



screenrights

The Audio-Visual Copyright Society

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Screenrights is the trading name of
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Limited ACN 003 912 310

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Dear Fiona

Copyright Law Review Committee Inquiry into Crown Copyright - Issues Paper - February 2004

Thank you for the opportunity to provide a submission on the Copyright Law Review Committee's (the "Committee's") current inquiry into the law relating to government ownership of copyright material.

1. Introduction

- 1.1 Screenrights is a copyright collecting society representing the interests of copyright owners in audio-visual works including film producers, film distributors, scriptwriters, visual artists and music copyright owners.
- 1.2 Screenrights assists where it is difficult or impossible for copyright owners in audio-visual works such as film, television and radio programs, to negotiate individual copyright clearances, ensuring that the people who want to use film, television and radio programs can do so, provided they make a fair payment for this use.
- 1.3 Screenrights administers the use of broadcast programming under Parts VA and VB of the *Copyright Act 1968* (the "Act"), in respect of which Screenrights is "declared" by the Commonwealth Attorney General as a collecting society under Subsections 135P(1) and 135ZZB(1) of the Act. These schemes create a statutory licence for the copying and communication of copyright protected works contained in radio and television broadcasts by educational institutions.
- 1.4 In 2001, the Commonwealth Attorney-General declared Screenrights the collecting society for all relevant copyright owners for the purposes of the retransmission of free-to-air broadcasts under Part VC of the Act. ("Part VC"). Part VC provides that royalties are payable by

retransmitters (mainly pay television providers) for the retransmission of free-to-air television and radio broadcasts. Screenrights currently has an application before the Copyright Tribunal to determine the rate of remuneration to be paid to the underlying copyright owners in the retransmitted free-to-air broadcasts.

- 1.5 Since 4 May 2000, Screenrights has been the declared collecting society under Section 182C of the Act to administer the scheme under Section 183 of the Act ("Government Copying Scheme") in relation to copies of transmissions made by or for the Commonwealth, State and Territory government bodies and departments ("Government").
- 1.6 Additionally, Screenrights has entered into various agreements with organisations outside Australia and New Zealand for the collection of overseas royalties on behalf of its members.
- 1.7 In this submission, Screenrights comments on a number of specific issues raised in the Issues Paper as they affect Screenrights. However, Screenrights also wishes to draw the Committee's attention to a number of related issues, such as the use of Crown copyright material, and the use of copyright material by Government as it affects Screenrights and its members.

2. Screenrights royalties

- 2.1 A number of Commonwealth, State and Territory Government departments and agencies are members of Screenrights. These departments and agencies have either produced or own the relevant copyright in television and radio programs.
- 2.2 Screenrights distributes a significant amount of royalties to these Government departments and agencies for the copying and communication of their programs by educational institutions under the Part VA Scheme.
- 2.3 It is important to note that if the Act is amended to abolish Government ownership of copyright material then this is a revenue source that the various Government departments and agencies will not be receiving. Further, there will be less incentive for Government to create programs of educational interest where there is no opportunity to receive either direct revenue or royalty revenue from the use of such Government copyright material.

3. The Committee's Issues Paper – February 2004

- 3.1 Screenrights notes the submission of Film Australia and endorses Film Australia's submission without further addition.
- 3.2 In particular, Screenrights endorses Film Australia's conclusion that "there are significant difficulties with any proposal to abolish or limit crown copyright in cinematograph films, which relate to the complex legal and practical properties of film and its ongoing use".
- 3.3 Screenrights, in support of Film Australia's conclusion, recommends that the Committee closely examine the impact of any changes to the

treatment of Government ownership of copyright material, particularly with regard to issues relating to the management of access and rights to audio-visual materials.

- 3.4 With regard to Issues 1, 2, 3 and 4, Screenrights notes the submission of the Australian Copyright Council and endorses the Australian Copyright Council's position without further comment.
- 3.5 With regard to Issues 5, 6 and 8, Screenrights notes the submission of the Australian Copyright Council and endorses the Australian Copyright Council's position to the extent that it does not conflict with Screenrights' additional comments as follows:

Issue 5: The Committee seeks your views as to whether the Copyright Act should make express provision with respect to copyright in materials produced by:

- (a) the executive;***
- (b) the judiciary; and***
- (c) the legislative.***

- 3.6 Screenrights is aware that a number of Commonwealth and State Governments specifically commission their own audio-visual training materials. Screenrights submits that such materials should be dealt with in the same manner as non-government copyright material.

Issue 6: The Committee seeks your views as to what entities should be included as part of 'the Commonwealth or a State' for the purposes of the Copyright Act and how this should be determined.

- 3.7 This issue is relevant to Screenrights in its dealings with and administration of the Government Copying Scheme and provisions dealing with the use of copyright material for the Crown under Part VII, Division 2 of the Act. Screenrights has experienced difficulty and confusion in determining what bodies are governed by the Act, and clarification of the position of "statutory corporations". Screenrights is also aware that various State, Territory and Commonwealth Government departments and agencies that Screenrights has contacted also experience similar difficulties and confusion. In this regard, Screenrights supports the suggestion of the Australian Copyright Council, noted in paragraph 27 of the Issues Paper, to list such bodies in Regulations to the Act in order to overcome these difficulties.
- 3.8 Screenrights also requires clarification of the status of copying by ministers acting in ministerial offices and the status of copying by Local Government with respect to the Act.

Issue 8: The Committee seeks your views as to the appropriate duration of government copyright. Should it be the same as for non-government copyright material?

- 3.9 Screenrights supports the submission of the Australian Copyright Council to the extent that in Screenrights' opinion the appropriate duration of government copyright material should be the same as for non-government copyright material.

- 3.10 Screenrights does not propose to comment on Issues 9, 10, 11, 12, 14, 17 and 19.
- 3.11 With regard to Issues 13, 15, 16, 18 and 20, Screenrights comments as follows:

Issue 13: The Committee seeks your views as to the practical operation of the law relating to the administration or licensing of copyright material. In particular, should government practice be encouraged to achieve uniformity throughout the different Australian jurisdictions?

- 3.12 In general, Screenrights encourages Government to adopt uniform practices and policies regarding the licensing of Government material and Government using third party copyright material.
- 3.13 In this regard, Screenrights notes the report of the Auditor General titled "Intellectual Property Policies and Practices in Commonwealth Agencies, Audit Report No 25. 2003-2004. Screenrights supports the recommendation in that report for the Attorney General and DOCITA to take a more active role in co-ordinating the management of Government copyright material.
- 3.14 Screenrights however notes that it has been unable to finalise agreement for remuneration under s183 of the Act with the Commonwealth and the States and Territories .

Issue 15: The Committee seeks your views as to the effect of new technologies on government ownership of copyright material. In particular:

- (a) does copyright continue to be relevant?***
- (b) how does one safeguard against the distortion or inappropriate use of government material made available through new technologies?***
- (c) is facilitating government information online inconsistent with the policy objectives behind government ownership of copyright?***

- 3.15 With regard to Issue 15(a), Screenrights submits that the effect of new technologies on copyright ownership and management issues continue to be relevant to the issues of government ownership of copyright material due to the increase in opportunities for exploitation and infringement of copyright material that these new technologies attract.
- 3.16 With regard to Issue 15(b), Screenrights is of the opinion that copyright material can be protected and safeguarded against the potential distortion or inappropriate use by instituting appropriate digital rights management systems and technology protection measures (TPM). These digital rights management systems and TPM measures should be strengthened in Screenrights' opinion.
- 3.17 With regard to Issue 15(c), the Issues Paper does not provide a clear statement of the policy objectives behind government ownership of copyright material. Accordingly, Screenrights cannot comment on this aspect of the Issues Paper.

Issue 16: The Committee seeks your views as to whether, as a matter of public policy, the government should own copyright in materials produced by the:

(a) executive arm of government?

(b) legislative arm of government?

(c) judicial arm of government?

3.18 Screenrights is of the general view that Government should not be in a preferential position with regard to ownership of Copyright. However Screenrights notes that Government may be required to make separate policy decisions regarding legislation, Hansard and judgments.

Issue 18: The Committee seeks your view as to options for reform, legislative or otherwise, and the costs and benefits of those options.

3.19 In general, Screenrights is of the view that Government should be in the same position as others with regard to the ownership of copyright. In this regard we note the Copyright Council's view with regard to preferential treatment in relation to first ownership.

3.20 Screenrights also notes the report of the Auditor General" referred to in paragraph 3.13 of this submission. This report makes a number of recommendations as to how the Commonwealth can develop better practice principles for intellectual property management.

3.21 In particular, we note the conclusion of the Auditor-General about the complexity of intellectual property management within the Commonwealth and the need to effectively manage their use of third party rights. In point 8.26, the Auditor-General concludes that "Intellectual property management allows an agency to fulfil its accountability obligations with respect to intellectual property it holds, and to ensure that agency resources are put to productive and efficient use. In the case of third party intellectual property that the agency uses, good management of intellectual property will ensure that infringement of third party rights is minimised, thereby reducing possible detrimental consequences for the agency such as legal action, liability for unnecessary financial costs, and potential loss of reputation. Agencies need to consider the most appropriate options for ownership of intellectual property, including whether to retain the intellectual property itself or to transfer or otherwise share the intellectual property with third parties and on what basis".

Issue 20: The Committee seeks your views as to any other matters arising out of this Issues Paper.

3.22 The Committee's Issues Paper is limited in its scope to the law relating to Government ownership of copyright material.

3.23 As the declared collecting society for copies of broadcasts made under s183, Screenrights submits that the scope of the Committee's inquiry be extended to examine the use of copyright material by Government and that Government develops clear policies regarding such use.

- 3.24 Since May 2000 Screenrights has been negotiating with State, Territory and Commonwealth Government departments in relation to both a survey system to monitor copying and a rate of remuneration to be paid to underlying copyright owners in transmissions that have been copied either by or for Government under Section 183 of the Act.
- 3.25 Screenrights has been unable to conclude an agreement with either the State & Territory and Commonwealth Governments as to a rate to be applied to these Government copies.
- 3.26 As the declared collecting society, Screenrights is currently in negotiations with key representatives of State and Territory Government departments to participate in a sample survey for the purpose of subsection 183(A)(2) of the Act with respect to a method for calculating equitable remuneration for the Government Copying Scheme.
- 3.27 Screenrights wishes to draw the Committee's attention to a number of practical implications to Screenrights' members of Section 183 of the Act and the obligations on Government under this Section.
- 3.28 A procedure is set up at Subsections 183(4) and (5) of the Act for Government to inform copyright owners where the Government does acts comprised in the copyright.
- 3.29 The terms for the doing of any act comprised in the copyright are to be "as agreed between the Commonwealth or the State and the owner of copyright or, in default of agreement, as are fixed by the Copyright Tribunal" (Section 183(5)).
- 3.30 Screenrights notes that s183A of the Act only applies to 'copying' and that there are no special provisions relating to 'performance' and 'communication' of works. Screenrights is aware that public performance and communication to the public of audio-visual material is taking place, though Screenrights is not aware of Government entering into any private arrangements with its members as copyright owners and is not aware that Government, at any time, has placed a notice in the *Commonwealth of Australia Gazette* or *Government Gazette* of the State informing copyright owners of the use of their copyright works by Government. This requirement is prescribed by Regulation 25 of the *Copyright Regulations 1969* (Cth).
- 3.31 The fact that the provisions under Subsections 183(4) and (5) of the Act relating to the obligation on Government to "inform" copyright owners of the use of their copyright works, are not being adhered to, indicates that the current provisions in the Act are not working.
- 3.32 Further, it is impracticable to require individual copyright owners to monitor compliance with these Subsections (183(4) and (5)) and to negotiate with Government for the use of their copyright works. Screenrights also notes that there are no infringement provisions for Government in this area, which has not assisted Government in complying with its obligations under the Act.

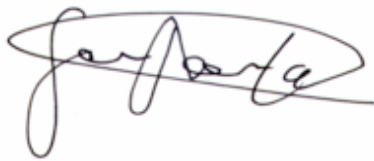
3.33 Accordingly, Screenrights submits that the Committee's scope of inquiry be extended to an examination of Section 183 of the Act.

4. Conclusion

Thank you for the opportunity to make this submission. Screenrights would be pleased to provide any further information that you may require, or elaborate on any points raised in the submission.

Should you require any further information, please contact Simon Lake, Screenrights' Chief Executive, at the address provided.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Simon Lake', enclosed within a hand-drawn oval shape.

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