

**screenrights**

**Submission in response to:  
Orphan Works Scheme - Design Options**

**Submission by Screenrights**

**27 September 2024**

*This submission may be published*

Screenrights is the trading name of Audio-Visual Copyright Society Limited ABN 76 003 912 310  
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## About Us

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Screenrights is a non-profit copyright management organisation representing the screen production sector, with more than 5,250 members in 72 countries worldwide. Our members are writers, visual artists, producers, directors, sales agents, broadcasters and distributors.

Screenrights is appointed by the Commonwealth and the Copyright Tribunal to administer several licensing schemes on behalf of filmmakers. The licences include educational use of broadcasts, retransmission of free-to-air broadcasts and government use of broadcasts. Screenrights collects the fees for the use and distributes them to the copyright owners of the programs used.

## General comments

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In principle, Screenrights is supportive of a properly constructed, well designed Orphan Works Scheme (the “Scheme”).

Screenrights commends the Attorney-General’s Department for the comprehensive Design Options paper. We have confined our comments to questions of particular importance to Screenrights and our members.

## Responses to questions in the options paper

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### *Question 7*

Provided that the other requirements of the Scheme are met, Screenrights supports the option 1 approach which allows that the scheme may cover material within the scope of a statutory licence, including the statutory licences which Screenrights administers.

This support is based on the assumption that any reliance on the orphan works scheme for material that could otherwise be covered by a statutory licence would have the same requirements as any other use of the Scheme. This includes, for example, that there must have been a diligent search in advance of the usage by the person intending to rely on the Scheme, and that the search is documented and all notice provisions and other requirements are met.

Subject to the above, Screenrights does not otherwise see conflict between the statutory licences and the orphan works scheme.

In the alternative, if it was proposed that a different, less rigorous set of requirements were to apply to material covered by the statutory licence, then Screenrights would not support the introduction of an Orphan Works Scheme.

*Question 10*

In broad terms, the principle underlying the requirements for diligent search should be that the level of diligence is proportional to the potential impact of the use. That is, a high value use has a higher standard of diligent search than a lower value use.

Note that the standard should be applied to the nature of the use, not the nature of the user.

Within this principle, Screenrights does not propose additional aspects of the search, but rather that the person relying on the Scheme must be required to retain documented proof of their search.

*Question 11*

The proposed minimum requirements are so fundamental that in Screenrights' submission any search that did not cover these two points at least could in no way be considered diligent. Therefore, Screenrights submits that the mandatory requirements are a bare minimum and could not unreasonably limit reliance on the scheme.

*Question 16*

Screenrights supports the requirement for a public notice of the use of a work in reliance on the Scheme.

*Question 17*

Yes, Screenrights agrees that the periods should align.

*Question 22*

Screenrights does not consider that a user should be able to rely on a search made by another person under the Scheme. We fail to see how a person can be sure that a search made by another was diligent. Each person seeking to rely on the Scheme should make their own diligent search.

*Questions 24 and 25*

Screenrights submits that distinctions between commercial and non-commercial uses are likely to be of little use in determining the value of a use or the diligent search required and accordingly, the Scheme should not include the concept, nor seek to define the terms.

**For further information:**

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