the

floodgates to mass copyright infringement issues, including a lack of attribution of the creator and a risk to monetisation of that content by the rightful copyright owner.

Accordingly, Screenrights generally supports the introduction of a mandatory ACMA take-down code to govern the take-down processes of digital platforms operating in Australia. The effectiveness of any such code is dependent on proper consultation and buy in from rightsholders. Rightsholders from large media businesses to small individual content creators should be closely consulted with in the development of the terms of code. It is critical that the resulting code adequately protects rightsholders by embedding clear obligations on digital platforms to ensure the timely and effective take-down of copyright-infringing content.

While we generally support the development of a code, Screenrights shares the concerns of other stakeholders that a code does not adequately address the issues with the operation of authorisation liability in the Copyright Act and could, as submitted by Foxtel, have the effect of normalising infringement. We note the ACCC considers that these concerns can be addressed through the development of clear and robust rules for take-downs, Screenrights queries whether these concerns can be sufficiently addressed by such mechanisms.

Screenrights also shares the concern of some stakeholders that compliance with the code could make a finding of authorisation infringement by a court less likely. In particular we agree with The Australian Copyright Council's submission that compliance with the code cannot be taken by a court as supporting a conclusion that there's been no authorisation infringement by a digital platform. As expressed in FreeTV's submission, compliance with the code should only be one of the factors a court considers when determining whether a platform has authorised copyright infringement.

***Recommendation 9: Stable and adequate funding for the public broadcasters.***

Due to Screenrights' role in administering the educational statutory licence as well as in licensing resource centres like EnhanceTV and ClickView, Screenrights recognises the importance to educators of access to public interest journalism produced by the national broadcasters, with ABC programs like *ABC News*, *Four Corners* and *The 7:30 Report* and SBS programs such as *NITV News* being used by many educators.

Accordingly, Screenrights agrees that stable and adequate funding should be provided to the ABC and SBS in recognition of their role in addressing the risk of under-provision of public interest journalism that generates broad benefits to society.

***Recommendation 13: The Terms of Reference for the review of the Australian Curriculum scheduled for 2020 should include consideration of the approach to digital media literacy education in Australian schools.***

Screenrights supports the view that the Terms of Reference for the review of the Australian Curriculum scheduled for 2020 should include consideration of the approach to digital media literacy education in Australian schools.

We agree with the suggestion in the Final Report that the review should consider potential opportunities to incorporate materials and resources provided through the Government grants program targeted at local reporting into elements of the curriculum.

Australia's wide ranging exceptions for educational use of broadcast content provides a great opportunity for this content to be incorporated into the curriculum and used in the classroom.

Screenrights would welcome the opportunity to work with government on developing a better approach to digital media literacy in Australian Schools. This could involve resource centres working closely with the relevant stakeholders in reviewing the new Australian Curriculum and then curating content for schools that aligns with the goal of improving digital media literacy.

### **More information**

Marie Foyle  
Head of Policy  
Screenrights

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

tel 02 8038 1300