

screenrights

SCHOOLS LICENSING
SCHEME AGREEMENT

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Schools Licensing Scheme Agreement Under Section 48 of the Copyright Act 1994

BACKGROUND

- A.** Screenrights is a licensing body as defined by section 2 of the Copyright Act 1994 (New Zealand) as amended ("the Act").
- B.** The members of Screenrights include rights holders of the Repertoire serviced by Screenrights.
- C.** Screenrights is authorised by certain of its members to enter into licensing agreements on their behalf to authorise the copying and Communication of the Repertoire by Educational Establishments and to collect licensing fees for distribution to its members.
- D.** Screenrights has established a licensing scheme pursuant to which it will grant licences to schools as contemplated by section 48(4) of the Act ("the Licensing Scheme")
- E.** The School wishes to enter into a licensing agreement with Screenrights under the Licensing Scheme to enable it to copy and Communicate the Repertoire upon the terms and conditions set out in this Agreement.

1. OVERVIEW AND INTERPRETATION

- 1.1** This Agreement specifies the terms and conditions upon which Screenrights grants the School a licence.
- 1.2** Special terms used in more than one place are defined in the Dictionary in Clause 18.
- 1.3** In this Agreement, unless the context otherwise requires:
 - (a)** headings are for ease of reference and do not affect the interpretation of the Agreement;
 - (b)** derivatives of a word defined in this Agreement have a corresponding meaning; and
 - (c)** the definitions of words and expressions in the Act apply to this Agreement except to the extent of any inconsistency with this Agreement in which event the Agreement prevails.

2. TERM

The Term is from 1 July 2009 or as otherwise agreed, and continues, subject to Clauses 12 and 17, from Financial Year to Financial Year upon issue by Screenrights of a certificate under clause 13.2.

3. GRANT OF LICENCE

- 3.1** Screenrights on behalf of and with the authority of its relevant members agrees that the School may for its own educational purposes make or authorise the making of Copies the subject of its Repertoire and Communicate those Copies on the terms contained in this Agreement.
- 3.2** Screenrights gives no warranties or undertakings regarding the content of the Communication Works included in the Repertoire or any Works or other copyright material included within those Communication Works and the School acknowledges that fact.

4. THE SCHOOL

- 4.1** The School warrants that it is an Educational Establishment as defined by section 2 of the Act.
- 4.2** The School warrants that Copies will only be made and Communicated for its educational purposes.
- 4.3** The School warrants and undertakes that it will not obtain Copies from any sources where it knows or has reason to believe that those sources include Communication Works which contain Works or other copyright material which may infringe the intellectual property rights including copyright of third parties.
- 4.3** The School agrees to inform members of its staff of its obligations under this Agreement and to ensure that those staff members fully understand those obligations.

5. MARKING

- 5.1** While this Agreement applies the School agrees to mark all Copies as follows:

Made only for [Name of School]'s educational purposes
Title of Communication Work: [title]
Date of Broadcast: [date]
Date this Copy made: [date]

- 5.2** Where the Copy is Communicated the School shall cause the words in sub-clause 5.1 to appear on the screen being viewed by the audience of the Communication prior to the Communication Work being displayed on the screen.
- 5.3** Screenrights may notify the School of alternative marking that it requires to be applied to all Copies and Communications from time to time.

6. REMUNERATION

- 6.1** Remuneration is to be calculated in accordance with this clause.
- 6.2** For the 2009-2010 Financial Year, or part thereof, Remuneration is the sum of NZ\$3.88 multiplied by the School's Enrolment for 2008.
- 6.3** The Remuneration for each Financial Year of the Term or part thereof after the 2009-2010 financial year will be calculated as follows:

Remuneration = Current Copying Rate x School's Prior Calendar Year Enrolment

where the Current Copying Rate for any Financial Year is determined in accordance with the following formula:

$$R = \frac{A \times B}{C}$$

Where:

'R' equals the Current Copying Rate to be determined for any Financial Year; and

'A' equals the Current Copying Rate for the Financial Year prior to the Financial Year being calculated; and

'B' equals the Index for the December quarter prior to the Financial Year being calculated; and

'C' equals the Index for the December quarter prior to 'B'; and

'Index' means the Consumer Price Index (all Groups) published by Statistics New Zealand; and

'December Quarter' means the quarter of a year ending 31 December

- 6.4** If the Index ceases to be issued or Screenrights is of the opinion that the basis of calculating the Index (including the base year of the Index) has been substantially changed as to be no longer a proper measure for the increase of the Current Copying Rate, then the increase of the Current Copying Rate will be determined in accordance with a converted formula proposed by Statistics New Zealand (or its successor body) from time to time.
- 6.5** Under no circumstances will the Current Copying Rate payable in respect of any Financial Year be less than the Copying Rate in respect of any preceding Financial Year.

7. SAMPLING FOR DISTRIBUTION

- 7.1** In order to estimate the quantum and nature of Copying and Communication undertaken by the School for the purpose of Screenrights' distribution to its members, Screenrights may establish a Sampling System which will be administered by Screenrights in conjunction with the Survey Authority.
- 7.2** The School acknowledges that it, or a part of it, may be chosen as a Selected School under the Sampling System by Screenrights or the Survey Authority giving the School reasonable notice.
- 7.3** The School acknowledges that the Selected Schools chosen by Screenrights and the Survey Authority may not include the School.
- 7.4** The School acknowledges that Screenrights or the Survey Authority may in their discretion consult with it on the selection of Selected Schools and the School agrees to fully co-operate and assist them in this regard.
- 7.5** The School acknowledges that Screenrights or the Survey Authority may, in their discretion, consult with the Ministry of Education on the selection of Selected Schools.
- 7.6** Subject to Clause 11.5:
 - (a)** Screenrights will pay the Survey Authority's costs and expenses arising from the Sampling System; and

(b) The School will pay its own costs and expenses arising from the Sampling System unless the School is designated a substitute School for the purpose of 11.4(b) in which case such substitute School has a right to be reimbursed for its reasonable additional expenses incurred in completing the review of its copying over the previous Sample Period.

8. SAMPLING OBLIGATIONS OF SELECTED SCHOOLS

8.1 The School undertakes and agrees that if it is chosen as a Selected School it will comply with the obligations imposed by this clause.

8.2 A Selected School agrees to fully co-operate with Screenrights and the Survey Authority during the Sample Period and acknowledges that Screenrights and the Survey Authority will have, upon the giving of reasonable notice, the right of access to any and all Records relating to the Selected School's curriculum and copying practices and activities.

8.3 A Selected School agrees to keep Records of all Copying and Communication made by or on behalf of the Selected School during the Sample Period in such form as advised by Screenrights from time to time in its discretion.

8.4 Records kept by a Selected School must:

(a) be accurate, complete and legible Records of all Copying and Communications made during the Sample Period;

(b) be completed by or on behalf of the Selected School as and when Copies and Communications are made or as soon as reasonably practicable thereafter;

(c) be provided by the Selected School in completed form to the Survey Authority at intervals as required by Screenrights during the Sample Period whether or not it has Copied or Communicated Communication Works during the Sample Period.

8.5 A Selected School must nominate one or more suitably qualified and authorised members of its staff to act as Copyright Records Officers during the Sample Period to assist in the proper performance by the Selected School of its obligations under the Sampling System. Screenrights may require the appointment of an alternative or additional Copyright Records Officers

if, in its discretion, Screenrights determines that such appointments are required for the proper conduct of the Sampling System.

8.6 A Selected School must ensure that:

(a) all members of its staff are fully informed of the requirements of the Sampling System in respect of Records, in particular, that Copies and Communications made by them on behalf of the Selected School for educational purposes (whether made at the Selected School or elsewhere) must be included in Records;

(b) to ensure the integrity of the Sampling System so that correct rights holders are identified for distribution purposes, members of its staff maintain during the Sample Period the Copying practices normally adopted by them in periods other than the Sample Period; and

(c) members of its staff otherwise take all steps as may reasonably be required by Screenrights or the Survey Authority to ensure the completeness and accuracy of Records.

8.7 A Selected School agrees to advise Screenrights of the names of those persons nominated as Copyright Records Officers under Clause 8.5 and upon being requested to do so by Screenrights, provide to Screenrights all copies of all written advice made to staff regarding the sample period pursuant to Clause 8.6 (a).

8.8 A Selected School undertakes to promptly take such action as may be requested by the Survey Authority or Screenrights from time to time to make good any illegible, incomplete or inaccurate Records.

9. FURTHER OBLIGATIONS OF THE SCHOOL

The School must permit Screenrights or the Survey Authority or both to attend at its premises:

(a) to consult with the Copyright Records Officer and/or other members of staff on reasonable notice in regard to Records and Copies; and

(b) to carry out at any time without notice such audit measures as Screenrights or the Survey Authority may deem necessary to determine compliance with Clause 5 and the accuracy of the Sampling System including, but not limited to, consulting with Students of the School.

10. PROPERTY IN THE RECORDS

The School acknowledges that it creates the Records under Clause 8 at the request and direction of Screenrights and that the Records and the information in the Records are the property and confidential information of Screenrights.

11. DEFAULT UNDER CLAUSES 8 OR 9

- 11.1** Failure by the School to properly perform any of its obligations under Clauses 8 or 9 constitutes a breach of this Agreement.
- 11.2** Upon notice by Screenrights to the School of such breach, the School must, within fourteen days of the date of the notice:
- (a)** fully explain the cause or circumstance giving rise to the breach; and
 - (b)** if possible, correct the breach.
- 11.3** Where in the opinion of the Survey Authority, the Selected School has failed to keep Records sufficiently reliable for use in the Sampling System, the Survey Authority:
- (a)** must prepare a report outlining the matters and circumstances on which its opinion is based; and
 - (b)** must provide a copy of that report to the Selected School and to Screenrights.
- 11.4** Where Screenrights receives a report under Clause 11.3(b), it may elect:
- (a)** to reject some or all of the Records kept by the Selected School during the Sample Period covered by the report;
 - (b)** to conduct a further sample of the Selected School or a substitute School.
- 11.5** Where Screenrights chooses to exercise its rights under Clause 11.4, the Selected School must pay to Screenrights a sum equivalent to:
- (a)** any costs incurred by Screenrights in retaining the Survey Authority to administer the Sampling System under Clause 8 in respect of that Selected School;
 - (b)** any other costs incurred by Screenrights associated with the conduct of the Sampling System under Clause

7 or the consultation in respect of that Selected School;

(c) any expenses incurred or a loss sustained by Screenrights or the Survey Authority or both, including, but not limited to:

- (i)** conducting a further sample under Clause 11.4(b) (including any costs of further and more extensive training seminars); and
- (ii)** the reimbursement of any costs incurred by:
 - (a)** Schools substituted in the additional survey; and
 - (b)** Screenrights and/or the Survey Authority in arranging for a substitute School or Schools.

11.6 The School acknowledges that notwithstanding that it is responsible for an Event of Default, Screenrights may, in its discretion, select it as a Selected School for further Sampling Periods including a further survey under Clause 11.4(b).

12. DEFAULT UNDER CLAUSE 4

12.1 A breach of any of the School's warranties under Clause 4 constitutes a breach of this Agreement.

12.2 Upon notice by Screenrights to the School of breach under sub-clause 4.1, 4.2 or 4.4, the School must, within fourteen days of the date of the notice:

- (a)** fully explain the cause or circumstance giving rise to the breach; and
- (b)** if possible, correct the breach.

12.3 If such breach is in Screenrights' reasonable opinion incapable of remedy, Screenrights may terminate this Agreement and revoke the School's certificate issued under Clause 13.2 with immediate effect.

12.4 Where the School is in breach of the warranty given under Clause 4.3 of the Agreement Screenrights may upon 14 days notice to the School terminate this Agreement with immediate effect and revoke the School's certificate issued under Clause 13.2.

12.5 In the event that the School's certificate is revoked pursuant to sub-clause 12.3 or 12.4 above:

- (a)** the School shall not be entitled to any refund of any part of the Remuneration paid under Clause 13.1; and

(b) the School acknowledges that from the date of revocation of the certificate it shall no longer be entitled to rely on the licence granted under Clause 3 of this Agreement in respect of any Copies made or Communicated by it.

13. PAYMENT OF REMUNERATION AND ACCEPTANCE

13.1 To be eligible for the benefits under this Agreement in any Financial Year, the School must:

(a) pay Remuneration to the New Zealand Schools Trustee Association or as Screenrights otherwise advises; and

(b) pay such Remuneration by 30 September of that Financial Year, unless Screenrights agrees to a later time;

such payment constituting an offer by the School to Screenrights to be licensed under this Agreement.

13.2 Upon Screenrights receiving notification that the School has paid Remuneration in accordance with Clause 13.1, Screenrights will accept that offer by issuing to that School a certificate, certifying that School to be licensed under this Agreement for the current Financial Year.

13.3 Acceptance under 13.2 occurs at the time and place Screenrights issues a certificate to that School.

13.4 Upon issuing of the certificate pursuant to Clause 13.2, Screenrights shall be entitled to the Remuneration.

14. NOTICES

14.1 All notices under this Agreement must be in writing and given by personal delivery, pre-paid post or facsimile.

14.2 Any notice served:

(a) by delivering it, is deemed to have been served at the time of such delivery;

(b) by post, is deemed to have been served upon the day on which in the ordinary course of posting it would have been received; and

(c) by facsimile transmission, is deemed to have been served on the day of transmission provided that the transmission is complete and legible.

15. MISCELLANEOUS

- 15.1** Failure or omission by a party at any time to enforce or require strict or timely compliance of any provision of this Agreement does not affect or impair that provision in any way or the rights of that party to avail itself of the remedies it may have in respect of any breach of any such provision.
- 15.2** If any provision of this Agreement is found to be void, illegal or unenforceable, that provision shall be deemed severable and the remaining provisions shall be read and applied as if the void, illegal or the unenforceable provision had been deleted.

16. JURISDICTION

This Agreement shall be deemed to have been made in the state of New South Wales and the construction of it is governed in accordance with the laws of New Zealand. The parties agree to submit to the non exclusive jurisdiction of the courts of New Zealand.

17. TERMINATION AND VARIATION

Screenrights may, on notice to the School by 31 March of any Financial Year:

- (a)** terminate the licensing scheme for any subsequent Financial Years, effective 30 June of the Financial Year in which such notice was given; or
- (b)** revise the terms of the licensing scheme by varying, adding or deleting terms so that such revisions will be incorporated into the terms of any subsequent Agreement entered into between the School and Screenrights under the licensing scheme.

18. DICTIONARY

In this Agreement the following definitions apply, unless the context otherwise requires:

“Act” means the Copyright Act 1994 (New Zealand) as amended;

“Agreement” means the terms upon which Screenrights grants a licence to the School for any financial year under the licensing scheme;

“Copy” means a recording of a Communication Work or a copy of such a recording;

“Communicate” means to transmit or make available by means of a communication technology including by means of a telecommunications system or electronic retrieval system a Communication Work and “Communication” has a corresponding meaning;

“Communication Work” means a communication work as defined in the Act and includes a broadcast or a cable programme, including any Work included in the communication work;

“Copyright Records Officers” means those persons nominated by a Selected School under Clause 8.5;

“Enrolled” includes admitted to a particular course of instruction provided by the School, entitled to be enrolled, and for which no formal indication of withdrawal, deferment or discontinuance of enrolment has been registered;

“Enrolment” means the number of students enrolled in the School during a calendar year as published annually by the Ministry of Education (or its successor) expressed in full time equivalent terms;

“Financial Year” means the year commencing on 1 July in any given year and ending on 30 June the following calendar year;

“Records” means the information kept in the form stipulated under Clause 8.3;

“Remuneration” means the amount calculated in accordance with the provisions of Clause 6;

“Repertoire” means Communication Works in respect of which Screenrights has been authorised by its members to grant licences in respect of copying and Communication by Educational Establishments in New Zealand but excludes any Communication Works which may contain Works or other copyright material which infringes the rights of any third parties;

“Sample Period” means a period of time selected by Screenrights for the Sampling System but in any event no longer than fourteen weeks;

“Sampling System” means the system of surveying Copying and Communication in the School as established by Screenrights in its discretion from time to time;

“School” includes all Educational Establishments with which the School is affiliated or amalgamated, merged into or incorporated with at the commencement of this Agreement or from time to time during the Term;

“Selected School” means any School selected by Screenrights or the Survey Authority under Clause 7.2;

“Student” means a person enrolled at the School including, but not limited to, those enrolled on a part-time or external basis;

“Survey Authority” means such person as Screenrights may appoint from time to time;

“Term” means the term of this Agreement as defined in Clause 2; and

“Work” means a literary, dramatic, musical or artistic work as defined in the Act.

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