

31 January 2007

Mr John Laughlin  
Transport & Prices Oversight Branch  
Australian Competition and Consumer Commission  
GPO Box 520  
Melbourne VIC 3001

**By e-mail and post**

Dear Mr Laughlin

**Re: Draft publication - Copyright Licensing and Collecting Societies: A Guide for Licensees**

Thank you for the opportunity to comment on the above draft publication.

1. Screenrights is a non-profit copyright collecting society for rights holders in film, script, music, sound recordings of music and artistic works in film, television and radio programs. Screenrights administers copyright royalties collected under provisions in the Australian and New Zealand Copyright Acts.
2. Screenrights has been declared by the Attorney-General to collect educational royalties under Part VA and VB of the Copyright Act and has been declared by the Copyright Tribunal to collect royalties for government copying under s183 of the Copyright Act. Screenrights has also been declared by the Attorney-General to collect equitable remuneration under Part VC of the Copyright Act in respect of the retransmission of free to air broadcasts by pay television providers.
3. As a declared society, our operations are overseen by the Attorney-General who tables our Annual Report. Screenrights also adheres to the voluntary Code of Conduct for Collecting Societies. If the Commission would like to know more about these aspects of our operations I would invite them to visit our website, [www.screen.org](http://www.screen.org).

**Nature of the Guide**

4. Firstly, it is unclear as to the precise nature of the "guide" and the intended audience for the guide. If this is to provide information to licensees and potential licensees, this type of information is already available on each of the collecting societies websites and in various fact sheet publications, which are issued by the respective societies.
5. Indeed the voluntary Code of Conduct for collecting societies, to which all of the collecting societies listed in the guide subscribe, requires the collecting societies to make this information available to licensees and potential licensees.
6. The distinction made in the guide between statutory licenses, administered by declared collecting societies and voluntary licences, which are not created or regulated by statute requires clarification. The distinction should be made clear to licenses/potential licensees, and the fact that the guide is intended to apply to both forms of licences. Further comments will be made under Chapter 4.
7. As a general comment, in respect of the language used in the guide (eg references to monopolistic behaviour, misuse of market power etc) Screenrights submits that it would be more helpful and balanced if the guide could be expressed in neutral language and that it gave equal prominence to the benefits of collective rights administration and collecting societies in general.
8. Further some of the language referred to above such as "inefficient use of resources", "reduction of the overall welfare of society" is commonly used in economic theory and may be misleading to licensees or potential licensees who may not be skilled in economic theory.
9. Additionally, the examples used in the document (medical clinic as licensee) to illustrate various points in relation to collecting societies are exclusively based on the public performance of musical works and sound recordings, which are rights administered by APRA and PPCA respectively. It would be more representative for the intended audience to use a range of examples, illustrating different classes of works and subject matter, eg music, sound recordings, cinematograph films, literary and dramatic works, visual art etc.

#### **Specific comments**

#### **Chapter 2 - Copyright Protection in Australia**

10. The reference on page 8 to "*narrow statutory exceptions to copyright infringement under the Copyright Act, including educational use..*" should be qualified by reference to the 2006 amendments to the Copyright Act to reflect the fact that these exceptions only apply if certain conditions are met: where they amount to a special case; do not conflict with a normal exploitation of the work ; do not unreasonably prejudice the legitimate interests of the copyright owner and they do not apply if another exception or statutory licence applies to the use( eg the statutory licences under Parts VA and VB of the Copyright Act).

### **Chapter 3 - Copyright Collecting Societies**

#### **Code of Conduct**

11. It should be noted that since its inception, the Code Reviewer has found no issues with the compliance by the collecting societies with the Code.
12. In his latest report, dated 27 November 2006 on compliance with the Code for the Year 1 July 2005 to 30 June 2006, the Code Reviewer notes that despite a wide opportunity to make submissions to the Code Reviewer, only one submission was received, which was found to be without foundation.

The Code Reviewer notes the following:

*"The very fact that it (the Code) has been kept before the staff of the societies, not merely through induction courses, but in regular conferences and daily practice, on their websites, and as the subject of specific records, tends over time to create and reinforce attitudes consistent with the aims of the Code... That they have shown themselves committed to it during the period under review is the most important and promising conclusion of this report..."*

### **Chapter 5 - Resolving Disputes with Collecting Societies**

14. Screenrights, consistent with its obligations under the Code has a complaints handling and dispute resolution policy, which is published on its website at the following address:  
[http:// www.screen.org/policies/ADRM0205.pdf](http://www.screen.org/policies/ADRM0205.pdf). It would be helpful to include a reference to the URL in the guide.

### **Chapter 6 -The Tribunal**

15. Again, by way of balance it should be noted that Tribunal proceedings are expensive and lengthy for collecting societies also. Collecting societies therefore do not invoke the jurisdiction of the Tribunal lightly, but only in circumstances where there has been a failure to reach agreement with the licensees in question.
16. In the second paragraph it may be helpful to also note that whilst the Tribunal isn't bound by the rules of evidence it is guided by them as a matter of practice.

#### **Chapter 7 - The Role of the ACCC**

17. On page 33, the ACCC's suggestions for collecting societies to make their input and output arrangements less anti-competitive are more a guide for the societies themselves than licensees or potential licensees so query the relevance of their inclusion in this guide.
18. Screenrights welcomes the opportunity to comment on the draft guide and any draft guidelines issued by the ACCC pursuant to section 157A of the Copyright Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Lake', written over a horizontal line.

Simon Lake  
Chief Executive