

# **Productivity Commission Issues Paper: Intellectual Property Arrangements**



**screenrights**

**Submission by Screenrights**

**21 December 2015**

## EXECUTIVE SUMMARY

- I. Screenrights is a copyright society representing rightsholders in film, television and radio. Screenrights has 3,821 members in 61 countries. Screenrights has unique experience as the administrator of several statutory licences. This submission focuses on the statutory licence to use television and radio broadcasts for educational purposes (Part VA of the Copyright Act) in the light of the reforms recommended by the Australian Law Reform Commission in its recent copyright enquiry.
- II. In Screenrights' experience the statutory licences adhere closely to the principles espoused by the Productivity Commission in the Discussion Paper:
  - Part VA contributes to the creation of additional broadcast content and additional copyright material created to assist educational institutions in using that content;
  - Part VA is highly efficient with an expenses to collections ratio that is lower than mainstream distribution fees;
  - Part VA has been very adaptable, for example, allowing copy formats to transition seamlessly with technological change, but is confined by some technology constraints for historical reasons; and,
  - Part VA itself is highly accountable, with very strict governance.
- III. While there is extensive evidence on the contribution of the creative industries to the economy, there is very little reliable economic evidence to support the ALRC's recommendation to introduce a US style fair use system in Australia or a widening of the fair dealing provisions. The ALRC acknowledges that the economic evidence is not available and so adopts a "hypothesis-driven approach" and merely assumes the benefits to innovation will accrue and the costs will not occur.
- IV. The copyright regime is working well although the statutory licences could benefit from some minor reform to improve their technology neutrality.
- V. In Screenrights' experience, copyright reform is highly contested and difficult. An alternative approach and more productive approach is for government to encourage the parties to reach compromise on proposals which the government can then consider outside heightened environment of a large scale enquiry where the stakes are extremely high. This cooperative model has recently been used by the government to develop reform proposals to simplify the statutory licences. Screenrights commends this approach to reform.

## BACKGROUND

### *About Screenrights*

1. Screenrights, The Audio-Visual Copyright Society Limited, is a non-profit copyright society representing rightsholders in the audio-visual sector including film, television and radio. Screenrights is a declared collecting society for the purposes of Part VA, Part VB, Part VC and Part VII, Div 2 of the Copyright Act 1968 (Cth) ('the Act'). Screenrights also supplies an educational copyright licensing scheme for broadcasts in New Zealand (under New Zealand copyright law). It has 3,821 members in 61 countries.
2. Screenrights administers a range of collective licences that enable access to audiovisual material, including educational use of broadcasts (Part VA of the Act), government copying of broadcasts and audiovisual material on the internet (Part VII, Div 2 of the Act), and the retransmission of free to air broadcasts (Part VC of the Act). These licences operate as remunerated exceptions to copyright. Our experience in administering these licences gives us a unique perspective on the operations of such exceptions in the Act.
3. For the purposes of this submission, Screenrights comments will generally focus on its experience in administering the educational use of broadcast content provisions in Part VA of the Act. These provisions are particularly relevant to the enquiry as they were introduced to correct market failure in the copyright regime, and because they were the subject of considerable consideration in the ALRC enquiry into *Copyright and the Digital Economy*.

### *Operation of Part VA*

4. Part VA is a remunerated exception to copyright: a statutory licence allowing educational institutions to copy television and radio broadcast content, and communicate those copies, for their educational purposes. A statutory licence such as Part VA is sometimes referred to as a compulsory licence because copyright owners are compelled by the Act to permit use within the scope and on the terms set out in the statute. It is essentially an access regime. (Note that the copyright users, the educational institutions, are not compelled to participate. It is only compulsory on the copyright owners.)
5. Almost all schools and universities across Australia take advantage of Part VA statutory licence. Those institutions rely on these provisions to access broadcast content for teaching purposes. This institutional teaching use is distinct from an individual student's use of copyright for research or study purposes. An individual's use might be eligible for the research or study fair dealing exception whereas an educational institution's use of copyright for teaching purposes would not comprise fair dealing.
6. Educational institutions are obliged to pay "equitable remuneration", which is conceptually similar to a reasonable price under an access regime in return

for their use of the copyright material. The amount of equitable remuneration is determined either by agreement between Screenrights and the educational institutions or, failing agreement, determined by the Copyright Tribunal of Australia after a public hearing. Regardless of whether the amount is agreed or Tribunal-determined, Screenrights is responsible for collecting the fee, identifying the relevant copyright owners and distributing the fee to the copyright owners less its operating expenses.

7. Part VA provides for entities known as resource centres whose purpose is to make copies for educational institutions' delivery of teaching. The coverage of resource centres within the Part VA statutory licence has been a significant driver of innovation, creativity and added value for the Australian education sector.
8. Copyright debates are often binary disputes between full copyright protection and free exceptions. Remunerated exceptions such as Part VA represent a compromise position balancing a need to access content for a socially desirable purpose (i.e. teaching) with a right in creators to be compensated for such institutional (and commercially valuable) use.

## **GENERAL COMMENTS**

9. In this section we reply to the general questions in Part 3 of the Issues Paper. Screenrights notes the principles proposed by the Commission as those to which an intellectual property system should aspire: effectiveness, efficiency, adaptability and accountability.

### **Effectiveness**

10. Screenrights notes the submission of the Australian Screen Association and others in which they point out that the requirement of additional creativity (as a measure of effectiveness of an intellectual property system) is not a feature of policy development in copyright law.<sup>1</sup> Screenrights shares the concern of these groups that this principle, expressed this way, seems to create a test for copyright protection which is much higher than the fundamental requirement of originality upon which much of the copyright system rests.
11. Notwithstanding the above, Screenrights submits that the operation of the educational statutory licence in Part VA has contributed significantly to identifiable and measurable additional creativity and innovation.

### *Additional broadcast content*

12. The Part VA statutory licence creates a payment link between educational users of audio-visual content and the producers of that content. This link

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<sup>1</sup> *Joint submission of the Australian Screen Association and others, 30 November 2015, p8.*

has contributed to the creation of educationally useful content that may not have otherwise been produced. This will be illustrated below by reference to the *Redfern Now* example.

13. Generally speaking, distributions made by Screenrights are not public, as they are the confidential and commercially sensitive information of the rightsholders. This means that widespread quantitative data on the impact on new productions is difficult to produce without the consent of rightsholders.
14. One example that we can refer to is that of *First Australians*, a landmark documentary series on Australian indigenous history produced by Blackfella Films and broadcast on SBS in 2008. The producers have publicly explained the impact of the Screenrights distributions which permit this reference to the example here. The *First Australians* series was very popular with educational institutions and used widely by the sector under the Screenrights licence leading to substantial distributions to the copyright owners. Blackfella Films have stated that the distributions that they received were so significant that it allowed them to advance immediately into pre-production of their next series, *Redfern Now*, which broadcast its third season in 2015.
15. Importantly, the creative effect of the Screenrights licence has particular impact on Australian creators. The content most used under the licence often only has a domestic market, and after broadcast sometimes only an educational, domestic market. Therefore, the incentive is crucial to the production of local, independent film documentaries which is the genre of content most consumed by educational institutions under Part VA.<sup>3</sup>

#### *Unique value added to broadcast content*

16. Another category of additional content created by the statutory licence is in support material created by copyright owners to assist educational institutions in using the material. For example, most Australian documentaries have specialist study guides commissioned alongside the program.<sup>4</sup> This material exists because of the Part VA statutory licence.
17. Another example of additional innovation generated by the Part VA statutory licence is the creation and application of metadata for programs to assist educational institutions in search, recommendation and indexing of content. A resource centre, InfoRMIT, licensed under Part VA, creates extensive metadata around news and current affairs broadcasts, allowing Screenrights licensees to conduct unique searches on content for educational purposes.

#### *Additional innovative delivery of content*

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<sup>3</sup> Screenrights Annual Report 2014-15, p15.

<sup>4</sup> See for example, <http://www.metromagazine.com.au/tencanoes/>

18. Part VA provides for resource centres whose purpose is to make copies of broadcast content for educational institutions. These organisations have led to a range of innovations in the delivery of content.
19. Clickview Exchange is a peer-to-peer system licensed under Part VA. The service allows educational institutions (primarily schools) to upload copies of broadcasts to the Exchange server. Other schools are then able to download the copies to their local systems and share them with the staff and students of the school. Clickview Exchange has operated since 2007, during which it has enabled the downloading by schools hundreds of thousands of copies of broadcasts.
20. The Clickview Exchange system works within a proprietary video learning management system developed by an Australian company, Clickview Pty Ltd. Clickview has built a highly successful company around the operation of the Screenrights licence, to enable schools to maximise their utility from the licence. The Clickview system is now exported to countries which include provide for educational licensing of audio-visual content in their copyright laws. Significantly, the Clickview system is unable to be exported to the United States because its fair use system does not cover this use by educational institutions.
21. Today in Australia, there are a range of resource centre services providing cloud based video on demand streaming services to educational institutions covered by the licence. Resource centres compete with each other in terms of price and offerings, constantly innovating to improve service levels and lower the cost of content delivery. These services include TV4Education, Clickview Online, Understanding Faith and EnhanceTV Direct.
22. This is a unique outcome and product of the Australian statutory licensing regime. Again, it can be observed that organisations offering such services are absent from the United States where fair use does not provide a sufficiently certain legal environment for similar resource centres to operate.

## **Efficiency**

23. A measure of efficiency of the statutory licensing regime is the expenses to collections ratio of the collecting society i.e. the proportion retained to cover operating expenses.
24. In financial year 2015, Screenrights expenses were 14.2% of collections, or in other words over 85% of monies collected were remitted to rightsholders.
25. This 14.2% expenses to collections ratio can be considered as akin to the fees of distributors. It might be considered against the 30% retained by Apple when rightsholders content is distributed via the iTunes platform.

26. The Screenrights expenses to collections ratio, when compared to the sum retained by Apple for iTunes's distribution, suggests that the statutory licence model is efficient when compared with other content distribution systems. This is particularly significant given that the rationale for the creation of Screenrights licence was the market failure i.e. transaction costs being greater than the value of the transaction. The statutory licence has converted a failed market where transaction costs were greater than the value of the transaction, to a highly efficient market where the transaction costs are considerably lower than alternative distribution models..

### **Adaptability**

27. A key strength of Part VA is that it is drafted in largely technology neutral terms. This has allowed the licence to adapt to new technologies without much legislative amendment. For example, the Act does not define in what form a copy may be made. As a result, with changes in technology, educational copying licensed under Part VA has moved from magnetic video tape to laser discs to computer hard drives without the need to reform the Act.
28. Technological neutrality was reinforced in 2000 with the widespread amendment to the Act to create the right of communication which was designed to cover new media uses such as the internet. Parliament recognised that having created the new wider form of copyright protection, it was also necessary to widen the exceptions, including the statutory licence in Part VA. This has allowed the Screenrights licence to adapt to new communications including licensing educational institutions to make copies of programs available to their staff and students over the internet which is now the mainstay of use under the licence.
29. Likewise, in 2006 further reform occurred to ensure that educational copying from a free-to-air broadcaster's online provision of its broadcast content would fall within the scope of the Part VA statutory licence.
30. Screenrights broad position is that the inclusion of more linear audio-visual internet communications within Part VA in would improve the adaptability of the licence and be consistent with the principle espoused in the Commission's Discussion Paper. This view is shared to some extent by educational users. Therefore, a simplification proposal (discussed below) put forward jointly by Copyright Agency, Screenrights, school, TAFE and university peak bodies has suggested that a simplified educational statutory licence should also include any: 'communication by electronic transmission using the internet of the content of a broadcast at, or at substantially, the same time of the broadcast'.

## Accountability

### *Accountability of copyright reform proposals*

31. In regard to the question of accountability of copyright law generally, Screenrights is concerned that the debate on copyright law reform in Australia has not been evidence based. In particular, the arguments for reform appear to have assumed the benefits of change without demonstrating evidence of where such change has achieved those benefits.
32. It is especially notable that the ALRC failed to base its consideration of copyright on empirical evidence. Indeed the ALRC seemed to give up on examining the evidence concluding that *“given the impossibility of obtaining empirical research informing most aspects of copyright reform, it is appropriate to adopt a hypothesis-driven approach.”*<sup>6</sup> Seemingly from this basis the ALRC then goes on to wave away concerns of costs that may arise from its proposed reform considering that *“there will be minimal free riding from the recommendations in this Report, and the micro-economic changes envisaged will encourage innovation and creation of copyright material, without harm to the interests of copyright owners.”*<sup>7</sup>
33. Screenrights submits that this inability to identify an empirical case for the reform, the subsequent leap to a hypothesis-driven approach, and the consequent disregard for weighing both the costs and benefits of reform combine to undermine many of the ALRC’s recommendations pertaining to copyright exceptions.
34. Screenrights submits that it is incumbent on proponents of reform to present the empirical evidence to support their proposals and subject that evidence to review. The ALRC did not attempt to do so, and this approach is shared by many of the submissions to the ALRC in support of fair use or widened fair dealing.
35. Such submissions seem typically to correlate high levels of innovation in the United States with their fair use copyright regime without proving any causation. While acknowledging the importance of intellectual property law, no causal link was found by the Hargreaves Review in the UK which examined this issue. The Review concluded instead that cultural and geographic factors were more significant than intellectual property law in the US.<sup>8</sup>
36. By contrast, the economic contribution of the creative industries is well established. A Pricewaterhouse Coopers report found that in 2014 the core

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<sup>6</sup> ALRC Report on *Copyright and the Digital Economy*, para 3.120 p79.

<sup>7</sup> Ibid., para 3.121.

<sup>8</sup> *Digital Opportunity: A Review of Intellectual Property and Growth* para 5.17 p 45.

copyright industries contributed \$7.4billion to the Australian economy representing 4.7% of GDP and employing more than 600,000 people.<sup>9</sup>

#### *Accountability of statutory licences*

37. In regard to the particular operation of the provisions in the Copyright Act which it administers, Screenrights submits that the accountability of the statutory licences is very high.
38. Rightly and properly, declared collecting societies such as Screenrights have high governance requirements. These provisions are in addition to the regular governance provisions of corporate law.
  - Screenrights is accountable to Parliament and must present its Annual Report each year to the Parliament – copies of Screenrights recent Annual Reports are available at: <https://www.screenrights.org/about-us/corporate/publications>.
  - Screenrights operates in accordance with Guidelines published by the Commonwealth Attorney-General's Department which establish additional requirements for declared collecting societies.
  - The NSW Supreme Court has confirmed that Screenrights operates as a trustee and is governed by trust provisions which have high standards of probity and governance.
  - Screenrights is party to and abides by a voluntary industry Code of Conduct for collecting societies which is reviewed regularly by an independent Code Reviewer, currently former Federal Court Justice, Dr Kevin Lindgren AM QC.
39. Ultimately, Screenrights' declaration is at the discretion of the relevant Commonwealth Minister or, in the case of Part VII, Div 2 (the government copying licence) the Copyright Tribunal of Australia. Were Screenrights to fail in its duty to administer the statutory licences properly its relevant declaration could be revoked by either the Commonwealth Government or the Copyright Tribunal.

#### *Conclusion*

40. The collective statutory licences administered by Screenrights adhere to the principles proposed by the Commission.

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<sup>9</sup> <http://copyright.com.au/wp-content/uploads/2015/08/PWCReport-EconomicContribution-AustraliaCopyright-Industries.pdf>

41. By comparison, the ALRC's proposals fail to provide evidence of the additional innovation which is merely assumed to be generated by fair use; replace an efficient licensing system with an uncertain, potentially inefficient alternative; are only adaptable to the extent that a court finds a particular use falls within the bounds of the provision; and, are unsupported by economic evidence.

## **COPYRIGHT SPECIFIC QUESTIONS**

*To what extent does copyright encourage additional creative works, and does the current law remain 'fit for purpose'? Does the 'one size fits all' approach to copyright risk poorly targeting the creation of additional works the system is designed to incentivise?*

42. As outlined above, Screenrights submits that the educational statutory licence contributes to substantial additional creative works, through the production of additional programs for broadcast, the production of study guides and other support material to assist educational institutions in using programs, and through innovation in the delivery of the content to educational institutions.
43. To the extent that there is a question as to whether the provisions remain fit for purpose, Screenrights submits that where the provisions are not technology neutral over time they can lose their applicability and utility
44. The Issues Paper's makes reference to a "one size fits all" approach. It is unclear what exactly this is directed to. If it asks whether different terms of protection should be tailored to offer varying levels of incentive to different copyright-dependent industries – such as a very short term for software and a much longer term for major motion pictures – Screenrights simply makes the observation that treaty obligations constrain legislative choices here. In particular the Australia-US Free Trade Agreement obliges Australian law to afford particular types of subject matter terms of protection that go beyond the Berne Convention norm.

*Are the protections afforded under copyright proportional to the efforts of creators? Are there options for a 'graduated' approach to copyright that better targets the creation of additional works?*

45. The question of proportionality here is a slightly odd one. In view of treaty obligations, copyright protection and rights are conferred without any legislative or judicial assessment of 'effort'. The amateur short film and the professionally produced major motion picture are each afforded the same term of protection, and the same set of exclusive rights. Whether or not any subject matter garners a paying public is a quite separate question and one

that may be related to the quantum of 'effort' invested, together with a host of other factors.

46. It might be observed that questions of proportionality of protection arises in relation to the exploitation of copyright. Australian law has for many decades adopted a four-way division: (1) uses that attract full copyright liability and require permission from rightsholders to be lawful; (2) uses fall within some modified copyright liability and merely require payment of the appropriate amount to a collecting society to be lawful; (3) uses that fall within a free exception and require neither permission nor payment; (4) uses that fall completely outside the exclusive rights of copyright (such as merely reading or merely reuse of a work's broad ideas) or which are insubstantial (such as a single still image from a major motion picture).

*Is licensing copyright-protected works too difficult and/or costly? What role can/do copyright collecting agencies play in reducing transaction costs? How effective are new approaches, such as the United Kingdom's Copyright Hub in enabling value realisation to copyright holders?*

47. Screenrights notes that in recent years there has been an enormous increase in the availability of licensed audio-visual material through new media. The impact of subscription video on demand services such as Netflix has been extraordinary with a very fast growth in subscribing households. Even more dramatic outcomes have been seen in other copyright industries such as music. These new services are at a substantially lower cost to consumers than arises from the distribution of physical media. The proliferation of these new services evidence that licensing copyright protected works is neither too difficult nor too costly.
48. Collecting societies are highly efficient means of licensing with transaction costs significantly lower even than best practice mainstream markets. Importantly, such collective administration operates in markets that otherwise can not function as the individual transaction costs exceed the value of the transaction.
49. Screenrights is taking an active interest in the development of the Copyright Hub in the UK, and is supportive exploring a similar innovation through partnerships in Australia.

*Are moral rights necessary, or do they duplicate protections already provided elsewhere (such as in prohibitions on misleading and deceptive conduct)? What is the economic impact of providing moral rights?*

50. Screenrights makes no comment except to note that Australian is obliged, as a party to the *Berne Convention*, to give effect to its obligations under Berne Article 6 *bis*.

*What have been the impacts of the recent changes to Australia's copyright regime? Is there evidence to suggest Australia's copyright system is now efficient and effective?*

51. The most significant impact was the creation of the right of communication in 2000 to update the Copyright Act to new media particularly the internet. The reform was driven by a need to clarify and simplify the copyright position in regard to communications via the internet to the benefit of copyright owners and users. The reform was accompanied by lengthy and extensive consultation with stakeholders and reviews conducted over several years. A primary goal of the process was to ensure balance in the outcome for the competing interests of the parties.
52. Part of that balance was the extension of existing exceptions to cover communication, including the Screenrights educational licence in Part VA.
53. This reform of Part VA has ensured that the provision continues to be highly responsive to technological change allowing it to support new means of delivering content for educational institutions. The proof of the effectiveness of this reform is that the overwhelming majority of use of Screenrights licensed content in educational institutions today is as a result of the communication coverage.
54. More recently, the 2006 amendments to the Copyright Act created new free exceptions to copyright including a new fair dealing for parody and satire and new gap-filling free exceptions in section 200AB. This is an example of recent reform which has created new free exceptions to ensure balanced access to copyright subject matter. Section 200AB evidences that Australian copyright exceptions are neither inflexible nor closed.

*What should be considered when assessing prospective changes to copyright, and what data can be drawn on to make such an assessment?*

55. The ALRC enquiry demonstrated the paucity of economic evidence in support of change of Australia's copyright regime. While there is significant evidence of the economic contribution of the creative industries, there seems very little economic evidence demonstrating the purported relationship between fair use and innovation. Screenrights submits that this absence, and the ALRC's assessment that such evidence was unavailable, somewhat undermines the conclusions of the Report.
56. For example, one approach might be to observe that source educational licensing of audio-visual content (i.e. provision to schools and universities by rightsholders prior to or outside any statutory licence) 'prices in' the licence fee as a market rate. When that content is broadcast on general television that educational licence fee is not priced in. If educational users sought to

obtain licences for much of that matter, it is likely that prohibitive transactional costs would be imposed.

57. The Part VA statutory licence permits educational institutions to elect to 'price in' on a per student basis an educational licence fee for a vast amount of broadcast content. Therefore, the introduction of Part VA in 1990 can be seen to confer three clear economic benefits on Australia:
- i. The economic benefits that arise to the Australian education sector from the use of content that without Part VA would not have been available for lawful use;
  - ii. The direct economic benefits to the Australian film sector from appropriating value from content that has educational value; and
  - iii. The dynamic economic benefits which flow from that appropriated value (at ii) being invested into the production of fresh Australian content – such as the example given above relating to *Redfern Now*.

It is notable that the ALRC made no attempt to assess, when recommending that a new education fair use exception should override the Part VA statutory licence, what economic harm that reform might inflict by reducing benefits such as those described at (ii) and (iii).

*How should the balance be struck between creators and consumers in the digital era? What role can fair dealing and/or fair use provisions play in striking a better balance?*

58. Screenrights submits that there is no fundamental difference in striking the balance between creators and consumers merely because of content being digitised. Professional creators want consumer engagement; consumers want fresh and engaging content; professional creators require payment from some source; in a market economy appropriation of value from consumer demand with minimal transaction cost is regarded as an efficient and optimal means of payment.
59. Digital media create new and different potential uses for content, which may not be currently licensed or covered by an exception. However, digital delivery also provides new means of licensing content which makes for more efficient markets thus facilitating those new uses. This has created new licensing models such as licensed free uses via Creative Commons and licensed paid uses including the new online subscription services which are becoming commonplace in Australia.
60. Therefore, in view of the above Screenrights submits that:
- the increasing prevalence of digital media means that it is important to ensure the technological neutrality of the provisions in the Act;

- changes to the existing fair dealing regime are not justified merely on the basis that content and the delivery of content are becoming digitised; and,
  - the current fair dealing regime offers significant advantages as compared with a putative replacement fair use system, and in particular, the certainty provided by fair dealing compares very favourably with the uncertainty of fair use.
61. For the purposes of the ALRC enquiry, the Kernochan Center for Law, Media and the Arts at Columbia University School of Law conducted a review of the US fair use provisions in the light of a proposed fair use system in Australia. They found that the application of the fair use system in the US was often difficult to predict in advance and that frequently cases had had conflicting results at each level of the US courts right up to the Supreme Court.<sup>12</sup>
62. Furthermore they found that the uncertainty was exacerbated as it could not be assumed that US jurisprudence would be or could be translated to the Australian content and that the US system itself was something of a “moving target”.
63. By comparison, Australia has developed an extensive body of jurisprudence to explain and clarify the operation of the existing fair dealing system and its relationship with the mature remunerated exceptions such as Part VA. This has been developed over decades of jurisprudence and incremental reform. Its replacement with the uncertainty of US-style fair use would depreciate if not entirely eliminate the economic value of this extensive body of settled law.

*Are copyright exemptions sufficiently clear to give users certainty about whether they are likely to infringe the rights of creators? Does the degree of certainty vary for businesses relative to individual users?*

64. As stated above, Australian users and copyright owners benefit from an extensive history of testing the scope and boundaries of the existing provisions.
65. A unique aspect of the Australian system is its reliance on statutory licences. These remunerated exceptions go far beyond any uses covered by fair dealing or fair use. For example, in the United States, the guidelines relating to the use of broadcast material by educational institutions are far more restrictive than the uses covered by Part VA in Australia.

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<sup>12</sup> Kernochan Center for Law, Media and the Arts at Columbia University School of Law, *Copyright Exceptions in the United States for Educational Uses of Copyrighted Works*. Annexed as Attachment A

66. A key benefit of statutory licences is that they provide very certain and reliable access to content.
67. In terms of the relative certainty between businesses and individuals, the statutory licences apply to institutions not individuals. These institutions are able to rely on the certainty of the licence provisions, and also have the resources to properly interrogate and interpret the provisions.
68. Unavoidably, copyright interpretation can involve specialist legal consideration in relation to new uses of material. This is true irrespective of whether a system employs a fair use or fair dealing system. For the reasons given above, the current fair dealing system is significantly clearer and more certain than any imported US-style fair use system.

*To be efficient and effective in the modern era, what (if any) changes should be made to Australia's copyright regime?*

69. Screenrights submits that overall the Australian copyright regime is operating efficiently and reliably consistent with the principles outlined in the Discussion Paper. While refinements are always desirable, without a case for reform which is broadly accepted by the disparate stakeholders, railroading US-style fair use would be change for the sake of change. Rather than evidence-based reform, such reform would be faith-based.
70. In Screenrights' experience, by and large the statutory licences that it administers adhere closely to the principles for an intellectual property system espoused by the Productivity Commission. That said, Screenrights readily accepts that there are a number of refinements that can be made to the existing statutory licences which it administers to make them more technologically neutral and improve their utility in the modern era.
71. Screenrights notes that in conjunction with another declared society, Copyright Agency, and representatives of the educational sector, agreement has been reached to simplify the statutory educational licences in Parts VA and VB. Screenrights submits that such cooperative proposals are a superior means of reform in this sector given the highly specialised nature of the law, and submits that promoting such an approach is most productive to the reform process. Screenrights would like to commend the government for its support and encouragement for all parties in the simplification process.