



screenrights

The Audio-Visual Copyright Society

SCREENRIGHTS SUBMISSION TO THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

RETRANSMISSION SUBMISSION

A INTRODUCTION TO SCREENRIGHTS

The Audio-Visual Copyright Society Ltd ("Screenrights") is a non-profit copyright collecting society representing copyright owners in television and radio transmissions including producers, writers, broadcasters, music copyright owners and artistic works copyright owners. Since 1990 Screenrights has been the society declared by the Attorney-General for the purposes of Part VA of the Copyright Act ("the Act").

Screenrights' activities primarily relate to collecting remuneration from educational institutions from the copying of transmissions under Part VA of the Act. This remuneration is distributed by Screenrights to all the relevant copyright owners less Screenrights' administrative expenses only. In addition, Screenrights provides licences for copying of television broadcasts by educational institutions in New Zealand and collects remuneration for copyright owners on behalf of its members for schemes administered by other societies in other territories.

There are currently 1146 members of Screenrights, located in over 40 countries.

This submission covers matters in the Digital Agenda Bill relating to retransmission. Screenrights is making a separate submission in regard to Part VA and another submission in regard to other important matters in the Bill.

Included in the Part VA submission is a more detailed explanation of Screenrights' activities and a list of Screenrights' members.

Importantly, Australian broadcasters are members of Screenrights and receive royalties generated under the Part VA scheme in their capacity as owners of underlying rights in certain cases. This submission does not purport to represent the views of those members. Screenrights understands that Australian broadcasters make their own submissions to Government on the retransmission issue.

B THE RETRANSMISSION COALITION

In 1998 the Retransmission Coalition was formed. The members of the coalition are:

Screen Producers Association of Australia
Australasian Performing Right Association
Australian Film Commission
Australian Screen Directors Association Collecting Society
Film Australia Ltd
Australian Writers' Guild
Vi\$copy Ltd
Australian Film Finance Corporation Pty Ltd

Screenrights has been expressly authorised to make submissions to Government and to negotiate with ASTRA on behalf of the Retransmission Coalition members. This submission is made with that authority.

C SCREENRIGHTS IN THE HISTORY OF RETRANSMISSION LAW REFORM

Screenrights has been an active participant in the law reform process in respect of both the Copyright Act and the Broadcasting Services Act. A summary of Screenrights participation in the law reform process follows:

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| 1990 to 1996 | Numerous submissions to the Federal Government, supporting the introduction of a statutory licence to remunerate underlying rights owners for the cable retransmission of free to air broadcasts of their works, in line with Australia's international obligations. |
| 8 May 1997 | Participation in round-table Meeting with the Department of Communications and the Arts regarding possible retransmission legislative models |
| 29 May 1997 | Written submission to the Department of Communications and the Arts regarding three possible retransmission models |
| ** June 1998 | Written submission to Senate Committee on Environment, Recreation, Communications and the Arts regarding the retransmission amendments to the Broadcasting Services Act |
| 21 August 1998 | Attendance before the Senate Standing Committee on Environment, Recreation, Communications and the Arts to give oral submission regarding the retransmission amendments to the Broadcasting Services Act |
| ** April 1999 | Written submission to Attorney-General's Department and the Department of Communications, Information Technology and the Arts regarding Digital Agenda Bill Exposure Draft provisions, including a proposed alternative legislative model agreed between Screenrights and ASTRA |

- ** May 1999 Written submission to the Department of Communications, Information Technology and the Arts regarding the Retransmission and Digital Broadcasting Issues Paper
- ** August 1999 Written submission to the Department of Communications, Information Technology and the Arts commenting on the Discussion of Options Paper regarding Retransmission and Digital Broadcasting

Significantly, in respect of the retransmission provisions contained in the Exposure Draft of the Digital Agenda Bill, Screenrights and the Australian Subscription Television and Radio Association ("ASTRA") arrived at a joint position in respect of a preferred legislative model for a retransmission scheme in the Copyright Act. That model, derived from the existing Part VA Scheme, was substantially adopted within Part VC of the Digital Agenda Bill introduced into Parliament on 2 September 1999. Screenrights, on behalf of the Retransmission Coalition, congratulates the Government on this.

However, one important aspect of the Screenrights/ASTRA agreed position was not adopted within Part VC of the Digital Agenda Bill. It is this aspect which Screenrights wishes to focus upon in this submission.

D MULTIPLE DECLARED SOCIETIES AND THE RETRANSMISSION PROVISIONS

Under the current draft for the Attorney-General to declare multiple bodies to administer the retransmission scheme. The critical provisions read:

135ZZT Collecting societies

- (1) Subject to this section, the Attorney-General may, by notice in the Gazette, declare the body named in the notice to be the collecting society for all relevant copyright owners, or for such classes of relevant copyright owners as are specified in the notice.
- (2) Where the Attorney-General declares a body to be the collecting society for a specified class of copyright owners and subsequently declares another body to be the collecting society for that class of copyright owners:
 - (a) the first-mentioned collecting society ceases to be the collecting society for that class of copyright owners on the day on which the subsequent declaration is made; and
 - (b) any remuneration notice given to that collecting society ceases to be in force to the extent to which it relates to relevant copyright owners included in that class of copyright owners.
- (3) If the Attorney-General has declared a body to be the collecting society for a specified class of copyright owners, the Attorney-General may refuse to declare another body to be the collecting society for that class of copyright owners unless satisfied that to do so would be in the interests of those copyright owners, having regard to the number of members

of the first-mentioned society, the scope of its activities and such other considerations as are relevant.

This represents a significant difference to the way in which Screenrights currently administers the Part VA statutory scheme. It gives rise to the possibility of there being a plurality of declared societies representing copyright holders according to right, subject matter or nationality. In the retransmission context this presents several obstacles to the efficient administration of the retransmission right.

(i) Duplication & Inefficiency

Assuming two or more societies are declared under 135ZZT, this will create duplication of expenses occasioned by the separate administrations. This inefficient duplication of expenses, in turn, may put inflationary pressures on the retransmission licence fees and/or result in lower net distributions to rightsholders.

(ii) Creation of Multiple Monopolies

The multiple declared society model does not infuse "competition" into administration of the licence, except in so far as societies may be said to compete between themselves to increase their relative shares of the retransmission royalty base.

What the multiple society model does, in fact, is impose multiple monopolies. If several societies administer several discrete categories of subject matter or rights, each of those societies is a monopolist with respect of those right or subject matter.

Screenrights submits that a statutory licence of this type lends itself readily to one point of administration which is moulded to meet the requirements of the activity for which the licence was created; retransmission. In the US, the Copyright Office singularly fulfills this function in respect of the retransmission right.

(iii) Multiple Negotiations and Tribunal Determinations

A consequence of multiple societies administering the retransmission statutory licence, is that ASTRA's members must engage in multiple negotiations with each society as to payment of equitable remuneration. This may translate to multiple Copyright Tribunal determinations in respect of each failed negotiation.

The Digital Agenda Bill has inserted a strict record keeping requirement upon the pay industry. This, too, is to be determined by agreement or by Copyright Tribunal determination. In the multiple society scenario, this could create a genuine administrative burden with different societies seeking different types of records to be kept.

(iv) Possibility of Endless Judicial Review

Under the current drafting, any declaration by the Attorney-General under 135ZZT gives rise to a likelihood of that decision being challenged under the Administrative Decisions (Judicial Review) Act 1977. Such litigation could drag on over years, create an air of uncertainty over the retransmission licence and hamper the Government's policy objectives. It is Screenrights belief that a single

society model substantially reduces the possibility of such a scenario unfolding.

E CONCLUSION

Screenrights is of the view that one society dealing with all rights holders is the best way to administer the retransmission right. Such a society should be under the public scrutiny of the Parliament and have high prudential requirements imposed upon it. Such a society should lose its declaration if it fails to perform.

Screenrights would seek such a declaration as the collecting society administering the scheme. We regard this as appropriate because:

- Screenrights holds the declaration of the Attorney-General under Part VA of the Copyright Act and already meets the criteria for declared societies.
- By reason of that declaration, Screenrights represents all classes of copyright holders (in film, music and script) pertaining to the underlying works contained in the broadcasts. Screenrights is the only body in Australia which comprehensively represents the interests of the relevant underlying rights holders affected by retransmission.
- Screenrights is affiliated with international audio-visual collecting societies which collect and allocate royalties from retransmission operating in Europe, Canada and the United States. Screenrights is represented on the Board of Directors of AGICOA (the Association de gestion internationale collective des oeuvres audiovisuelles), the body responsible for the trans-national coordination of retransmission schemes across Europe.
- An agreed position between Screenrights and ASTRA has been instrumental in shaping the retransmission provisions contained in the Digital Agenda Bill.
- Screenrights has the experience, resources, rights management information and requisite access to transmission data to be in a natural position to efficiently administer any retransmission scheme as soon as legislation is enacted. We are confident that our administrative expenses will be reasonable both at start-up and over time.

Screenrights welcomes any opportunity to put any further submissions (in writing or in person) the Committee may find to be of assistance.