

10 January 2000

Mr. Kevin Andrews, MP  
Chair  
House of Representatives Standing Committee  
on Legal and Constitutional Affairs  
Parliament House  
Canberra ACT 2600

**By facsimile: 6277 4773**

**Total number of pages: 4**

Dear Mr Andrews,

**Advisory Report on Copyright Amendment (Digital Agenda) Bill 1999**

Screenrights welcomes the Committee's Report and is grateful for the Committee's hard work in considering the Bill. Screenrights would like to comment in regard to some elements of the Report in order to highlight areas of particular import. Our comments are arranged under the headings of the Report.

*Fair dealing*

Screenrights is concerned that the Committee has recommended that the current definition of "library" not be amended as proposed in the Bill. Screenrights endorses the comments of the Australian Copyright Council and Copyright Agency Limited in this matter and submits that if the current definition of library is retained, then it will be necessary to greatly modify other elements of the Bill to redress the imbalance this will cause.

*Educational statutory licences*

Screenrights welcomes the Committee's consideration of the treatment of the statutory licences in regard to the new right of communication.

Screenrights endorses Recommendation 8 that the Bill be amended to extend Part VA to include a licence to communicate copies of broadcasts for educational purposes.

Screenrights appreciates the Committee's comments concerning the efforts made to achieve consensus over the drafting of provisions for the extension of Part VA but notes that although the parties were close, no final agreement was reached. Screenrights notes that its approach mirrors the Government's approach in amending Part VB by introducing a separate assessment system for communications.

Screenrights endorses the Committee's conclusion that there is no need to amend the proposed electronic use system in Part VB. Screenrights respectfully submits that the similar system proposed by Screenrights for the administration of the right of communication within Part VA is the most appropriate means of amending the Bill in accordance with the Recommendation 8.

Screenrights notes that the Report states that the Committee "agrees with the comments from both sides [Screenrights and the AVCC] that in the absence of a statutory right to communicate the broadcasts they have been enabled to copy, the educational institutions are left with a licence that is greatly diminished in value." This does not reflect Screenrights' view. Screenrights does not accept that the licence would be diminished in value without a licence to communicate, but rather Screenrights notes that educational institutions would not be able to enjoy the greater value of being able to communicate their copies.

#### *Enforcement measures*

Screenrights notes that in Recommendation 18 the Committee proposes that the permitted purposes for use of circumvention devices be amended to include certain further purposes but that the Committee does not comment on the inconsistency of treatment between Parts VA and VB in regard to the use of circumvention devices. Screenrights repeats its submission that, if it is Parliament's intention that circumvention devices can be used for copying under educational statutory licences, then Part VA should also be included as a permitted purpose.

#### *Retransmission and broadcast issues*

Screenrights welcomes the thorough consideration given to the retransmission provisions by the Committee and endorses many of the recommendations made by the Committee in that section of its Report.

In particular, Screenrights welcomes and endorses the view expressed by the Committee that the Attorney-General be given the authority to declare a society to administer the retransmission regime. Screenrights values the existing relationship it has with the Attorney-General's Department by virtue of Screenrights' declaration under Part VA of the *Copyright Act 1968*. Screenrights has found over the years the guidelines issued by the Department to be invaluable to Screenrights' administration of the Part VA scheme.

Further, Screenrights agrees with the Committee's observation that the record keeping requirements under the proposed section 135ZZN could be clarified and endorses Recommendation 27 made by the Committee.

Screenrights also welcomes Recommendation 29 and notes that proposed legislative steps have been introduced prior to Christmas to implement this Recommendation.

However, Screenrights must express its disappointment that the Committee has accepted certain submissions which (in Screenrights respectful view) has led the Committee to erroneous or unclear conclusions on certain matters.

Screenrights disagrees with the conclusion made at paragraph 5.25 "that proposed Part VC should not apply to sound recordings". As submitted before the Committee, Screenrights believes that where source licensing is possible - either collectively or individually - this may occur under the existing proposed section 135ZZZC. Excluding sound recordings from Part VC renders subscription broadcasters potentially liable for infringement where each and every sound recording rights owner can not be traced. The exclusion will mean that the statutory licence will fail to address the very problem it is intended to overcome - excessive transaction costs. This problem is compounded if reliance can not be placed upon section 136 as is proposed by Recommendation 24. Screenrights believes that the Part VC licence should take account of all underlying rights holders, and permit source licensing under proposed section 135ZZZC.

Screenrights is somewhat uncertain as to the extent intended for Recommendation 23. While Screenrights agrees that the present scope of the proposed licence in Part VC is too broad (referring as it does to "a retransmitter") Screenrights submits that the relevant class of bodies which should be covered by the Part VC licence are "subscription broadcasting services" and "subscription narrow casting services", as those terms are defined under the *Broadcasting Services Act 1992*.

Screenrights welcomes the opinion expressed by the Committee that "Part VC lends itself to administration by one body" (paragraph 5.39). However, Screenrights is disappointed that the Committee ultimately decided against the prescribing of one collecting society under Part VC. Screenrights notes that the Report states (at paragraph 5.35) that the "proposal for a single collecting society was also supported by one copyright owner, the Screen Producers Association of Australia (SPAA)." Screenrights' submission for one society was supported by SPAA, the peak body for film producers in Australia, but was also supported by the other following groups:

- Australasian Performing Right Association
- Australian Film Finance Corporation Pty Ltd
- Australian Writers' Guild
- Australian Screen Directors Association Collecting Society
- Australian Film Commission
- Film Australia Limited

Screenrights is uncertain as to precisely what form of body the ARIA and PPCA revisions to section 135ZZZT would permit. On first impressions, it appears odd to consider a company limited by shares in which dividends are prohibited. In any event, Screenrights would vigorously resist any proposal that a collecting society under Part VC should be subject to any less rigorous transparency and accountability requirements to those which currently pertain to declared collecting societies under Part VA and Part VB.

Screenrights expresses no opinion on the issue of remuneration of directors under Part VC, other than to plead the case for consistent treatment throughout the *Copyright Act 1968*. It seems odd to deem directors to be a class of copyright owners in selective or isolated instances. The preferable position is to treat a film director as an author, a co-author or not an author in respect to a cinematograph film uniformly and consistently throughout the *Copyright Act 1968*.

*Remaining issues*

Screenrights respectfully disagrees with the Committee's conclusion (at paragraph 6.24) that concerns regarding inappropriate industry codes of practice are sufficiently addressed by the inclusion of the word "relevant" in proposed paragraphs 36(1A)(c) and 101(1A)(c). Screenrights submits that this "in part" resolution of the problems raised by this clause is inadequate and leaves open the possibility of copyright infringers relying on self serving codes of practice.

Although Screenrights acknowledges the common sense in the Committee's suggestion that all sections of the industry contribute to the development of accepted codes of practice, Screenrights submits that the views of copyright owners are often unwelcome in such discussions and may be ignored or given little weight.

Once again, Screenrights would like to thank the Committee for the careful and thorough consideration of all the issues covered by the Digital Agenda Bill and for the opportunity to participate in the discussion.

Yours sincerely,

Simon Lake  
Chief Executive

cc Ms Nicola Roxon MP, Deputy Chair  
Ms Julie Bishop MP  
Hon Alan Cadman MP  
Hon Duncan Kerr MP  
Ms Kirsten Livermore MP  
Mr John Murphy MP  
Hon Michael Ronaldson MP  
Mr Stuart St Clair MP  
Mrs Danna Vale MP