

Supporting Australian stories on our screens
Screenrights' submission on Options paper



Submission by Screenrights

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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
EMAIL: info@screenrights.org

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About Screenrights

Audio-Visual Copyright Society Limited trading as Screenrights is a not for profit copyright collecting society representing rightsholders in film, television and radio programmes. Screenrights has over 4,709 members in 69 countries world-wide covering a wide spectrum of copyright owners including broadcasters, producers, writers, music copyright owners and creators of artistic works. Many of our members are engaged in news media which is the subject of this consultation.

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.

Executive Summary

Australia's statutory licensing regime is a part of the Australian screen content financing structures and value chain that acts as a key indirect government support for the screen industry driving highly significant distributions to local content makers. The licence is particularly important for creators of high cultural value content including factual and documentary programs for which there is a limited market outside Australia.

Platform neutrality is necessary for the proper functioning of the licences. While the licences have grown and adapted to new digital platforms wherever legislatively possible, statutory constraints on the application of the licences to the internet potentially undermine the licences' support to the industry in future.

It is critical that the licences continue to be updated and modernised to ensure their ongoing use with digital platforms and new technology. In particular:

1. The educational licence needs to be extended to include the use of online AV content as in New Zealand;
2. The retransmission licence needs to be expanded to allow retransmission over the internet; and,
3. The government usage provisions need to include efficient collecting society administration of remuneration for the communication and performance of content.

Introduction

Screenrights' statutory licences are both an important institutional support for Australian stories on our screens, and also depend on those Australian stories being on our screens. Screenrights' members are predominantly Australian creators of film and television who are directly impacted by the policy framework outlined in the Options paper.

Equally, Screenrights' licensees are predominantly educational institutions who depend on quality Australian content being available under the licence to ensure the best teaching and learning outcomes for students.

Screenrights licences are a feature of Australian government support for the screen sector

The description of the Australian Government screen sector policy framework in the Options Paper is incomplete because it overlooks the Screenrights statutory licences. While the paper considers direct support such as Screen Australia and policy interventions such as quotas, it ignores the statutory licences. These licences are a creation of Commonwealth legislation and are an important indirect Commonwealth support for the Australian screen industry.

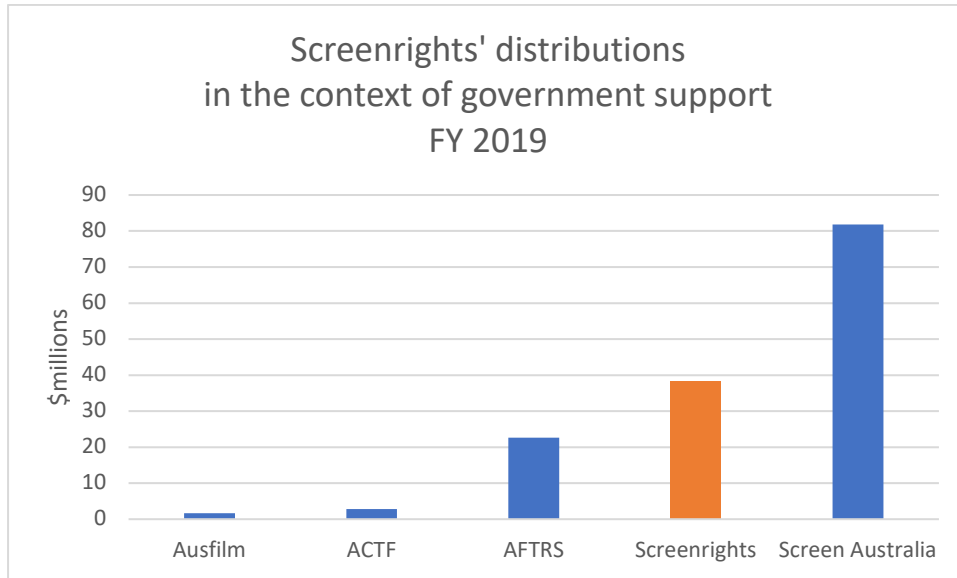
Both the fact of the licence, and the ultimate governance of their administration are the responsibility of the Commonwealth. The licences are created in the Copyright Act by the Australian Parliament and Screenrights is appointed by the Commonwealth Government¹ to administer the licences on behalf of the copyright owners.

Screenrights licences are a substantial support for the screen sector

The statutory licences were created to compensate copyright owners for the unauthorised use of their works for societally important purposes such as education and government administration. Over time, the *equitable remuneration* (ie fair fees) paid for the licences have developed to become substantial indirect supports for the screen sector.

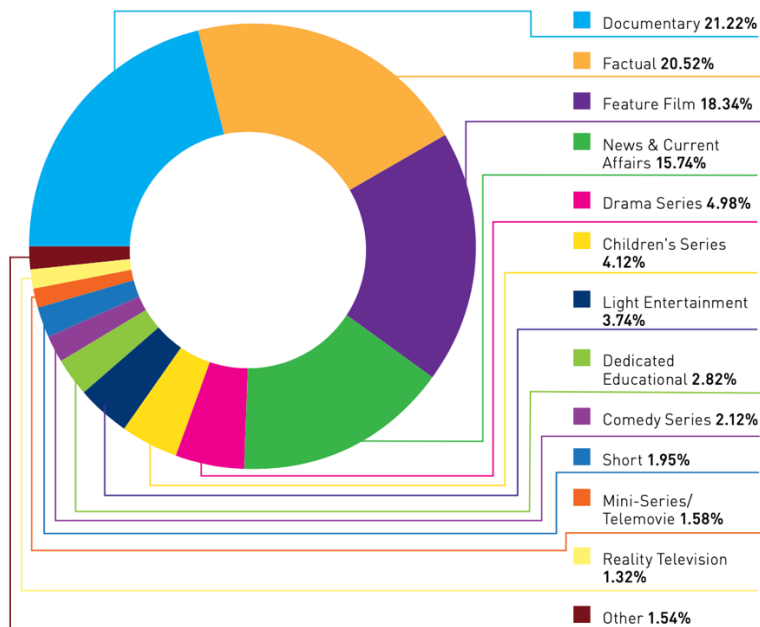
In the most recent financial year, Screenrights distributed \$38.2million in licence fees to copyright owners. More than half of distributions are paid to Australian members. This is a very significant amount in the context of the support provided by government as outlined in the paper.

¹ The government copying licence declaration is made by the Copyright Tribunal not the Commonwealth to avoid any conflict of interest by government.



Furthermore, Screenrights distributions are concentrated in areas of particular cultural value. In financial year 2019, 41.7% of programs used under the education licence were documentary or factual.²

FIGURE 9 Share of copies made for different types of content at Australian Educational Institutions



² Screenrights Annual Report Highlights 2019, <https://www.screenrights.org/wp-content/uploads/2019/10/SCR-4569-AR-OVERVIEW-2019-fin-web-6.pdf>

Operation of the statutory licences is not platform neutral

Like the other areas of policy discussed in the Options paper, the statutory licences do not operate equally across platforms. This reduces the effectiveness of the policy.

Educational use of broadcast content

The educational licence includes the copying of broadcasts and communication of copies for educational purposes. The policy goal is to ensure unfettered access to content for teaching while guaranteeing copyright owners are compensated for the use of their works. As shown in the previous section, the licence has become a key indirect support for Australian stories particularly for the culturally vital documentary and factual genres.

The licence as enacted is a mix of platform specific and platform neutral drafting. Where the licence is platform neutral it has functioned extremely efficiently, adapting to changes of technology and consumption. For example, “copying” is not defined by a specific technological means and so has evolved from VHS tapes in the 1990s, to DVDs, removable hard drives and ultimately cloud based storage. Similarly, “communication”, introduced into the licence in 2001, is not limited technologically and so the use of the licence has extended to emailing copies, sharing copies online and now, cloud based video on demand.

On the other hand, the licence is incomplete in that it only relates to broadcast content which by definition (imported from the Broadcasting Services Act) excludes transmissions over the internet. By contrast, New Zealand introduced reforms partly inspired by the Australian statutory licence framework, but they improved their scheme by extending the operation of the educational provisions to include audiovisual content sourced from the internet, such as a documentary streamed exclusively online.

As content is increasingly made available exclusively on the internet, there is a risk that the effective scope of the licence may shrink and the social purposes and the fair and equitable remuneration principles of the licence be undermined in Australia.

Retransmission of free to air broadcasts

The retransmission licence allows simultaneous and unaltered communication of free to air broadcasts on other platforms. The policy goal is to encourage the take up of new communication technologies and increase competition in the content markets while ensuring fair compensation for copyright owners.

There is one very specific platform restriction: the statutory licence does not cover retransmission “over the internet”.³ Outside of that exception, retransmission has evolved to a wide range of uses from its initial conception of pay television. Screenrights has licensed retransmission for mobile television, remote mining camps, hospital bedside information services and TV aerial free fibre to the premises urban developments.

Notwithstanding these uses, the internet exclusion has limited the growth of retransmission. The original policy rationale for the exclusion was to avoid the risk of uncontrolled communication over the internet damaging international markets for content.

³ Subsection 135ZZJA(1), *Copyright Act, 1968*

This risk is no longer relevant as evidenced by internet VOD services which operate safely in diverse geographic markets.

The internet exception for retransmission is outdated and redundant and should be removed consistent with the principle of harmonised regulation.

Government use of AV content

The provisions in the Copyright Act for crown use of copyright material are very broad and are fundamentally platform neutral. The Commonwealth, States and Territories may use any content in any way provided it is for the purposes of the government. The Act requires that equitable remuneration is paid by governments to the copyright owners.

However, the remuneration collection mechanisms are technology specific. In particular, the collective administration provisions only apply to “copies” and not to other uses. This creates absurd outcomes where the government pays Screenrights under a collective agreement to copy a broadcast (or internet AV content), but then needs to notify and negotiate with all the individual copyright owners relating to that program in order to perform or communicate it.

These outdated provisions derive from the original introduction of the collective administration 1998 which only considered photocopying and gave no thought to audiovisual content much less the internet.

These provisions also need to be modernised to make the collective administration neutral.

Support for other submissions

Screenrights has seen drafts of submissions by *Screen Producers Australia* and also the *Australian Screen Guilds*. Screenrights’ membership covers both sides of the debate on content quotas, however, we support in principle the goal of regulatory harmonisation and ensuring that the streaming services provide the same degree of support for Australian screen content production as local broadcasters.

More information

James Dickinson
Chief Executive
Screenrights

james@screenrights.org