

HEAD AGREEMENT

HEAD AGREEMENT IN RELATION TO EQUITABLE
REMUNERATION FOR AUDIOVISUAL COPIES MADE FOR THE
SERVICES OF THE COMMONWEALTH

Commonwealth of Australia represented by the Attorney-General's
Department

Audio-Visual Copyright Society Limited trading as Screenrights

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Date

This Head Agreement is dated ^day(numeric) month(name)^ 2006.

Parties

This Head Agreement is made between and binds the following parties:

1. **Commonwealth of Australia** represented by the Attorney-General's Department ABN 92 661 124 436 of Robert Garran Offices, National Circuit, Barton ACT 2600 (**Attorney-General's Department**)
2. **Audio-Visual Copyright Society Limited** trading as Screenrights ABN 76 003 912 310 of Level 3, 156 Military Road, Neutral Bay NSW 2089 (**Screenrights**)

Context

This Head Agreement is made in the following context:

- A. Under section 183(1) of the Act, the Commonwealth is entitled to do, and to authorise others to do, acts comprised in the copyright in a Work or other subject matter for the services of the Commonwealth.
- B. Section 183A(2) of the Act requires the Commonwealth to pay equitable remuneration to the relevant collecting society for Copies (other than Excluded Copies) made for the services of the Commonwealth under section 183(1). Equitable remuneration is worked out using a method either:
 - a. agreed on by the collecting society and the Commonwealth; or
 - b. if there is no agreement, determined by the Copyright Tribunal under section 153K of the Act.
- C. Screenrights is the declared collecting society under section 182C of the Act for copyright owners of the following classes of copyright material:
 - a. Sound Recordings;
 - b. Cinematograph Films;
 - c. television or sound Broadcasts;

d. all Works included in a Sound Recording, Cinematograph Film or a television or sound transmission,

in respect of the making of a Copy of a transmission of a sound Broadcast or a television Broadcast.

- D. Screenrights and the Commonwealth (represented by the Attorney-General's Department) have agreed on the method for calculating equitable remuneration under section 183A(2) of the Act and on the sampling system for the purposes of section 183A(3) of the Act in respect of the classes of Copyright Material set out in Context Item C above.
- E. Screenrights and the Commonwealth (represented by the Attorney-General's Department) enter into this Head Agreement to provide a framework for Agencies to enter into Individual Agreements with Screenrights in a standard format with common agreed terms. Individual Agreements are entered into by executing an Election to Participate (in the form provided at Schedule 2) on the terms and conditions set out at Schedule 3.
- F. The purpose of the Individual Agreements is to provide equitable remuneration to relevant copyright holders represented by Screenrights for copies made for the services of the Commonwealth in line with the Act. In requesting payment of equitable remuneration, Screenrights provides Participating Bodies with the assurance set out in clause 7 of the standard terms and conditions for an Individual Agreement.

Operative provisions

In consideration of the mutual promises contained in this Head Agreement, the parties agree as follows:

1. Interpretation

1.1. Definitions

1.1.1. In this Head Agreement, unless the context indicates otherwise:

Act	Means the <i>Copyright Act 1968</i> .
Agency	Means a body which is the Commonwealth or is an agent or emanation of the Commonwealth for the purposes of section 183 of the Act and includes as appropriate departments and other bodies within the Commonwealth and Commonwealth corporations.
Agreement Manager	Means the person responsible for the day to day conduct of this Head Agreement and principal point of contact for the other party, as specified in Schedule 1.
Analog Copy	Means a Copy which is recorded in a storage medium which records the audio-visual signal as a continuous variance, including Video Home System (VHS) video cassettes, Betamax and Super-VHS.
Attorney-General's Department	Means the Attorney-General's Department or such other Agency as the Commonwealth may from time to time nominate in writing to Screenrights as the representative of the Commonwealth for the purposes of this Head Agreement.
Broadcast	Has the same meaning as the term 'broadcast' in the Act.
Business Day	In relation to the doing of any action in a place, means a weekday other than a public holiday in that place.
Cinematograph Film	Has the same meaning as the term 'cinematograph film' in the Act.
Commencement Date	Means 1 January 2002.
Commonwealth	Means the Commonwealth of Australia.

Confidential Information	Means: a. the information described in Item B of Schedule 1; b. information that the parties agree in writing is confidential information after the date of this Head Agreement.
Copy	Means a copy: a. of a sound Broadcast or a television Broadcast and includes a copy of any Cinematograph Film, Sound Recording or other Work contained in the sound Broadcast or television Broadcast; and b. which is made pursuant to section 183 of the Act.
Copyright Material	Has the same meaning as the term 'copyright material' in section 182B of the Act.
Election to Participate	Means an instrument entered into between Screenrights and an Agency, substantially in the form set out in Schedule 2, which gives rise to an Individual Agreement.
Excluded Copies	Has the same meaning as the term 'excluded copies' in section 183A of the Act.
Head Agreement	Means this agreement between the Attorney-General's Department and Screenrights.
Individual Agreement	Means an agreement between Screenrights and the Participating Body which incorporates the terms and conditions set out in Schedule 3 to the Head Agreement.
Participating Body	Means an Agency which becomes party to an Individual Agreement with Screenrights.

Participating Body Material	Means any material: <ul style="list-style-type: none"> a. provided by the Participating Body to Screenrights for the purposes of the Individual Agreement; or b. derived at any time from the material referred to in paragraph a and includes completed Survey Record Forms, completed Resource Centre Forms and Resource Centre checklists, and completed Copyright Survey Manager's Reports but not the template forms or template Copyright Survey Manager's Report themselves.
Personal Information	Has the same meaning as the term 'personal information' in the <i>Privacy Act 1988</i> (Cth), that is: information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent or can reasonably be ascertained, from the information or opinion.
Personnel	Means a party's officers, employees, agents, contractor staff or professional advisers engaged in, or in relation to, the performance or management of this Head Agreement.
Sampling	Means a sample survey of Copying by a Participating Body conducted in accordance with the Sampling System.
Sampling System	Means the sampling system set out in clause 6 of the standard terms and conditions for an Individual Agreement and the Attachments to the Individual Agreement.
Sound Recording	Has the same meaning as the term 'sound recording' in the Act.
Survey Report	Means the reports that Screenrights is required to provide to a Participating Body and which are detailed in clause 10.1 of the Individual Agreement.
Survey Results	Means, in relation to a Participating Body, the results of the Sampling by the Participating Body.

Work	Has the same meaning as the term 'work' in the Act.
Year	Means a 12 month period commencing on 1 January and ending on 31 December.

1.2. Interpretation

1.2.1. In this Head Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person includes a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
- h. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of this Head Agreement

1.3.1. This Head Agreement records the entire agreement between the parties in relation to its subject matter.

1.3.2. A variation of this Head Agreement is binding only if agreed in writing and signed by the parties.

1.3.3. Any reading down or severance of a particular provision does not affect the other provisions of this Head Agreement.

1.3.4. This Head Agreement is to be construed in accordance with the laws of the Australian Capital Territory.

1.3.5. A provision of this Head Agreement shall not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

2. Term

- 2.1.1. This Head Agreement commences with effect from the Commencement Date and continues until 31 December 2009 unless terminated earlier in accordance with clause 12.
- 2.1.2. The parties may, through variation to this Head Agreement prior to 31 December 2009, extend this Head Agreement for such further period as may be agreed.

3. Head Agreement

3.1. Rights and obligations

- 3.1.1. The Commonwealth may only exercise a right of the Commonwealth or perform an obligation of the Commonwealth under this agreement through the Attorney-General's Department.

3.2. Liaison between the parties

- 3.2.1. The parties agree to liaise on issues affecting this Head Agreement and the Individual Agreements as reasonably required from time to time by either party. Liaison between the parties should generally take place between the Agreement Managers for each party, unless circumstances require otherwise.

3.3. Variation of the Head Agreement

- 3.3.1. If this Head Agreement is varied by the parties, the Attorney-General's Department must notify all Participating Bodies of the variation.

3.4. Variation of the Individual Agreements

- 3.4.1. The Attorney-General's Department and Screenrights may from time to time during the term of this Head Agreement, agree in writing to vary the standard terms and conditions for an Individual Agreement.
- 3.4.2. Any such variation will, from the date specified in the written agreement under clause 3.4.1, operate to vary each and every Individual Agreement that has been signed between a Participating Body and Screenrights.
- 3.4.3. In determining a date from which a variation is to operate under clause 3.4.2, the parties must select a date that is at least 30 Business Days after the execution of the written agreement to vary the Individual Agreements.
- 3.4.4. Screenrights must provide a notice to each Participating Body, setting out the variation, and the date on which that variation will come into effect,

within 10 Business Days of execution of a written agreement to vary the Individual Agreements. The notice provided by Screenrights must also include notification of the Participating Body's right to opt out of the variation and the mechanism and timeframe for exercising such right.

4. Obligations and assurance

4.1. Occupational Health and Safety Obligations

4.1.1. Personnel of either party who enter onto the premises or facilities of the other party must comply with all directions and all current procedures relating to occupational health and safety that apply to those premises or facilities.

4.2. Attorney-General's Department's obligations

4.2.1. The Attorney-General's Department will provide Screenrights with a list of all Agencies according to the records held by the Attorney-General's Department as soon as practicable after each anniversary of the Commencement Date.

4.3. Mutual assurance

4.3.1. The parties agree that the terms of this Head Agreement and of the Individual Agreement constitute an agreed method for calculation of equitable remuneration that meets the requirements of subsection 183A(3) of the Act.

5. Confidential Information

5.1. Confidential Information not to be disclosed

5.1.1. Subject to clause 5.2, a party must not during or after the term of this Head Agreement, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.

5.1.2. Either party may impose any conditions it considers appropriate when giving consent under clause 5.1.1 and the other party agrees to comply with these conditions.

5.2. Exceptions to obligations

5.2.1. The obligations on the parties under this clause 5 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Head Agreement;

- b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Head Agreement-related activities;
- c. is disclosed by the Attorney-General's Department to the responsible Minister;
- d. is disclosed by the Attorney-General's Department, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by the Attorney-General's Department within its own organisation or with another Commonwealth organisation, where this occurs on a need to know basis and serves the Commonwealth's legitimate interests;
- f. is authorised or required by law to be disclosed; or
- g. is in the public domain otherwise than due to a breach of this clause 5.

5.2.2. Where a party discloses Confidential Information to another person pursuant to clauses 5.2.1a. - 5.2.1.e, the disclosing party must notify the receiving person that the information is confidential.

5.2.3. In the circumstances referred to in clauses 5.2.1(a), 5.2.1(b) and 5.2.1(e) the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential.

5.3. Additional Confidential Information

5.3.1. The parties may agree in writing after the date of this Head Agreement that certain additional information is to be Confidential Information for the purposes of this Head Agreement.

5.4. Period of confidentiality

5.4.1. The obligations under this clause 5 continue, notwithstanding the expiry or termination of this Head Agreement:

- a. in relation to an item of information described in Item B of Schedule 1 – for the period set out in Item B of Schedule 1 in respect of that item; and
- b. in relation to any item of information referred to in clause 5.3 – for the period agreed by the parties in writing in respect of that item.

5.5. No reduction in privacy obligations

5.5.1. This clause 5 does not detract from any of the parties obligations under the *Privacy Act 1988 (Cth)*, or under clause 7, in relation to the protection of Personal Information.

6. Security

6.1. Interpretation of this clause

6.1.1. In this clause 6:

Security Classified Information means official information, assessed by its originator that, if it were compromised, could affect the security of the nation, interests of individuals, groups, commercial entities, government business and interests, or the safety of the community and has been assigned a protective marking.

6.2. General Security Obligations

6.2.1. Screenrights agrees to ensure that its Personnel comply with all security requirements notified in writing by the Attorney-General's Department.

6.2.2. Screenrights acknowledges that in the course of this Head Agreement, it may become subject to certain statutory provisions relating to security and security issues. Screenrights agrees to ensure that its Personnel are aware of, and comply, with any such statutory provisions that are notified in writing to it by the Attorney-General's Department.

6.2.3. Screenrights agrees to obtain prior written authorisation from the Attorney-General's Department for any Personnel who are required to:

- a. enter secure areas in the Attorney-General's Department's building or places;
- b. have access to Security Classified Information, or valuable assets; or
- c. hold a particular kind of security clearance that the Attorney-General's Department notifies to Screenrights.

6.2.4. Screenrights agrees to provide any information the Attorney-General's Department reasonably requests to enable the Attorney-General's Department to investigate whether particular Personnel should be authorised.

6.2.5. The Attorney-General's Department may, at any time, on reasonable grounds, without any liability whatsoever, withdraw, limit or suspend its

authorisation of a particular person, and in such event must notify Screenrights accordingly.

- 6.2.6. The Attorney-General's Department will not exercise this clause to prevent Screenrights carrying out its role as declared collecting society under section 182C of the Act, where to do so would be unreasonable considering the legitimate security requirements of the Attorney-General's Department.

7. Protection of Personal Information

7.1. Application of clause

- 7.1.1. This clause 7 applies only to the extent that Screenrights obtains or deals with Personal Information in relation to this Head Agreement.

7.2. Interpretation of this clause

- 7.2.1. In this clause 7, the following terms have the same meaning as they have in the *Privacy Act 1988 (Cth)* (the Privacy Act):

an agency;

APC (approved privacy code);

IPPs (Information Privacy Principles); and

NPPs (National Privacy Principles).

7.3. Obligations of Screenrights in relation to Personal Information

- 7.3.1. Screenrights agrees, in dealing with Personal Information in respect of this Head Agreement:
- a. to use or disclose Personal Information obtained only for the purposes of this Head Agreement;
 - b. to carry out and discharge the obligations contained in the IPPs as if it were an agency;
 - c. not to do any act or engage in any practice which, if done or engaged in by an agency, would be a breach of an IPP;
 - d. not to use or disclose Personal Information in breach of section 16F [Direct marketing] of the Privacy Act (where applied to the Service Provider), unless that use or disclosure is explicitly required under this Head Agreement;
 - e. not to engage in an act or practice that would breach an NPP (particularly NPPs 7 to 10) or an APC (where applied to Screenrights), unless that act or practice is explicitly required under this Head Agreement;

- f. to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this Head Agreement that are inconsistent with an NPP or an APC binding on a party to this Head Agreement);
- g. to notify the Attorney-General's Department immediately if Screenrights becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 7, whether by Screenrights or its Personnel;
- h. to comply with any directions, guidelines, determinations or recommendations of the Commonwealth relating to Personal Information to the extent that they are consistent with the requirements of this clause 7; and
- i. to ensure that all Personnel required to deal with Personal Information for the purposes of this Head Agreement are made aware of the obligations of Screenrights set out in this clause 7.

8. Reports

8.1. Individual Agreement report

- 8.1.1. Screenrights must provide the Attorney-General's Department with a report detailing for each Individual Agreement the following:
 - a. details of the total remuneration received from the Participating Body;
 - b. a breakdown of remuneration received from the Participating Body; and
 - c. the change in total remuneration and remuneration received from the Participating Body since the previous Individual Agreement report.
- 8.1.2. The Individual Agreement report is to be provided annually.

8.2. Survey Report

- 8.2.1. Screenrights must provide the Attorney-General's Department with a report aggregating the Survey Reports provided to Participating Bodies under the Individual Agreements.
- 8.2.2. This report is to be provided annually.

8.3. Dealing with Reports

- 8.3.1. Intellectual property in the Individual Agreement reports and the Survey Reports vests in Screenrights, except to the extent that the Reports incorporate Participating Body Material.

- 8.3.2. Screenrights grants (or will procure) a royalty-free, non-exclusive licence for the Attorney-General's Department to use, reproduce or adapt the Reports described in clause 8.3.1 for any purpose.

9. Review of Sampling System

9.1. Scope

- 9.1.1. The parties must, as soon as practicable after the date of this Head Agreement, commence negotiations seeking to agree the scope for a review of the Sampling System. The parties agree that the review will include consideration of Sampling requirements for Participating Bodies that are returning nil or minimal copying Survey Results.

9.2. Conduct

- 9.2.1. The parties will commence the review of the Sampling System once all Survey Results for the 2005-2006 Sampling have been provided to Screenrights by Participating Bodies, unless otherwise agreed in writing between the parties.
- 9.2.2. The review will be conducted by 2 experts, one appointed by each of the parties or, if the parties' agree, by ACNielsen Australia Pty Limited ACN 003 212 922. Each party will be responsible for the fees and expenses of its own expert. If the parties agree to appoint ACNielsen, the Attorney-General's Department and Screenrights must share equally ACNielsen's fees and expenses of conducting the review.

10. Review of equitable remuneration prior to 2002 Year

- 10.1.1. The Individual Agreements only cover equitable remuneration for the 2002 Year onwards. The parties reserve their rights in relation to Copies made for the services of the Commonwealth under section 183(1) of the Act between the date on which Screenrights was declared (4 May 2000) and 31 December 2001.
- 10.1.2. The parties must in good faith review how equitable remuneration is to be paid by Participating Bodies for the period between 4 May 2000 and 31 December 2001.
- 10.1.3. This review will commence once all Survey Results for the 2005-2006 Sampling have been provided to Screenrights by the Participating Bodies, unless otherwise agreed in writing between the parties.
- 10.1.4. Any agreement reached between the parties must be on the basis that all copies during that period be considered to be Analog Copies.

11. Dispute resolution

11.1. Procedure for dispute resolution

- 11.1.1. The parties agree that a dispute arising under this Head Agreement will be dealt with as follows:
- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
 - b. within 5 Business Days each party will nominate a representative not having any prior involvement in the dispute;
 - c. the representatives will try to settle the dispute by direct negotiation between them;
 - d. failing settlement within a further 10 Business Days, the parties may agree to refer the dispute to an independent third person with power:
 - A. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - B. to mediate and recommend some form of non-binding resolution;
 - e. the parties will cooperate fully with any process instigated under clause 11.1.1.d in order to achieve a speedy resolution; and
 - f. if a resolution is not reached within a further 20 Business Days, either party may commence legal proceedings.

11.2. Disputes arising in relation to Individual Agreements

- 11.2.1. If a dispute arises in relation to an Individual Agreement between Screenrights and a Participating Body, that dispute must be resolved in accordance with the dispute resolution procedures set out in the Individual Agreement.
- 11.2.2. If the same dispute, or a dispute involving similar subject matter arises in relation to an Individual Agreement between Screenrights and more than one Participating Body, Screenrights must as soon as possible notify the Attorney-General's Department of the nature of the disputes, the Participating Bodies affected and Screenrights proposals (if any) for resolving the disputes.

11.3. Costs

- 11.3.1. Each party will bear its own costs of complying with this clause 11, and the parties must bear equally the cost of any third person engaged under clause 11.1.1.d.

11.4. Exemption

11.4.1. This clause 11 does not apply to legal proceedings by either party seeking urgent interlocutory relief.

12. Termination

12.1. Termination without fault

- 12.1.1. Either party may terminate this Head Agreement without fault with a period of 3 calendar months notice to the other, provided that:
- a. the notice is provided at least 12 months after the date of signature of this Agreement; and
 - b. all Individual Agreements have been terminated in accordance with the terms of those Individual Agreements.
- 12.1.2. Any termination made by notice under clause 12.1.1 will only take effect at the end of the Year in which the notice period expires.

12.2. Termination for fault

- 12.2.1. If a party is in material breach of its obligations under this Head Agreement, then the other party - if the breach is:
- a. not capable of remedy - may, by notice, terminate this Head Agreement immediately;
 - b. capable of remedy - may, by notice require the breach to be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Head Agreement immediately by giving a second notice.

12.3. Immediate termination

- 12.3.1. The Attorney-General's Department may by notice to Screenrights terminate this Head Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if:
- a. Screenrights comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001 (Cth)*;
 - b. Screenrights has an order made against it for the purpose of placing it under external administration; or
 - c. Screenrights ceases to be the declared collecting society under section 182C of the Act in respect of the material and uses set out in Context Item C.

12.4. Reduction

12.4.1. Where the scope of Screenrights declaration under section 182C of the Act is reduced but does not cease entirely, then this Head Agreement will be reduced to the same extent from the date of the variation of the declaration.

12.5. Effect of termination

12.5.1. Except to the extent agreed otherwise by the parties, the termination of this Head Agreement:

- a. terminates each Individual Agreement created under this Head Agreement;
- b. will not affect the continuing operation of any provision of this Head Agreement relating to:
 - A. licensing of Intellectual Property;
 - B. Confidential Information;
 - C. the protection of Personal Information;
 - D. audit;
 - E. security;
 - F. an assurance; or
 - G. any other provision which expressly or by implication from its nature is intended to continue.

13. General provisions

13.1. Audit and Access

13.1.1. Screenrights agrees:

- a. to give Personnel of the Attorney-General's Department, or any persons authorised in writing by the Attorney-General's Department, access to premises or facilities occupied by Screenrights; and
- b. to permit those persons to inspect and take copies of any material pertaining to calculation of equitable remuneration by Screenrights, Samplings, Survey Results and any material relevant to this Head Agreement or to Individual Agreements that are required for the discharge of the audit obligations and requirements of the Attorney-General's Department or the Auditor-General.

13.1.2. The rights referred to in clause 13.1.1 are subject to:

- a. the Attorney-General's Department providing reasonable prior notice;

- b. Screenrights' reasonable security procedures; and
- c. if appropriate, execution of a deed of confidentiality relating to non-disclosure of Screenrights' Confidential Information.

13.1.3. Without in any way affecting the statutory powers of the Auditor-General under the *Auditor-General Act 1997 (Cth)*, and subject to the provisions of that Act, the Auditor-General is a person authorised for the purposes of this clause 13.1.

13.2. Relationship of the parties

13.2.1. Screenrights is not by virtue of this Head Agreement an officer, employee, partner or agent of the Attorney-General's Department, nor does Screenrights have any power or authority to bind or represent the Attorney-General's Department.

13.3. Waiver

13.3.1. A failure or delay by a party to exercise any right or remedy it holds under this Head Agreement or at law does not operate as a waiver of that right.

13.3.2. A single or partial exercise by a party of any right or remedy it holds under this Head Agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

13.4. Assignment and novation

13.4.1. Screenrights cannot assign its obligations, and agrees not to assign its rights, under this Head Agreement without the Attorney-General's Department's prior written approval.

13.4.2. Screenrights agrees, on 30 Business Days' notice, that the Attorney-General's Department may vary or novate this Head Agreement at any time to substitute another Agency as a party to this Head Agreement in place of the Attorney-General's Department. Such a variation or novation will only occur where the Commonwealth, for policy or machinery of government reasons, requires the change. Screenrights agrees, on request by the Attorney-General's Department, to promptly create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 13.4.2.

13.5. Subcontracts

13.5.1. Screenrights agrees to ensure that any subcontract entered into by Screenrights for the purpose of fulfilling its obligations under this Head Agreement imposes on the subcontractor the same obligations that

Screenrights has under clauses 5, 6 and 7 (including this requirement in relation to subcontracts).

13.6. Notice

13.6.1. A notice under this Head Agreement is only effective if it is in writing and addressed to the Agreement Manager of the other party at the address specified in Item A of Schedule 1 or as otherwise notified by the other party.

13.6.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand; or
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

13.6.3. A notice is deemed to be effected:

- a. *if delivered by hand* – upon delivery to the relevant address;
- b. *if sent by post* – upon delivery to the relevant address;
- c. *if transmitted electronically* – upon actual receipt by the addressee.

13.6.4. A notice received after 5.00 pm, or on a day that is not a Business Day, is deemed to be effected on the next Business Day.

Executed as a Deed

SIGNED SEALED AND)
DELIVERED for and on behalf of)
the **Commonwealth of Australia**)
as represented by the Attorney-
General's Department by:

Name of signatory

Signature

In the presence of:

Name of witness

Signature of witness

SIGNED SEALED AND)
DELIVERED for and on behalf of)
Audio-Visual Copyright Society)
Limited by:

Director

Signature

Director/Secretary

Signature

SCHEDULE 1. DETAILS

A. Agreement Managers and address for notices

Attorney-General's Department Agreement Manager and address for notices

Name of Agreement Manager	Assistant Secretary, Copyright Law Branch
Physical address	Robert Garran Offices, National Circuit, Barton, ACT 2600
Postal address	Robert Garran Offices, National Circuit, Barton, ACT 2600
Telephone	02 6250 6313
Email	copyrightlawbranch@ag.gov.au
Facsimile	02 6250 5929

Screenrights' Agreement Manager and address for notices

Name of Agreement Manager	James Dickinson
Physical address	Level 3, 156 Military Road, Neutral bay, NSW 2089
Postal address	PO Box 1248, Neutral Bay, NSW 2089
Telephone	02 9904 0133
Email	james@screen.org
Facsimile	02 9904 0498

B. Confidential Information

Attorney-General's Department's Confidential Information

Item	Period of Confidentiality
Individual Agreement Reports	Indefinite
Survey Reports	Indefinite
List of Agencies provided under clause 4.2	Indefinite

Screenrights' Confidential Information

Item	Period of Confidentiality
Details of Screenrights distribution to its individual members	Indefinite

SCHEDULE 2. FORM OF ELECTION TO PARTICIPATE

A. Date

- A.1. This Election to Participate is dated ^day(numeric) month(name) year in full^.

B. Parties

- B.1. The parties to this Election to Participate are:

^insert name of Participating Body^ ABN ^insert ABN of Participating Body^ of ^insert address of Participating Body^ (**Participating Body**)

Audio-Visual Copyright Society Limited trading as Screenrights
ABN 76 003 912 310 of Level 3, 156 Military Road, Neutral Bay NSW
2089 (**Screenrights**)

C. Context

- C.1. Screenrights and the Attorney-General's Department (acting on behalf of the Commonwealth) have entered into a Head Agreement to provide a framework for Agencies to enter into Individual Agreements with Screenrights in a standard format with common agreed terms.
- C.2. The purpose of an Individual Agreement is for the Participating Body to provide equitable remuneration to relevant copyright holders represented by Screenrights for copies of broadcasts made by the Participating Body for the services of the Commonwealth under section 183 of the Act. In requesting payment of equitable remuneration, Screenrights provides Participating Bodies with the assurance set out in clause 7 of the standard terms and conditions for an Individual Agreement.

D. Interpretation

- D.1. In this Election to Participate, unless the context indicates otherwise:
- | | |
|--------------------------|---|
| Act | Means the <i>Copyright Act 1968</i> . |
| Agency | Means a body which is the Commonwealth or is an agent or emanation of the Commonwealth for the purposes of section 183 of the Act and includes as appropriate departments and other bodies within the Commonwealth and Commonwealth corporations. |
| Agreement Manager | Means the person responsible in each party for the day to day conduct of the Individual Agreement and principal point of contact for the other party. |

Copyright Survey Manager	Means the person appointed by the Participating Body to administer the sampling surveys.
Election to Participate	Means this instrument, which gives rise to the Individual Agreement.
Head Agreement	Means the agreement between the Attorney-General's Department and Screenrights dated ^insert date^.
Individual Agreement	Means the agreement between Screenrights and the Participating Body which incorporates the terms and conditions set out in Schedule 3 to the Head Agreement.

E. Formation of Individual Agreement

- E.1. The parties agree that by executing this Election to Participate, they will be deemed to form an Individual Agreement on the standard terms and conditions set out at Schedule 3 to the Head Agreement as amended from time to time according to the terms of the Head Agreement.

F. Agreement Managers

Participating Body Agreement Manager and address for notices

Name of Agreement Manager	
Physical address	
Postal address	
Telephone	
Email	
Facsimile	

Screenrights' Agreement Manager and address for notices

Name of Agreement Manager	
Physical address	
Postal address	
Telephone	
Email	
Facsimile	

G. Copyright Survey Manager

Name of Copyright Survey Manager	
Physical address	
Postal address	
Telephone	
Email	
Facsimile	

H. Signatures

Executed as a Deed)
)
 SIGNED, SEALED AND)
 DELIVERED for and on behalf of)
 ^insert name of Participating
 Body^ by:

 Name of signatory

Signature

In the presence of:

 Name of witness

Signature of witness

SIGNED, SEALED AND)
 DELIVERED for and on behalf of)
Audio-Visual Copyright Society)
Limited by:

 Director

Signature

Director/Secretary

Signature

**SCHEDULE 3. STANDARD TERMS AND CONDITIONS FOR AN
INDIVIDUAL AGREEMENT**

INDIVIDUAL AGREEMENT

TERMS AND CONDITIONS FOR INDIVIDUAL AGREEMENT IN
RELATION TO EQUITABLE REMUNERATION PAYABLE TO
SCREENRIGHTS FOR AUDIOVISUAL COPIES MADE BY A
PARTICIPATING BODY FOR THE SERVICES OF THE
COMMONWEALTH

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STANDARD TERMS AND CONDITIONS FOR AN INDIVIDUAL AGREEMENT

TERMS AND CONDITIONS FOR INDIVIDUAL AGREEMENT IN RELATION TO EQUITABLE REMUNERATION PAYABLE TO SCREENRIGHTS FOR AUDIOVISUAL COPIES MADE BY A PARTICIPATING BODY FOR THE SERVICES OF THE COMMONWEALTH

1. Interpretation

1.1. Definitions

1.1.1. In this Individual Agreement, unless the context indicates otherwise:

Act	Means the Copyright Act 1968.
Agency	Means a body which is the Commonwealth or is an agent or emanation of the Commonwealth for the purposes of section 183 of the Act and includes as appropriate departments and other bodies within the Commonwealth and Commonwealth corporations.
Agreed Rate	Means the General Interest Charge rate applicable on the relevant date as published by the Australian Taxation Office.
Agreement Manager	Means the person responsible for the day to day conduct of this Individual Agreement and principal point of contact for the other party, as specified in the Election to Participate.
Broadcast	Has the same meaning as the term 'broadcast' in the Act.
Business Day	In relation to the doing of any action in a place, means a weekday other than a public holiday in that place.
Cinematograph Film	Has the same meaning as the term 'cinematograph film' in the Act.
Commencement Date	Means the later of 1 January 2002 and the date on which the Participating Body came into existence.
Commonwealth	Means the Commonwealth of Australia.
Computer Hard Disk Copy	Means a Copy recorded on the magnetic disk drive of a personal computer including fixed and removable drives.

Confidential Information	Includes the Survey Record Forms, the Resource Centre checklists, the Resource Centre Forms, the Copyright Survey Manager's Report and any other information that the parties agree in writing on or after the date of this Individual Agreement is confidential information for the purposes of this Individual Agreement.
Copy	Means a copy: <ul style="list-style-type: none"> a. of a sound Broadcast or a television Broadcast and includes a copy of any Cinematograph Film, Sound Recording or other Work contained in the sound Broadcast or television Broadcast; and b. which is made pursuant to section 183 of the Act.
Copyright Survey Manager	Means the person appointed by the Participating Body to administer the sampling surveys.
Copyright Survey Manager's Report	Means the report prepared at the end of each month of the Survey Period by the Copyright Manager in the form included as Attachment 5.
CPI	Means the All Groups Consumer Price Index for the eight State and Territory capital cities published by the Australian Bureau of Statistics or any successor agency.
Digital Tape Copy	Means a Copy which uses a magnetic tape medium that records the audio-visual signal in discrete numerical values, including Digital Audio Tape and Digital Betamax.
DVD or CD Copy	Means a Copy recorded on Digital Versatile Disc or a Compact Disc, and includes all formats of such media including CD-ROM, DVD-RAM, DVD-R, DVD-RW, DVD+R and DVD+RW.
Election to Participate	Means the instrument executed by Screenrights and the Participating Body which gives rise to this Individual Agreement.
Excluded Copies	Has the same meaning as in section 183A of the Act.

Head Agreement	Means the agreement between the Attorney-General's Department and Screenrights dated ^insert date^.
Individual Agreement	Means the agreement between Screenrights and the Participating Body incorporating these standard terms and conditions.
Participating Body	Means the Agency which executes the Election to Participate giving rise to this Individual Agreement.
Participating Body Material	Means any material: <ul style="list-style-type: none"> a. provided by the Participating Body to Screenrights for the purposes of this Individual Agreement; or b. derived at any time from the material referred to in paragraph a and includes completed Survey Record Forms, completed Resource Centre Forms and Resource Centre checklists, and completed Copyright Survey Manager's Reports but not the template forms or template Copyright Survey Manager's Report themselves.
Personnel	Means a party's officers, employees, agents, contractor staff or professional advisers engaged in, or in relation to, the performance or management of this Individual Agreement.
Personal Information	Has the same meaning as the term 'personal information' in the Privacy Act 1988 (Cth), that is: information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent or can reasonably be ascertained, from the information or opinion.

Preview Copy	Means a Copy made by the Participating Body: <ul style="list-style-type: none"> a. and used solely for the purpose of enabling the Participating Body to determine whether or not that Copy should be retained and used by the Participating Body for the services of the Commonwealth; and b. that is destroyed by the Participating Body within 10 Business Days after the day on which it was made.
Resource Centre Form	Means a document in the form set out in Attachment 4 to be used by the Participating Body in conducting Sampling with Resource Centres.
Sampling	Means a sample survey of Copying by the Participating Body conducted in accordance with the Sampling System.
Sampling System	Means the sampling system set out in clause 6 of this Individual Agreement and the Attachments to this Individual Agreement.
Screenrights	Means Audio-Visual Copyright Society Limited trading as Screenrights ABN 76 003 912 310 of Level 3, 156 Military Road, Neutral Bay NSW 2089.
Sound Recording	Has the same meaning as the term 'sound recording' in the Act.
Survey Period	Means a 3 month period in which a Sampling takes place, between May of the Year to which the Sampling relates and the April of the following Year, as notified by Screenrights to a Participating Body under Attachment 1.
Survey Record Form	Means a document in the form set out in Attachment 2 to be used by the Participating Body in conducting Sampling with surveyed Personnel.
Survey Report	Means the reports that Screenrights is required to provide to the Participating Body and which are detailed in clause 10.1.

Survey Results	Means, in relation to a Participating Body, the results of the Sampling by the Participating Body.
TV Ephemeral	Means the television programs classified by Screenrights as news, drama series and drama serials (excluding mini-series), sports, advertisements (other than advertisements incidentally copied), light entertainment or current affairs magazine programs (other than substantially scripted documentary style current affairs programs) and other programs determined by Screenrights from time to time.
TV Non-Ephemeral	Means all television programs not included in TV Ephemeral.
Work	Has the same meaning as the term 'work' in the Act.
Year	Means a 12 month period commencing on 1 January and ending on 31 December.

1.2. Interpretation

1.2.1. In this Individual Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person includes a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. a reference to any agreement or other document includes that agreement or document as amended or replaced;
- h. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
- i. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

- j. a reference to 'Attachment' means an Attachment which forms part of this Individual Agreement.

1.3. Guidance on construction of this Individual Agreement

- 1.3.1. Any reading down or severance of a particular provision does not affect the other provisions of this Individual Agreement.
- 1.3.2. This Individual Agreement is to be construed in accordance with the laws of the Australian Capital Territory.
- 1.3.3. The terms of this Individual Agreement apply on and from the Commencement Date.
- 1.3.4. A provision of this Individual Agreement shall not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Prioritisation of Agreement Documents

- 1.4.1. In the event and to the extent of any inconsistency between parts of this Individual Agreement, those parts will be interpreted in the following order of priority:
 - a. the Election to Participate;
 - b. the terms and conditions set out in this document; and
 - c. the Attachments.

2. Term

- 2.1.1. This Individual Agreement commences with effect from the Commencement Date and continues until 31 December 2009 unless terminated earlier in accordance with clause 16.
- 2.1.2. In the event that the Head Agreement is extended beyond 31 December 2009, the parties to this Individual Agreement may agree in writing to extend the Individual Agreement for a period not exceeding the extended term of the Head Agreement.

3. Variation

3.1. Variation

- 3.1.1. This Individual Agreement may only be varied by:
 - a. agreement in writing between the parties; or

- b. agreement between Screenrights and the Attorney-General's Department under clause 3.4 of the Head Agreement.

3.1.2. Where this Individual Agreement is varied under clause 3.4 of the Head Agreement, the Participating Body may, at any time within 20 Business Days of receipt of notice from Screenrights of the variation, notify Screenrights in writing that it does not accept the variation in which case this Individual Agreement will continue to apply without the variation.

3.2. Notice of amalgamation or change

3.2.1. The Participating Body must as soon as practicable notify Screenrights of any plans to amalgamate or otherwise change the activities, function or composition of the Participating Body in a way which would affect its obligations under this Individual Agreement.

4. Obligations of the parties

4.1. Obligations of the Participating Body

4.1.1. The Participating Body agrees to:

- a. make payments of equitable remuneration to Screenrights;
- b. conduct Sampling;
- c. provide all Survey Results in accordance with clause 6.3 of this Individual Agreement; and
- d. comply with all other obligations imposed on it under this Individual Agreement.

4.2. Obligations of Screenrights

4.2.1. Screenrights agrees to:

- a. calculate equitable remuneration payable by the Participating Body in accordance with clause 5 of this Individual Agreement;
- b. submit correctly rendered invoices and Survey Reports in accordance with clauses 8 and 10 of this Individual Agreement; and
- c. comply with all other obligations imposed on it under this Individual Agreement.

4.3. Liaison between the parties

4.3.1. The parties agree to liaise on issues affecting this Individual Agreement as reasonably required from time to time. Liaison between the parties should generally take place between the Agreement Managers for each party, unless circumstances require otherwise.

5. Equitable Remuneration

5.1. Calculations of Equitable Remuneration

5.1.1. Subject to this clause 5, payments of equitable remuneration to be made to Screenrights in a particular Year are to be calculated by:

- a. determining and aggregating the length in minutes of all Copies in each medium and program category (set out in clause 5.2) made by the Participating Body in accordance with the 3 month Sampling or estimate for that Year (whichever is applicable - see clauses 5.3 to 5.7). The length of Copies made in each medium and program category should be rounded up to the nearest minute in the case of TV Copies and to the nearest 15 minutes in the case of Radio Copies;
- b. multiplying the aggregate length of each medium and program category by 4 to represent an estimate of the Copying made during the relevant Year;
- c. multiplying the resulting aggregate length in minutes in each medium and program category by the rates determined in accordance with clause 5.2; and
- d. adding together the resulting amounts from each medium and program category to determine the total equitable remuneration payable by the Participating Body in that Year.

5.2. Rates for Copies

5.2.1. The rates for Copies for the 2002 and 2003 Years are:

Medium and Program Category	Analog	Digital	DVD or CD	Computer hard disk	Other Copy
TV non-ephemeral (rounded to the nearest minute with a minimum of one minute)	\$3.16	\$3.90	\$4.32	\$5.30	*
TV ephemeral (rounded to the nearest minute with a minimum of one minute)	\$0.95	\$1.19	\$1.27	\$1.59	*
Radio (per 15 minutes or part thereof)	\$3.16	\$3.90	\$4.32	\$5.30	*

*The rate and definition of 'other copy' will be determined by agreement between Screenrights and the Attorney-General's Department. Such agreement will take place in accordance with the variation procedure set out in clause 3.4 of the Head Agreement.

5.2.2. Rates for Years after the 2003 Year are to be adjusted by the change in CPI between the relevant Year and the 2003 Year according to the following formula:

$$20XX \text{ Year Rate} = 2003 \text{ Year rate} \times 20XX \text{ Year CPI} / 2003 \text{ Year CPI}$$

Where:

20XX is the Year for which the calculation is being made.

5.3. Copying for 2002 to 2005

5.3.1. Where Sampling was conducted by the Participating Body between 1 January 2002 and 31 December 2004, the estimate of Copying for the 2002, 2003, 2004 and 2005 Years will be an average of the Survey Results of the 2005-2006 Sampling and the Survey Results from the 2002 or 2003 Sampling.

5.3.2. Where no Sampling was conducted by the Participating Body between 1 January 2002 and 31 December 2004, the estimate of Copying for the 2002, 2003, 2004 and 2005 Years will be based on the Survey Results of the 2005-2006 Sampling.

5.4. Copying for 2006 and beyond

5.4.1. Subject to clause 5.4.2, the remuneration payable for the 2006 and subsequent Years will be calculated on the average of the Survey Results of the 4 most recent Samplings conducted by the Participating Body.

5.4.2. If the Participating Body has conducted less than 4 Samplings, the remuneration will be calculated on the average of the Survey Results of all of the Samplings conducted by the Participating Body.

5.5. New Participating Body

5.5.1. Where an Agency comes into existence in 2005 or any subsequent Year and signs an Election to Participate, the amount of remuneration payable in the Year in which the Agency came into existence (pro rated as necessary in accordance with clause 5.6.1) will be calculated by reference to the first Sampling conducted.

5.6. Participating Body not in existence

5.6.1. Where the Participating Body is in existence for part of a Year only, the Participating Body is only liable for a proportion of the full Year amount of equitable remuneration that would otherwise be payable for that Year under this clause 5. The proportion payable is determined by the following formula:

[(equitable remuneration payable for the full Year multiplied by the number of calendar days over which the Participating Body is in existence in that Year) divided by the total number of calendar days in that Year].

5.6.2. Where the Participating Body ceases to exist during its Sampling, Screenrights will use an average of the 3 most recent Samplings to calculate remuneration, or if the Participating Body has conducted less than 3 Samplings, the remuneration will be calculated on the average of the Survey Results of all of the Samplings conducted by the Participating Body.

5.7. Change in activities, function or composition

5.7.1. Where Screenrights is notified or otherwise becomes aware of a planned significant change in the activities, function or composition of the Participating Body under clause 3.2.1, Screenrights may agree with the Participating Body how to use previous Survey Results of that Participating Body.

5.8. Source licences

- 5.8.1. Any Copies made by the Participating Body under licence from the relevant copyright owner will be excluded from determination of equitable remuneration provided that the Participating Body:
- a. notifies Screenrights of the existence of the licences when it provides the Survey Results to Screenrights; and
 - b. provides Screenrights with a copy of the licence or, to the extent that the licence is confidential, a redacted copy of the licence, and such other evidence as Screenrights reasonably requests.
- 5.8.2. If Screenrights is satisfied on reasonable grounds that the Copy has been made under a licence from the copyright owner, Screenrights will adjust the Survey Results accordingly.

5.9. Preview Copies

- 5.9.1. Notwithstanding clause 5.2.1, the parties agree that the equitable remuneration payable for Preview Copies made by the Participating Body will be nil. The Participating Body must include Preview Copies in the Survey Results and identify them as such.

5.10. Excluded Copies

- 5.10.1. Any Excluded Copies made by the Participating Body will not be included in the Survey Results. The Participating Body's Copyright Survey Manager will make a declaration in the form included at Attachment 5 with respect to the use of the Excluded Copies exception.
- 5.10.2. Copies made for public relations or public communications purposes are not to be specified as Excluded Copies.

5.11. Responsibility for calculating equitable remuneration

- 5.11.1. Screenrights will be responsible for calculating equitable remuneration payable in each Year by the Participating Body on the basis of the Survey Results for that Participating Body and for ensuring that such calculations take into account the matters in this clause 5.

6. Sampling System

6.1. Sampling surveys

- 6.1.1. In the 2005 Survey Period and each subsequent Survey Period, the Participating Body will undertake Sampling. Such Sampling will be in accordance with this Individual Agreement unless otherwise agreed in writing between Screenrights and the Participating Body.

- 6.1.2. A Sampling must record all Copies made by the Participating Body (with the exception of Excluded Copies):
- a. during the Survey Period; and
 - b. in accordance with the Resource Centre Forms and Survey Record Forms and Attachment 1 to this Individual Agreement.

6.2. Copyright Survey Manager

- 6.2.1. The Participating Body must appoint a Copyright Survey Manager (who may or may not be the same person as the Participating Body's Agreement Manager) who has the responsibility for all matters relating to the conduct of each Sampling within the Participating Body.

6.3. Survey Results

- 6.3.1. The Participating Body must, as soon as practicable after the end of each month of each Survey Period, provide Screenrights with all completed:
- a. Resource Centre Checklists for that month of the Survey Period.
- 6.3.2. The Participating Body must within 20 Business Days of the end of the Survey Period, provide Screenrights with all completed:
- a. Resource Centre Forms;
 - b. Survey Record Forms; and
 - c. the Copyright Survey Manager's Report, for that Survey Period.
- 6.3.3. Where Screenrights reasonably believes that a relevant form or a Copyright Survey Manager's Report does not contain sufficient information for it to perform the calculation of equitable remuneration, Screenrights must inform the Participating Body as soon as possible after receipt and include detail of the additional information required.
- 6.3.4. On receipt of notice under clause 6.3.3, the Participating Body must use its best endeavours in accordance with this Individual Agreement to promptly supply the requested information.
- 6.3.5. If any dispute arises between Screenrights and a Participating Body in relation to satisfactory completion of any forms or the Copyright Survey Manager's Report, such dispute shall be resolved in accordance with the dispute resolution procedures outlined in clause 15.

6.4. Retention by Screenrights

- 6.4.1. Screenrights must retain a copy of all:

- a. Resource Centre Checklists;
 - b. Resource Centre Forms;
 - c. Survey Record Forms; and
 - d. Copyright Survey Managers' Reports,
- provided to it by each Participating Body for a minimum period of 6 years.

6.4.2. Screenrights must, on request from the Participating Body, promptly provide a copy of any such material to the Participating Body at the Participating Body's expense.

7. Assurance to Participating Body

7.1.1. Screenrights assures the Participating Body that invoices provided to the Participating Body under this Individual Agreement have been formulated in accordance with the agreed method for calculation of equitable remuneration set out in the Head Agreement and Individual Agreement, except to the extent that Screenrights has made any genuine mistake in preparing the invoice.

7.1.2. Screenrights only provides this assurance to the Participating Body to the extent that the Participating Body complies with its obligations under this Individual Agreement.

8. Invoicing and payment arrangements

8.1. Invoicing

8.1.1. Screenrights must provide the Participating Body with an invoice for the equitable remuneration for a particular Year as soon as practicable after the completion of the Sampling.

8.2. Payment

8.2.1. On receipt of a correctly rendered invoice, the Participating Body shall pay to Screenrights the amount of equitable remuneration set out in the invoice within 30 days.

8.2.2. A correctly rendered invoice is one which is:

- a. addressed to the Participating Body's Agreement Manager as set out in the Election to Participate, or as otherwise notified by the Participating Body from time to time; and
- b. sets out the amount of equitable remuneration to be paid, including details of the calculation of that equitable remuneration.

8.3. Interest

8.3.1. Where any invoice is not paid within 30 days after receipt of the correctly rendered invoice, the Participating Body must pay interest at the Agreed Rate on any outstanding amounts from the due date (30 days after receipt of the correctly rendered invoice) until the date of payment.

8.4. Mistake in calculation of equitable remuneration

8.4.1. Where an invoiced amount is paid by a Participating Body but has been miscalculated by Screenrights (whether discovered by Screenrights or any other person), Screenrights must issue an amended invoice as soon as practicable after it becomes aware of the miscalculation. An amended invoice:

- a. must include a full breakdown of the recalculation; and
- b. is subject to the same payment and invoice requirements as are set out in this clause 8.

8.4.2. Where as a result of the recalculation, Screenrights owes a Participating Body a partial refund, Screenrights must notify the Participating Body immediately and must, at the Participating Body's election, either repay the amount within 30 days or offset the refund against the next Year's payment.

8.5. Reimbursement where Participating Body not an Agency

8.5.1. Where Commonwealth policy or legislation or a court decision results in a Participating Body being found not to be an Agency (i.e. not an agent or emanation of the Commonwealth), Screenrights will reimburse all payments made by the Participating Body under this Individual Agreement which Screenrights has not yet distributed to copyright owners. Reimbursement must be made by Screenrights as soon as reasonably practicable.

9. Taxes, duties and government charges

9.1. Screenrights' obligation

9.1.1. Except as provided by this clause 9, Screenrights must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Individual Agreement.

9.2. GST

9.2.1. The following terms have the meanings respectively given to them in the *A New Tax System (Goods and Services Tax) Act 1999*:

consideration;
GST;
input tax credit;
supply;
taxable supply; and
tax invoice.

- 9.2.2. Unless otherwise indicated, all consideration for any supply made under this Individual Agreement is exclusive of any GST imposed on the supply.
- 9.2.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Individual Agreement, on receipt of a tax invoice from the supplier, the recipient must pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 9.2.4. No party may claim from the other party under this Individual Agreement any amount for which the first party may claim an input tax credit.

10. Reports

10.1. Survey Reports

- 10.1.1. Screenrights must provide a Survey Report to the Participating Body when it provides its invoice.
- 10.1.2. The Survey Report must set out the basis for calculation of the equitable remuneration of the Participating Body including:
- a. a detailed breakdown of the calculation of equitable remuneration;
 - b. a list of Copies that Screenrights has not included as subject to remuneration due to source licences; and
 - c. a list of Copies claimed by the Participating Body to be subject to source licences but which Screenrights believes are subject to remuneration (and which are invoiced as such).

10.2. Screenrights classifications

- 10.2.1. Screenrights must, as soon as reasonably practicable after the signing of this Individual Agreement, supply the Participating Body with an indicative list of programs to be classified as TV Ephemeral programs.
- 10.2.2. Screenrights must supply the Participating Body with an updated copy of the list referred to in clause 10.2.1 during each Year of this Individual Agreement.

11. Participating Body Material

11.1. Ownership

11.1.1. Intellectual property rights in any Participating Body Material vests in the Participating Body or as it may arrange with a third party.

11.2. Licence

11.2.1. The Participating Body grants (or will procure) a royalty-free, non-exclusive, irrevocable licence for Screenrights to use, reproduce and adapt the Participating Body Material for Screenrights' internal business purposes and the purposes of the Head Agreement and this Individual Agreement.

11.2.2. The Participating Body grants (or will procure) a royalty-free, non-exclusive, irrevocable licence for the Commonwealth (as represented by the Attorney-General's Department) to use, reproduce and adapt the Participating Body Material for any purpose.

12. Confidential Information

12.1. Confidential Information not to be disclosed

12.1.1. Subject to clause 12.2, a party must not during or after the term of this Individual Agreement, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.

12.1.2. Either party may impose any conditions it considers appropriate when giving consent under clause 12.1.1 and the other party agrees to comply with these conditions.

12.2. Exceptions to obligations

12.2.1. The obligations on the parties under this clause 12 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under the Head Agreement (for Screenrights) or this Individual Agreement;
- b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of the Head Agreement or Individual Agreement-related activities;
- c. is disclosed by the Participating Body to the responsible Minister;
- d. is disclosed by the Participating Body in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;

- e. is shared by the Participating Body within its own organisation or with another Commonwealth organisation, where this occurs on a need to know basis and serves the Commonwealth's legitimate interests;
- f. is authorised or required by law to be disclosed; or
- g. is in the public domain otherwise than due to a breach of this clause 12.

12.2.2. Where a party discloses Confidential Information to another person pursuant to clauses 12.2.1.a - 12.2.1.e, the disclosing party must notify the receiving person that the information is confidential.

12.2.3. In the circumstances referred to in clauses 12.2.1.a, 12.2.1.b and 12.2.1.e, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential.

12.3. **Additional Confidential Information**

12.3.1. The parties may agree in writing after the date of this Individual Agreement that certain additional information is to be Confidential Information for the purposes of this Individual Agreement.

12.4. **Period of confidentiality**

12.4.1. The obligations under this clause 12 continue indefinitely, notwithstanding the expiry or termination of this Individual Agreement in relation to any item of information, unless a specified period is agreed by the parties in writing in respect of that item.

12.5. **No reduction in privacy obligations**

12.5.1. This clause 12 does not detract from any of the parties obligations under the *Privacy Act 1988 (Cth)*, or under clause 14, in relation to the protection of Personal Information.

13. **Security**

13.1. **Interpretation of this clause**

13.1.1. In this clause 13:

Security Classified Information means official information, assessed by its originator that, if it were compromised, could affect the security of the nation, interests of individuals, groups, commercial entities, government business and interests, or the safety of the community and has been assigned a protective marking; and

Security Incident means a security breach, violation, contact or approach from those seeking unauthorised access to Security Classified Information.

13.2. General Security Obligations

13.2.1. Screenrights agrees to ensure that its Personnel comply with all security requirements notified in writing by the Participating Body.

13.2.2. Screenrights acknowledges that in the course of this Individual Agreement, it may become subject to certain statutory provisions relating to security and security issues. Screenrights agrees to ensure that its Personnel are aware of, and comply, with any such statutory provisions that are notified in writing to it by the Attorney-General's Department or by the Participating Body.

13.3. Personnel Security

13.3.1. Screenrights agrees to obtain prior written authorisation from the Participating Body for any Personnel who may be required to:

- a. enter secure areas in the Participating Body's building or places;
- b. have access to Security Classified Information, or valuable assets; or
- c. hold a particular kind of security clearance that the Participating Body notifies to Screenrights.

13.3.2. Screenrights agrees to provide any information the Participating Body reasonably requests to enable the Participating Body to investigate whether particular Personnel should be authorised.

13.3.3. The Participating Body may, at any time, on reasonable grounds, without any liability whatsoever, withdraw, limit or suspend its authorisation of a particular person, and in such event must notify Screenrights accordingly.

13.3.4. The Participating Body will not exercise this clause to prevent Screenrights carrying out its role as declared collecting society under section 182C of the Act, where to do so would be unreasonable considering the legitimate security requirements of the Participating Body.

13.4. Security Reports

13.4.1. Screenrights agrees to notify the Participating Body immediately if it becomes aware that a Security Incident has occurred.

14. Protection of Personal Information

14.1. Application of clause

14.1.1. This clause 14 applies only to the extent that Screenrights obtains or deals with Personal Information in relation to this Individual Agreement.

14.2. Interpretation of this clause

14.2.1. In this clause 14, the following terms have the same meaning as they have in the *Privacy Act 1988 (Cth)* (the Privacy Act):

an agency;

APC (approved privacy code);

IPPs (Information Privacy Principles); and

NPPs (National Privacy Principles).

14.3. Obligations of Screenrights in relation to Personal Information

14.3.1. Screenrights agrees, in dealing with Personal Information in respect of this Individual Agreement:

- a. to use or disclose Personal Information obtained only for the purposes of this Individual Agreement;
- b. to carry out and discharge the obligations contained in the IPPs as if it were an agency;
- c. not to do any act or engage in any practice which, if done or engaged in by an agency, would be a breach of an IPP;
- d. not to use or disclose Personal Information in breach of section 16F [Direct marketing] of the Privacy Act (where applied to the Service Provider), unless that use or disclosure is explicitly required under this Individual Agreement;
- e. not to engage in an act or practice that would breach an NPP (particularly NPPs 7 to 10) or an APC (where applied to Screenrights), unless that act or practice is explicitly required under this Individual Agreement;
- f. to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this Individual Agreement that are inconsistent with an NPP or an APC binding on a party to this Individual Agreement);
- g. to notify the Participating Body immediately if Screenrights becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 14, whether by Screenrights or its Personnel;

- h. to comply with any directions, guidelines, determinations or recommendations of the Commonwealth relating to Personal Information to the extent that they are consistent with the requirements of this clause 14; and
- i. to ensure that all Personnel required to deal with Personal Information for the purposes of this Individual Agreement are made aware of the obligations of Screenrights set out in this clause 14.

15. Dispute resolution

15.1. Procedure for dispute resolution

- 15.1.1. The parties agree that a dispute arising under this Individual Agreement will be dealt with as follows:
 - a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
 - b. within 5 Business Days each party will nominate a representative not having any prior involvement in the dispute;
 - c. the representatives will try to settle the dispute by direct negotiation between them;
 - d. failing settlement within a further 10 Business Days, the parties may agree to refer the dispute to an independent third person with power:
 - A. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - B. to mediate and recommend some form of non-binding resolution;
 - e. the parties will cooperate fully with any process instigated under clause 15.1.1.d in order to achieve a speedy resolution;
 - f. if a resolution is not reached within a further 20 Business Days, either party may commence legal proceedings.

15.2. Costs

- 15.2.1. Each party will bear its own costs of complying with this clause 15, and the parties must bear equally the cost of any third person engaged under clause 15.1.1.d.

15.3. Exemption

- 15.3.1. This clause 15 does not apply to legal proceedings by either party seeking urgent interlocutory relief.

16. Termination

16.1. Termination without fault

- 16.1.1. Either party may terminate this Individual Agreement without fault with a period of 3 calendar months notice to the other.
- 16.1.2. Any termination made by notice under clause 16.1.1 will only take effect at the end of the Year in which the notice period expires.
- 16.1.3. In the event of termination under clause 16.1.1, the Participating Body will make alternative arrangements to meet its obligations under section 183A of the Act.

16.2. Termination for fault

- 16.2.1. If a party is in material breach of its obligations under this Individual Agreement, then the other party - if the failure is:
 - a. not capable of remedy - may, by notice, terminate this Individual Agreement immediately;
 - b. capable of remedy - may, by notice require the failure to be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Individual Agreement immediately by giving a second notice.

16.3. Immediate termination

- 16.3.1. The Participating Body may also by notice terminate this Individual Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if:
 - a. Screenrights comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001 (Cth)*;
 - b. Screenrights has an order made against it for the purpose of placing it under external administration; or
 - c. Screenrights ceases to be the declared collecting society under section 182C of the Act in respect of the material and uses set out in Context Item C of the Head Agreement.
- 16.3.2. This Individual Agreement, unless the parties have agreed in writing to novate it to another Agency, terminates immediately on the date on which the Participating Body ceases to exist.
- 16.3.3. The parties agree that this Individual Agreement terminates automatically in the event that:
 - a. the Head Agreement is terminated; or

- b. Commonwealth policy or legislation, or a court decision, results in a Participating Body being found not to be an Agency (i.e. not an agent or emanation of the Commonwealth).

16.4. Reduction

16.4.1. Where the scope of Screenrights declaration under section 182C of the Act is reduced but does not cease entirely, then this Individual Agreement will be reduced to the same extent from the date of the variation of the declaration.

16.5. Effect of termination

16.5.1. The termination of this Individual Agreement will not affect the continuing operation of any provision relating to:

- a. licensing of Intellectual Property;
- b. Confidential Information;
- c. the protection of Personal Information;
- d. audit;
- e. security;
- f. an assurance; or
- g. any other provision which expressly or by implication from its nature is intended to continue.

16.5.2. In the event of termination during the course of a Year, where the Participating Body has at the date of termination paid a Screenrights invoice in relation to remuneration for that entire Year, Screenrights will return to the Participating Body a portion of the amount paid by the Participating Body. The amount returned must be proportional to the portion of the Year remaining at the date of termination. Screenrights is only required to make this repayment where the payment provided by the Participating Body has not yet been distributed to Screenrights members.

16.5.3. In the event of termination during the course of a Year, where the Participating Body has not at the date of termination paid a Screenrights invoice in relation to remuneration for that Year, the Participating Body must pay Screenrights an amount calculated in accordance with the procedure set out in clause 5.6.

17. General provisions

17.1. Audit and Access

17.1.1. Screenrights agrees:

- a. to give Personnel of the Participating Body, or any persons authorised in writing by the Participating Body access to premises or facilities occupied by Screenrights; and
- b. to permit those persons to inspect and take copies of any material pertaining to calculation of equitable remuneration by Screenrights, Samplings, Survey Results and any material relevant to this Individual Agreement that are required for the discharge of the audit obligations and requirements of the Participating Body or the Auditor-General.

17.1.2. The rights referred to in clause 17.1.1 are subject to:

- a. the Participating Body providing reasonable prior notice;
- b. Screenrights' reasonable security procedures; and
- c. if appropriate, execution of a deed of confidentiality relating to non-disclosure of Screenrights' Confidential Information.

17.1.3. Without in any way affecting the statutory powers of the Auditor-General under the *Auditor-General Act 1997 (Cth)*, and subject to the provisions of that Act, the Auditor-General is a person authorised for the purposes of this clause 17.1.

17.2. Relationship of the parties

17.2.1. Screenrights is not by virtue of this Individual Agreement an officer, employee, partner or agent of the Participating Body, nor does Screenrights have any power or authority to bind or represent the Participating Body.

17.3. Waiver

17.3.1. A failure or delay by a party to exercise any right or remedy it holds under this Individual Agreement or at law does not operate as a waiver of that right.

17.3.2. A single or partial exercise by a party of any right or remedy it holds under this Individual Agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

17.4. Subcontracts

17.4.1. Screenrights agrees to ensure that any subcontract entered into by Screenrights for the purpose of fulfilling its obligations under this Individual Agreement imposes on the subcontractor the same obligations

that Screenrights has under clause 12, 13 and 14 (including this requirement in relation to subcontracts).

17.5. Notice

- 17.5.1. A notice under this Individual Agreement is only effective if it is in writing and addressed to the Agreement Manager of the other party at the address specified in the Election to Participate or as otherwise notified by the other party.
- 17.5.2. A notice is to be:
- a. signed by the person giving the notice and delivered by hand; or
 - b. signed by the person giving the notice and sent by pre-paid post; or
 - c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.
- 17.5.3. A notice is deemed to be effected:
- a. *if delivered by hand* – upon delivery to the relevant address;
 - b. *if sent by post* – upon delivery to the relevant address;
 - c. *if transmitted electronically* – upon actual receipt by the addressee.
- 17.5.4. A notice received after 5.00 pm, or on a day that is not a Business Day, is deemed to be effected on the next Business Day.

ATTACHMENT 1. CONDUCTING SAMPLING SURVEY

A. Notice of Survey Period

A.1. Screenrights to notify

A.1.1. Screenrights will provide the Participating Body with a minimum of 25 Business Days' notice of the Survey Period.

A.2. Action on receipt of notice

- A.2.1. On receipt of Screenrights' notice under Item A.1.1, the Participating Body must identify:
- a. all units or sections within the Participating Body which have a responsibility to supply or hold Copies including media units, libraries, audio visual units and equivalent units or sections, and any other persons who nominate themselves to the Copyright Survey Manager as being persons who regularly copy (**Resource Centres**); and
 - b. all personnel with a separate email address (**Surveyed Personnel**).

B. Surveyed Personnel

B.1. Notification of sampling survey

- B.1.1. Immediately prior to the commencement of the Survey Period, the Copyright Survey Manager must:
- a. notify the Surveyed Personnel by e-mail (references to e-mail in the Attachments to the Individual Agreement also means any other equivalent electronic messaging system) about the Sampling and their reporting obligations; and
 - b. provide Surveyed Personnel with a copy of the Survey Record Form in Attachment 2 and any Frequently Asked Questions as provided by Screenrights prior to the Survey Period commencing.

B.2. Conduct of Sampling

- B.2.1. The Participating Body must ensure that its surveyed Personnel record each Copy made on the Survey Record Form (subject to any exclusions in the Individual Agreement).
- B.2.2. The Copyright Survey Manager must ensure that replacement Survey Record Forms are easily available to surveyed Personnel.

B.3. Collection of Survey Record Forms

- B.3.1. The Copyright Survey Manager must:

- a. remind Surveyed Personnel in writing by email at the end of the Survey Period to submit Survey Record Forms;
- b. collect all completed Survey Record Forms at the completion of the Survey Period; and
- c. ensure that all returned Survey Record Forms are complete and legible.

C. Resource Centres

- C.1.1. The Copyright Survey Manager must brief each Resource Centre and provide it with the Resource Centres Form in Attachment 4 immediately prior to the commencement of the Survey Period.
- C.1.2. The Copyright Survey Manager must send reminders to return completed Resource Centre Forms at the end of each of the first and second months during the Survey Period along with an attached Resource Centre Form for the next month. The Copyright Survey Manager must ensure that replacement Resource Centre Forms are easily available to Resource Centres.
- C.1.3. The Participating Body must ensure that each Resource Centre completes a Resource Centres Form at the end of each month of the Survey Period whether or not the Resource Centre has made any Copies during the month.

C.2. Collection of Resource Centre Forms

- C.2.1. The Copyright Survey Manager must:
 - a. collect all Resource Centre Forms at the end of each month of the Survey Period;
 - b. ensure that they are complete and legible irrespective of whether the Resource Centre has made any Copies during the month covered by the Resource Centres Form; and
 - c. at the end of the Survey Period, send the resource centre end of survey e-mail to all Resource Centres.

ATTACHMENT 2. SURVEY RECORD FORM

COPYING OF TELEVISION AND RADIO TRANSMISSIONS FOR THE SERVICES OF THE COMMONWEALTH SURVEY RECORD FORM

Under an agreement between [DEPT/AGENCY] and Screenrights (a copyright society representing rights holders in television and radio programs), we are obliged for three months of each year to keep records of copies made of television and radio transmissions **for work purposes**. Note that this is a survey of copying for work purposes only, and does not include copies made for personal use.

Compliance with this survey obligation is compulsory for all staff of [DEPT/AGENCY]. The Commonwealth is obliged to pay the relevant copyright owners where staff copy a television or radio program as part of their official duties. The Commonwealth's agreement with Screenrights sets out the rates of equitable remuneration payable to Screenrights each year for government copies of television and radio broadcasts. It is essential that staff members accurately record the copying they do for work purposes. If you fail to record a copy made during the sample period, the relevant copyright owners may be denied fair payment. On the other hand, over reporting could result in an over payment of public funds.

When is the survey running?

This year, the survey is operating from to .

What do I do if I make a copy from television or radio in this time?

If during the survey period you make a copy from television or radio, or make a copy of a copy, then you must record the details of each copy on the Record Form overleaf.

Note, however, that this only covers copies made for work purposes.

Do NOT include any copies made for personal (non-work) purposes.

All copies of television or radio made for work purposes between these dates must be reported on this form.

Detailed instructions for completing the form are included overleaf.

What do I do with this form once I've filled it out?

Completed forms must be returned by internal mail to [CSM NAME], [CSM INTERNAL ADDRESS]. A new form, which you can use for further copies which you make during the survey period, can be obtained from [www.screen.org/government/cw/\[dept\]form.pdf](http://www.screen.org/government/cw/[dept]form.pdf)

At the end of the survey, you will be sent a reminder to return the completed Form.

I copy television and radio for work regularly and this form is too small!

If you copy regularly, please contact the Copyright Survey Manager (CSM), whose details are listed below. They can provide you with a form more suitable to your purposes.

What if I don't copy anything during the survey period?

If you do not copy any television or radio programs for work purposes during the survey, then you do not need to complete this form. You will be emailed again at the end of the survey to remind you to report any copies you make.

More information?

More information, and further copies of this form are available at [www.screen.org/government/cw/\[dept\]form.pdf](http://www.screen.org/government/cw/[dept]form.pdf)

Any queries concerning the survey can be directed to [CSM NAME], tel: [CSM PHONE] or email: [CSM EMAIL]

COPYING OF TELEVISION AND RADIO TRANSMISSIONS FOR THE SERVICES OF THE COMMONWEALTH SURVEY RECORD FORM

❖ **Record below the details of any copies you make for work purposes. Use one line per program copied.**

Date of copy	Date of broadcast	Time of broadcast (am/pm)	Duration of copy (minutes)	Number of copies made	Title of the television or radio program (including series, episode and segment titles, if applicable)	Source: television (TV); cable (C); satellite (S) radio (R)	Channel	Format tape (T); digital tape (DT); CD/DVD; PC; other (specify)
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❖ **If you need more space, tick this box , and print another copy of this form and attach it with your return.**

❖ **If you delete a copy within 10 business days without showing it to anyone or using it...**

...then this may be a preview copy. If you have destroyed the copy within 10 business days of creating it, and have only used it for the purpose of previewing it to see if it would be of any use, and have used it for no other purpose nor shown it to anyone else, then please put a line through the entry in the Record Form above.

❖ **Enter your name, section and staff ID below, then date and sign the form.**

Your name	Section	Staff ID number	Date	Signature
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❖ **Return the completed form at the end of each month to the CSM: [CSM NAME], [CSM INTERNAL ADDRESS]**

❖ **Obtain a new form for any further copies you make from [www.screen.org/government/cw/\[dept\]form.pdf](http://www.screen.org/government/cw/[dept]form.pdf)**

Notes on completion of form

"Date copy made": enter the date on which you made the copy of the television or radio program.

"Date of broadcast": enter the date on which the program was broadcast. Usually this is the same date as the copy date, but not always, eg. if you make a copy of an earlier copy.

"Time of broadcast": enter the time that the program was transmitted by the television or radio station and include am or pm.

"Duration of copy": enter the length of the copy in minutes. If only an excerpt was copied, enter the length of the excerpt, NOT the length of the entire program. Enter the total length of the copy including incidental advertisements. Advertisements will be factored out later.

"No. of copies made": enter the number of copies. Usually, this will be 1 but there is no restriction of the number of copies that may be made.

"Title...": enter the title of the program in full, including series and episode titles if applicable. If an excerpt is copied, include a title for or description of the segment(s) copied.

"Source": enter the source from which the copy was made, either ordinary free to air television ("TV"), or satellite television ("S"), or cable television ("C") or radio ("R").

"Channel": enter the television or radio channel from which the copy was made, for example, "ABC", "Channel 10" or "Radio National".

"Format of copy": enter the format of the copy you make. Ordinary analog tape copies such as VHS videos are "T". Digital copy formats must be specified. Typical digital copy formats are set out. If a format other than those outlined is used, then please specify the format which you used.

ATTACHMENT 3. SURVEY INSTRUCTIONS

COPYING OF TELEVISION AND RADIO TRANSMISSIONS FOR THE SERVICES OF THE COMMONWEALTH

COPYRIGHT SURVEY MANAGER SURVEY INSTRUCTIONS

[DEPT/AGENCY] has agreed to take part in sampling to enable the Commonwealth and Screenrights to determine the level of copying of television and radio broadcasts by the organisation. It will also enable determination of subsequent reporting requirements for each Agency. Consequently, there is an obligation on all staff of the Agency to report all copies of television and radio transmissions made for work purposes for a continuous three month period.

You have been nominated by the agency as the Copyright Survey Manager ("CSM") for the purposes of this survey. The CSM is responsible for the administration and coordination of the survey. This document details your role in the survey.

Note that you are not solely responsible. If it has not already done so, the Agency must nominate a senior staff member to provide support and in particular to assist in emphasising to all staff the importance of the proper conduct of the survey. This is the "Senior Contact Person" for the purposes of the survey.

What is the purpose of the survey?

The purpose of the survey is to obtain information about the level and type of copying of television and radio programs within the Agency.

Firstly, the survey is designed to estimate each year, the number of minutes of television and radio copied for the purposes of the agency. The results of the survey will be extrapolated to provide an annual estimate.

Secondly, the survey details the programs copied by the Agency. The fees collected for copying are remitted by Screenrights to the copyright owners of the programs copied. For this reason, it is crucial that the programs copied are fully described, because that allows Screenrights to identify the proper copyright owners. (Note that all other departments and agencies are also keeping records at various times and that all year round copying is being surveyed somewhere.)

What is my role?

You are charged with administering and coordinating the survey on behalf of the Agency.

Essentially, you are responsible for ensuring that all emails with Forms are sent to all staff and that the Forms returned by staff are complete with no blank fields. At the end of the Survey, you collate the completed Forms and send them to Screenrights.

How does the survey work? An overview

The survey is very simple and straightforward but does require some set up and coordination.

All staff that have email access are included in the survey. Each staff member is sent an introductory email at the commencement of the survey. This explains to the staff member the importance of the survey, and the need for them to keep full records during the survey period. This email is under the name of the Senior Contact Person – a staff member of SES level who is also responsible for the conduct of the survey. Attached to that email to all staff is a copy of the *Survey Record Form*.

During the three months of the survey, if they copy television and radio programs for work purposes, staff are required to enter the details on the *Survey Record Form* provided. Staff then return the (completed and signed) *Survey Record Form* to the CSM (you!), either immediately if it is full and they need a new Form, or at the end of the three months, if there is still space.

During the three months, as you receive Forms, you check that the details are complete, including the signature, and if the survey is still going, you email a new Form and reminder to each staff member that returned a completed Form. If you are sent any incomplete Forms you must contact the staff member to finalise the details of the Form.

At the end of the survey period (ie three months), you send another final reminder by email to all staff. Once again this is under the signature of the Senior Contact Person, and includes by attachment another copy of the *Survey Record Form*. This email reminds staff that have made copies of television or radio for work purposes to send the CSM all completed Forms.

You again check that all the details on the Forms are complete and chase up any incomplete information.

Note that staff that have made no copies during the three months DO NOT send you a Form. You have no further contact with these staff. As copying is usually relatively rare, and perhaps concentrated, most staff will probably not be sending you Forms.

Within 20 business days after the end of the survey period, all the Forms must be returned. The completed Forms together with a *CSM Report* about the survey, including the CSM Declaration which is part of the *CSM Report*, are sent by you to Screenrights.

Resource Centres

The exception to the procedure above, relates to staff that are nominated as Resource Centres. These are staff who commonly copy from television and radio for work purposes. Resource Centres include all Media Units, Audio Visual Units and Libraries, along with any individual staff who nominate themselves. (If you have conducted the survey previously, then you may already be able to nominate the Resource Centres from past records.)

The process for Resource Centres is slightly different. As CSM, you are required to maintain a list of Resource Centres (which is part of the *CSM Report*). At the start of the survey and at the end of each the first and second months during the survey, you send Resource Centres a *Resource Centres Record Form* by email. At the end of each month, Resource Centres are required to return their Form to you whether or not they have made any copies.

If Forms are not received from each Resource Centres each month, you must contact them to ensure the return of the Forms. You note the issue of the new Forms and return of the completed Forms on the CSM Report.

At the end of the first and second months, send a copy of the Resource Centres Checklist (page 3 of the CSM Report) to Screenrights. At the end of the survey, ensure that there is a completed returned Form for each Resource Centre for each month, and attach the Forms to the CSM Report.

The forms

There are three main forms:

(i) *Survey Record Form* (the standard form used by almost all staff members)

(ii) *Resource Centres Record Form* (a special – slightly larger which is replaced each month – form used by staff members that are more likely to regularly copy television and radio)

(iii) *Copyright Survey Manager's Report* (a form to assist you in coordinating the survey and to report the progress of the survey)

In addition, a number of emails are sent out by the CSM or Senior Contact Person. Pro forma emails are provided for this purpose. Note that these need to be customised to include the relevant departmental information (such as your contact details) before they are sent.

Step by step instructions

1. Ensure you have copies (in electronic form) of all the relevant Emails and Forms. You should have:

(i) *Pre-survey Questionnaire* (pdf file)

(ii) *DRAFT Survey Record Form* (pdf file)

(iii) *DRAFT Resource Centres Record Form* (pdf file)

If any forms or emails are missing, contact Screenrights (licensing@screen.org, telephone 02 9904 0133)

2. Complete the *Pre-survey Questionnaire* and return it to Screenrights.

This Questionnaire includes information about your agency which is relevant to the overall conduct of the survey across the Commonwealth.

In addition, the Questionnaire requires that you identify Resource Centres, ie staff members that regularly copy from television and radio as part of their duties. All libraries, media units and audio visual units are also automatically nominated as Resource Centres (irrespective of whether they say they copy often). Resource Centres will be sent the *Resource Centres Record Form*.

Screenrights will then send you revised forms updated to include the information in the *Pre-survey Questionnaire*. Screenrights will also send a copy of *CSM Report* (Word document); *Pro Forma Emails* (Word document); and *FAQs*.

- 3.** Obtain permission to send emails to all staff at the commencement and conclusion of survey.
- 4.** At the start of the survey period, customise the pro forma Introductory Email, attach the *Survey Record Form* and send to all staff (except Resource Centres).
- 5.** Note date the email was sent and record in *CSM Report*.
- 6.** Also at the start of the survey period, customise the Resource Centres Commencement Email, attach the *Resource Centres Record Form*, and send to nominated Resource Centres.
- 7.** Note date the email was sent and record in *CSM Report*.
- 8.** At the end of the first and second month of the survey, send all Resource Centres the Resource Centres End of Month 1 and Month 2 Email along with the attached Form for the next month. Check that all Resource Centres have returned their signed Forms. Note that Resource Centres must return the Form whether or not they have made any copies. If any *Resource Centres Record Forms* are outstanding, contact the Resource Centres to ensure return of the completed Forms. On receipt of Forms, check for completeness, and note the dates on the *CSM Report*. Send a copy of the Checklist to Screenrights.
- 9.** At the end of the survey, send all staff the End of Survey Reminder Email along with another *Survey Record Form* attached.
- 10.** Also at the end of the survey, send all Resource Centres the Resource Centres End of Survey (Month 3) Email. Check that all *Resource Centres Record Forms* are returned and are complete.
- 11.** Check all completed Forms as they are received. If any information is missing or illegible, contact the staff member to complete the Form. Collate *Survey Record Forms* and attach to the *CSM Report*.
- 12.** 20 Business Days after the end of the survey period, all *Resource Centres Record Forms* and *Survey Record Forms* should have been received. Complete the *Declaration* on the *CSM Report* and return the Report along with all Forms to Screenrights.

13. The survey is now complete for the year.

First steps

The Survey may appear daunting in prospect, but is in fact simple and straightforward. The first steps are to ensure you have received all relevant Forms and pro forma Emails, and to complete the Pre-Survey Questionnaire, and return the Questionnaire to Screenrights.

Also, it is important in the early phase to make contact with the Senior Contact Person to discuss your role, and the support they will provide.

It will also be necessary as soon as possible to obtain permission to send the all staff email so that you are ready to go when the survey period commences.

Timetable

Step	Timing
Screenrights contacts CSM, sending <i>Instructions, Pre-survey Questionnaire</i> and all relevant (draft) Forms and Emails	Survey minus 25 Business Days.
CSM returns <i>Pre-survey Questionnaire</i> to Screenrights.	Survey minus 3 weeks.
Screenrights forwards final versions of Forms which include the internal return address for CSM.	Survey minus 2 weeks.
<i>Resource Centre Commencement Email</i> sent by CSM to Resource Centres and <i>Introductory Email</i> sent by CSM to all other staff. RESPECTIVE RECORD FORMS ATTACHED TO EMAIL.	Day 1.
Resource Centres return first completed Form and <i>Resource Centre End of Month 1 and Month 2 Email</i> sent along with the attached Form for the next month.	End of Month 1.
Send (copy of) Resource Centre Checklist to Screenrights. This is page 3 of the <i>CSM Report</i> .	End of Month 1.
Resource Centres return second completed Form and <i>Resource Centre End of Month 1 and Month 2 Email</i> sent ALONG WITH THE ATTACHED FORM for the next month.	End of Month 2.
Send (copy of) Resource Centre Checklist to Screenrights. This is page 3 of the <i>CSM Report</i> .	End of Month 2.
<i>End of Survey Reminder Email</i> sent to all staff except Resource Centres. RECORD FORMS ATTACHED TO EMAIL.	End of Month 3.
<i>Resource Centre End of Survey Email</i> sent to all Resource Centres. Resource Centres return third completed Form.	End of Month 3.
All Forms (checked for completeness by CSM) attached to <i>CSM Report, Declaration</i> signed; and, Report with Forms sent to Screenrights.	Survey end plus 20 Business Days.

More information

For more information about the Survey, contact the Licensing Executive at Screenrights: tel 02 9904 0133.

ATTACHMENT 4. RESOURCES CENTRE FORM

COPYING OF TELEVISION AND RADIO TRANSMISSIONS FOR THE SERVICES OF THE COMMONWEALTH INSTRUCTIONS FOR RESOURCE CENTRES

Under an agreement between [DEPT/AGENCY] and Screenrights (a copyright society representing rights holders in television and radio programs), we are obliged for three months of each year to keep records of copies made of television and radio transmissions **for work purposes**. Note that we are only interested in copies made for work purposes. DO Not record any details of copies made for personal use.

Compliance with this survey obligation is compulsory for all staff of [DEPT/AGENCY]. The Commonwealth is obliged to pay the relevant copyright owners where staff copy a television or radio program as part of their official duties. The Commonwealth's agreement with Screenrights sets out the rates of equitable remuneration payable to Screenrights each year for government copies of television and radio broadcasts. It is essential that staff members accurately record the copying they do for work purposes. If you fail to record a copy made during the sample period, the relevant copyright owners may be denied fair payment. On the other hand, over reporting could result in an over payment of public funds. This form is designed for individuals who (potentially) regularly copy from television or radio for work purposes.

How to complete the form

Page 2 is a table in which to record the details of any copies you make from television or radio for work purposes. From [START DATE] to [END DATE] you must enter the details of all copies made for work purposes on this form. If you require more room, use copies of page 3 and attach them to the main form. At the end of each month, send the completed form to the Copyright Survey Manager ("CSM"): [CSM NAME], [CSM INTERNAL ADDRESS]. The CSM will send you a new form, and continue recording the copies you make until [END DATE], which is the end of the survey.

Preview copies

If you copy a program to determine if it will be of use or value for work purposes, and find that you do not wish to use the program for work purposes, the copy may become a *preview copy*. If you destroy the copy within 10 business days of making it, and do not use it for any purpose other than previewing it to see if it would be of use, then delete the record of the copy by crossing it out on the Record Form.

Other notes on completing the form

"Date copy made": enter the date on which you made the copy of the television or radio program.

"Date of broadcast": enter the date on which the program was broadcast. Usually this is the same date as the copy date, but not always, eg. if you make a copy of an earlier copy.

"Time of broadcast": enter the time that the program was transmitted by the television or radio station and include am or pm.

"Duration of copy": enter the length of the copy in minutes. If only an excerpt was copied, enter the length of the excerpt, NOT the length of the entire program. Enter the total length of the copy including incidental advertisements. Advertisements will be factored out later.

"No. of copies made": enter the number of copies. Usually, this will be 1 but there is no restriction of the number of copies that may be made.

"Title...": enter the title of the program in full, including series and episode titles if applicable. If an excerpt is copied, include a title for or description of the segment(s) copied.

"Source": enter the source from which the copy was made, either ordinary free to air television ("TV"), or satellite television ("S"), or cable television ("C") or

radio ("R").

"Channel": enter the television or radio channel from which the copy was made, for example, "ABC", "Channel 10" or "Radio National".

"Format of copy": enter the format of the copy you make. Ordinary analog tape copies such as VHS videos are "T". Digital copy formats must be specified. Typical digital copy formats are set out. If a format other than those outlined is used, then please specify the format which you used.

RESOURCE CENTRES RECORD FORM – COVER PAGE

❖ **Record below the details of any copies you make for work purposes. Use one line per program copied.**

Date of copy	Date of broadcast	Time of broadcast (am/pm)	Duration of copy (minutes)	Number of copies made	Title of the television or radio program (including series, episode and segment titles, if applicable)	Source:	Channel	Format of copy:
						television (TV); cable (C); satellite (S) radio (R)		tape (T); digital tape (DT); CD/DVD; PC; other(specify

❖ **If you need more space, tick this box , turn to the next page & print as many copies as required. Attach them with your return.**

❖ **If you delete a copy within 10 business days without showing it to anyone or using it...**

...then this may be a preview copy. If you have destroyed the copy within 10 business days of creating it, and have only used it for the purpose of previewing it to see if it would be of any use, and have used it for no other purpose nor shown it to anyone else, then please put a line through the entry in the Record Form above.

❖ **Enter your name, section and staff ID below, then date and sign the form.**

Your name	Section	Staff ID number	Date	Signature
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❖ **Return the completed form at the end of each month to the CSM: [CSM NAME], [CSM INTERNAL ADDRESS]**

❖ **You will be sent a new form for copies you make in the next month by the CSM.**

**RESOURCE CENTRES RECORD FORM
EXTRA PAGES (IF REQUIRED)**

- ❖ **Make as many copies of this page as you need. Attach each page to the cover page.**
- ❖ **Record below the details of any copies you make for work purposes. Use one line per program copied.**

Date of copy	Date of broadcast	Time of broadcast (am/pm)	Duration of copy (minutes)	Number of copies made	Title of the television or radio program (including series, episode and segment titles, if applicable)	Source:	Channel	Format of copy:
						television (TV); cable (C); satellite (S) radio (R)		tape (T); digital tape (DT); CD/DVD; PC; other(specify

- ❖ **Initial the completed page here:**
- ❖ **At the end of each month, return all completed pages to: [CSM NAME], [CSM INTERNAL ADDRESS]**

ATTACHMENT 5. COPYRIGHT SURVEY MANAGER'S REPORT

COPYING OF TELEVISION AND RADIO TRANSMISSIONS FOR THE SERVICES OF THE COMMONWEALTH

COPYRIGHT SURVEY MANAGER REPORT

The Copyright Survey Manager ("CSM") is the person nominated by the department/agency as responsible for the administration and coordination of the television and radio copying survey. This report is designed to assist the CSM in the conduct of the survey. This report must be completed at the end of the survey and returned to Screenrights together with completed Resource Centre Forms and Survey Record Forms. Further information is provided below.

1. CSM details

Your name: _____
 Dept/Agency name: _____
 Telephone: _____
 Email: _____

2. General tasks checklist

<i>Task</i>	<i>Date</i>	<i>Comments</i>
<i>Pre-survey Questionnaire</i> completed and sent to Screenrights		
Resource Centres identified and entered on the Resource Centres Checklist		
Authority obtained to send emails to all staff		
Pro forma emails customised to include departmental details		
Individual <i>Introductory Emails</i> sent to all staff along with Survey Record Forms		Note number of emails sent.
End of Month 1: Copy of Resource Centres Checklist completed and sent to Screenrights.		
End of Month 2: Copy of Resource Centres Checklist completed and sent to Screenrights.		
Individual <i>End of Survey Reminder Emails</i> sent to all staff along with attached Forms		Note number of emails sent.
Individual <i>Survey Record Forms</i> received, checked for completeness and collated		Note number of completed Record Forms returned.
This Report completed and <i>Declaration</i> (see 4. below) <u>signed</u>		

<i>Task</i>	<i>Date</i>	<i>Comments</i>
Report and all Forms sent to Screenrights		

3. Resource Centres checklist

The table on the next page is used to track Resource Centres Record Forms. For each Resource Centre, you must issue a Resource Centres Record Form each month, and obtain the completed form at the end of each month. The table records these actions and will assist you in ensuring that all Forms are returned as required. After the end of the first month, and the second month, send a copy of the Checklist to Screenrights at the address at the end of this report.

RESOURCE CENTRES CHECKLIST – enter the dates new Resource Centre Forms sent and completed Forms received for each Resource Centre each month and any comments on the forms

	Resource Centres names	First month		Second month		Third month		Comments
		Email and Record Form sent	Record Form returned	Email and Record Form sent	Record Form returned	Email and Record Form sent	Record Form returned	
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								

4. CSM Declaration

I _____ declare that:
(insert your name)

- 1 I am the Copyright Survey Manager appointed by the Department / Agency in accordance with the agreement between Screenrights and the Department / Agency for the purposes of administration and coordination of the television and radio copying survey ("the Survey");
- 2 Survey commencement emails have been sent to all staff in accordance with the agreement;
- 3 Survey conclusion emails have been sent to all staff in accordance with the agreement;
- 4 Resource Centres Record Forms have been sent to and received from all nominated Resource Centres on a monthly basis; and
- 5 All record forms created during the Survey have been completed in full and returned to Screenrights in accordance with the Agreement.
- 6 Attached to this Report are the following number of record forms: _____
(Count the number of pages of copy records including *Resource Centres Forms* and individual *Survey Record Forms* and enter this amount).
- 7 If the Department / Agency has made copies but not recorded them in the Survey Results on the basis of the Excluded Copies exception, all such copies fall within the definition of "Excluded Copies" in section 183A(6) of the *Copyright Act 1968*.

Dated _____

Signed _____

5. Return of Forms

At the end of the survey, once all Forms have been received and completed, attach this form to all completed Forms including all Survey Record Forms and all Resource Centres Forms and return by mail to Screenrights within 20 business days of the end of the survey:

Screenrights
Attn: Licensing Executive
PO Box 1248
Neutral Bay NSW 2089
