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School Licensing Scheme Agreement - Under Section 48 of the Copyright Act

Background

- A. Screenrights is the declared collecting society established within the terms of Parts VA and VB of the Copyright Act 1968 (Australia) and a licensing body established within the terms of Part VIII of the Copyright Act 1994 (New Zealand).
- B. The members of Screenrights include rights holders of the Repertoire serviced by Screenrights.
- C. Screenrights is authorised by certain of its members to enter into licensing agreements on their behalf to authorise the copying of the Repertoire by Educational Establishments and to collect licensing fees for distribution to its members.
- D. The School wishes to enter into a licensing agreement with Screenrights to enable it to copy the Repertoire upon the terms and conditions set out in this Agreement.

1. Overview and Interpretation

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

2. Term

The Term is from 1 January 1998, or as otherwise agreed, and continues, subject to Clause 17, from financial year to financial year upon issue by Screenrights of a certificate under Clause 12.2.

3. Grant of Licence and Waiver

- 3.1 Screenrights on behalf of and with the authority of its relevant members agrees that the School may for its own educational purposes make or authorise the making of Copies the subject of its Repertoire on the terms in this Agreement.

- 3.2 In the event the School is certified by Screenrights pursuant to Clause 12 for the 1998-9 financial year, Screenrights on behalf of and with the authority of its relevant members, agrees to waive those rights which may have been infringed by the School having, for its own educational purposes, made or authorised the making of Copies the subject of its Repertoire where such Copies were made during the Waiver Period.

4. The School

- 4.1 The School warrants that it is an Educational Establishment.
- 4.2 The School warrants that Copies will only be used for its educational purposes.
- 4.3 The School agrees to inform members of its staff of its obligations under this Agreement.

5. Marking

- 5.1 While this Agreement applies the School agrees to mark all Copies as follows: Made only for [Name of School]'s educational purposes Title of Broadcast: [title] Date of Broadcast: [date] Date this Copy made: [date]
- 5.2 Where the Copy is made by means of digitisation, the information stipulated in Clause 5.1 shall if practicable be embedded within the digital Copy.
- 5.3 Screenrights may notify the School of alternative marking that it requires to be applied to all Copies from time to time.
- 5.4 The School agrees to mark all Copies made during the Waiver Period in accordance with this Clause within 30 days of being certified by Screenrights pursuant to Clause 12 for the 1998-9 financial year.

6. Remuneration

- 6.1 Remuneration is to be calculated in accordance with this clause.
- 6.2 For the 1997-8 financial year, or part thereof, Remuneration is the sum of NZ\$3.00 multiplied by the School's Enrolment for 1997.
- 6.3 a) The Remuneration for each financial year of the Term or part thereof after the 1997-8 financial year will be calculated as follows:

$$\text{Remuneration} = \text{Current Copying Rate} \times \frac{\text{School's Prior Calendar Year Enrolment}}{\text{Year Enrolment}}$$

where the Current Copying Rate for any financial year is determined in accordance with the following formula:

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

Where:

'R' equals the Current Copying Rate to be determined for any financial year; and

'A' equals the Index published for the December Quarter preceding the December Quarter used to determine B; and

'B' equals the Index published for the December Quarter preceding the commencement of the financial year for which the Current Copying Rate is to be determined; and

'C' equals the Copying Rate for the financial year preceding the financial year for which the Current Copying Rate is to be determined (for example, C for the financial year commencing on 1 July 1999 will be NZ\$3.00); and where

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

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

- b) Annexure A to this Agreement is an example for illustration in which the calculation set out in 6.3 a) is performed and explained.

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

7. Sampling for Distribution

- 7.1 In order to estimate the quantum and nature of Copying undertaken by the School for the purpose of Screenrights' distribution to its members, Screenrights may establish a Sampling System which will be administered by Screenrights in conjunction with the Survey Authority.
- 7.2 The School acknowledges that it, or a part of it, maybe chosen as a Selected School under the Sampling System by Screenrights or the Survey Authority giving the School reasonable notice.
- 7.3 The School acknowledges that the Selected Schools chosen by Screenrights and the Survey Authority may not include the School.
- 7.4 The School acknowledges that Screenrights or the Survey Authority may in their discretion consult with it on the selection of Selected Schools and the School agrees to fully co-operate and assist them in this regard.
- 7.5 The School acknowledges that Screenrights or the Survey Authority may, in their discretion, consult with the Ministry of Education on the selection of Selected Schools.
- 7.6 Subject to Clause 11.5:
 - a) Screenrights will pay the Survey Authority's costs and expenses arising from the Sampling System; and
 - b) the School will pay its own costs and expenses arising from the Sampling System unless the School is designated a substitute School for the purpose of Clause 11.4 b) in which case such substitute School has a right to be reimbursed for its reasonable additional expenses incurred in completing the review of its copying over the previous Sample Period.

8. Sampling Obligations of Selected Schools

- 8.1 The School undertakes and agrees that if it is chosen as a Selected School it will comply with the obligations imposed by this clause.
- 8.2 A Selected School agrees to fully co-operate with Screenrights and the Survey Authority during the Sample Period and acknowledges that Screenrights and the Survey Authority will have, upon the giving of reasonable notice, the right:
 - a) to enter the premises of the Selected School;
 - b) of access to any and all documents or information relating to the Selected School's curriculum, copying practices and copying activities.
- 8.3 A Selected School agrees to keep Records of all Copying made by or on behalf of the Selected School during the Sample Period in the form of Annexures B and C to this Agreement or such other form or additional forms as may be advised by Screenrights from time to time in its discretion.
- 8.4 Records kept by a Selected School must:
 - a) be accurate, complete and legible Records of all Copying made during the Sample Period;
 - b) be completed by or on behalf of the Selected School as and when Copies are made or as soon as reasonably practicable thereafter;
 - c) be provided by the Selected School in completed form to the Survey Authority at intervals as required by Screenrights during the Sample Period whether or not it has Copied Broadcasts during the Sample Period; and
 - d) exclude advertisements copied incidentally to the Copying of Broadcasts.
- 8.5 A Selected School must nominate one or more suitably qualified and authorised members of its staff to act as Copyright Records Officers during the Sample Period to assist in the proper performance by the Selected School of its obligations under the Sampling System. Screenrights may require the appointment of an alternative or additional copyright Records officers if, in its discretion, Screenrights determines that such appointments are required for the proper conduct of the Sampling System.
- 8.6 A Selected School must ensure that:
 - a) all members of its staff are fully informed of the requirements of the Sampling System in respect of Records, in particular, that Copies made by them on behalf of the Selected School for educational purposes (whether made at the Selected School or elsewhere) must be included in Records;
 - b) persons holding the following positions in the Selected School participate in training seminars held by Screenrights:
 - i) the Copyright Records Officer or officers (if applicable);
 - ii) the Principal or Deputy Principal (or nominated senior executive); and

- iii) the Head Librarian (or their delegate of next to equal rank);
 - c) to ensure the integrity of the sampling system so that correct rights holders are identified for distribution purposes, members of its staff maintain during the Sample Period the Copying practices normally adopted by them in periods other than the Sample Period; and
 - d) members of its staff otherwise take all steps as may reasonably be required by Screenrights or the Survey Authority to ensure the completeness and accuracy of Records.
- 8.7 A Selected School for which Clause 3.2 applies acknowledges that it may be requested by the Survey Authority or Screenrights to review its copying during the Waiver Period and if so requested agrees to use its best efforts to provide Records in respect of such copying.
 - 8.8 A Selected School agrees to advise Screenrights of the names of those persons nominated as Copyright Records Officers under Clause 8.5 and upon being requested to do so by Screenrights, provide to Screenrights all copies of all written advice made to staff regarding the sample period pursuant to Clause 8.6 a).
 - 8.9 A Selected School undertakes to promptly take such action as may be requested by the Survey Authority or Screenrights from time to time to make good any illegible, incomplete or inaccurate Records.

9. Further Obligations of the School

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

- a) to consult with the Copyright Records Officer and/or other members of staff on reasonable notice in regard to Records and Copies; and
- b) to carry out at any time without notice such audit measures as Screenrights or the Survey Authority may deem necessary to determine compliance with Clause 5 and the accuracy of the Sampling System including, but not limited to, consulting with Students of the School.

10. Property in the Records

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

11. Default under Clauses 8 or 9

- 11.1 Failure by the School to properly perform any of its obligations under Clauses 8 or 9 constitutes a breach of this Agreement.
- 11.2 Upon notice by Screenrights to the School of such breach, the School must, within fourteen days of the date of the notice:
 - a) fully explain the cause or circumstance giving rise to the breach; and
 - b) if possible, correct the breach.
- 11.3 Where in the opinion of the Survey Authority, the Selected School has failed to keep Records sufficiently reliable for use in the Sampling System, the Survey Authority:
 - a) must prepare a report outlining the matters and circumstances on which its opinion is based; and
 - b) must provide a copy of that report to the Selected School and to Screenrights.
- 11.4 Where Screenrights receives a report under Clause 11.3 b), it may elect:
 - a) to reject some or all of the Records kept by the Selected School during the sample period covered by the report;
 - b) to conduct a further sample of the Selected School or a substitute School.
- 11.5 Where Screenrights chooses to exercise its rights under to Clause 11.4, the Selected School must pay to Screenrights a sum equivalent to:
 - a) any costs incurred by Screenrights in retaining the Survey Authority to administer the Sampling System under Clause 8 in respect of that Selected School;
 - b) any other costs incurred by Screenrights associated with the conduct of the Sampling System under Clause 7 or the consultation in respect of that Selected School;
 - c) any expenses incurred or a loss sustained by Screenrights or the Survey Authority or both, including, but not limited to:
 - i) conducting a further sample under Clause 11.4 b) (including any costs of further and more extensive training seminars); and
 - ii) the reimbursement of any costs incurred by:

- a) Schools substituted in the additional survey; and
- b) Screenrights and/or the Survey Authority in arranging for a substitute School or Schools.

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

12. Lodgement of Remuneration and Acceptance

12.1 To be eligible for the benefits under this Agreement in any financial year, the School must:

- a) lodge Remuneration with the New Zealand Schools Trustee Association or as Screenrights otherwise advises; and
- b) must lodge such Remuneration by 7 May immediately preceding that financial year, unless Screenrights agrees to a later time; such lodgement constituting an offer by the School to Screenrights to be licensed under this Agreement.

12.2 Upon Screenrights receiving notification that the School has lodged Remuneration in accordance with Clause 12.1, Screenrights may accept that offer by issuing to that School a certificate, certifying that School to be licensed under this Agreement for the current financial year.

12.3 Acceptance under Clause 12.2 occurs at the time and place Screenrights issues a certificate to that School.

12.4 Upon issuing of the certificate pursuant to Clause 12.2, Screenrights shall be entitled to the Remuneration.

12.5 If Screenrights does not accept the School's offer within two months of Screenrights receiving notification of that offer, the School will be entitled to uplift the Remuneration it has lodged under Clause 12.1, Screenrights shall be entitled to the Remuneration.

13. Notices

13.1 All notices under this Agreement must be in writing and given by personal delivery, prepaid post or facsimile.

13.2 Any notice served:

- a) by delivering it, is deemed to have been served at the time of such delivery;
- b) by post, is deemed to have been served upon the day on which in the ordinary course of posting it would have been received; and
- c) by facsimile transmission, is deemed to have been served on the day of transmission provided that the transmission is complete and legible.

14. Miscellaneous

14.1 Failure or omission by a party at any time to enforce or require strict or timely compliance of any provision of this Agreement does not affect or impair that provision in any way or the rights of that party to avail itself of the remedies it may have in respect of any breach of any such provision.

14.2 If any provision of this Agreement is found to be void, illegal or unenforceable, that provision shall be deemed severable and the remaining provisions shall be read and applied as if the void, illegal or the unenforceable provision had been deleted.

15. Jurisdiction

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

16. Copyright Tribunal

The School and Screenrights agree that neither party will make an application to the Copyright Tribunal in respect of matters dealt with by this Agreement while this Agreement applies.

17. Termination and Variation

Screenrights may, on notice to the School by 31 March of any financial year:

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

18. Dictionary

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

- "Act" means the Copyright Act 1994 (New Zealand);
- "Agreement" means the terms upon which Screenrights grants a licence to the School for any financial year under the licensing scheme;
- "Broadcast" means a broadcast as defined in the Act or a cable program as defined in the Act including any work (as defined in the Act) included in the broad-cast or cable program;
- "Copy" means a recording of a Broadcast or a copy of such a recording;
- "Copyright Records Officers" means those persons nominated by a Selected School under Clause 8.5;
- "Enrolled" includes admitted to a particular course of instruction provided by the School, entitled to be enrolled, and for which no formal indication of withdrawal, deferment or discontinuance of enrolment has been registered;
- "Enrolment" means the number of students enrolled in the School during a calendar year as published annually by the Ministry of Education (or its successor) expressed in full time equivalent terms;
- "Records" means the information kept in the form stipulated under Clause 8.3; "Remuneration" means the amount calculated in accordance with the provisions of Clause 6;
- "Repertoire" means Broadcasts in respect of which Screenrights has been authorised by its members to grant licences in respect of copying by Educational Establishments in New Zealand;
- "Sample Period" means a period of time selected by Screenrights for the Sampling System but in no longer than fourteen weeks;
- "Sampling System" means the system of surveying Copying in the School as established by Screenrights in its discretion from time to time;
- "School" includes all Educational Establishments with which the School is affiliated or amalgamated, merged into or incorporated with at the commencement of this Agreement or from time to time during the Term;
- "Selected School" means any School selected by Screenrights or the Survey Authority under Clause 7.2;
- "Student" means a person enrolled at the School including, but not limited to, those enrolled on a part-time or external basis;
- "Survey Authority" means such person as Screenrights may appoint from time to time; and
- "Term" means the term of this Agreement as defined in Clause 2.
- "Waiver Period" means that time between 1 January 1998 and 30 June 1998.

ANNEXURE A

Illustrative Example Referred to in Clause 6.3 b)

For example, to calculate the 1999-2000 Current Copying Rate (R)

- i) where in 1998-9 the Rate is \$3.00 c), and
- ii) assuming in December 1998 the Consumer Price Index is 103.8 b), and
- iii) assuming in December 1997 the Consumer Price Index is 101.51 a),

the calculation will be: $R = \frac{B \times C}{A}$

1999-2000 Current Rate = $\frac{1998 \text{ Consumer Price Index} \times 1998-9 \text{ Rate}}{1997 \text{ Consumer Price Index}}$

1999-2000 Current Rate = $\frac{103.8 \times \$3.00}{101.5}$

1999-2000 Current Rate = \$3.07

