

**DRAFT RESPONSE TO ACCC EXPOSURE DRAFT MANDATORY NEWS
MEDIA BARGAINING CODE**

screenrights

Submission by Screenrights

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Screenrights is the trading name of Audio-Visual Copyright Society Limited
ABN 76 003 912 310 ADDRESS: Level 1, 140 Myrtle Street, Chippendale NSW 2008, Australia
WEBSITE: www.screenrights.org
POSTAL: PO Box 853, Broadway NSW 2007 Australia
FreePhone: 0800 44 2348

ABOUT US

Audio-Visual Copyright Society Limited trading as Screenrights is a not for profit copyright collecting society representing rightsholders in film, television and radio programs. Screenrights has over 4277 members in 66 countries world-wide covering a wide spectrum of copyright owners including broadcasters, producers, writers, music copyright owners and creators of artistic works. Many of our members are engaged in news media which is the subject of this consultation.

Screenrights is the declared collecting society under the *Copyright Act 1968 (Cth)* (the Act) that administers statutory licences for educational copying and communication of broadcasts under Part IVA Division 4 of the Act, retransmission of free to air broadcasts under Part VC of the Act and government copying in respect of television, radio and internet broadcasts under s183 of the Act.

The statutory licences operate as remunerated exceptions to copyright. Screenrights' experience in administering statutory licences for thirty years gives us a unique perspective on the operation of blanket licences and rate setting.

Screenrights' subsidiary EnhanceTV Pty Limited operates EnhanceTV, a video-on-demand service for educational institutions with a Screenrights licence to access broadcast content for teaching purposes.

In New Zealand, Screenrights also supplies an educational copyright licensing scheme for "communication works" under New Zealand copyright law, which is platform neutral in that it includes broadcasts and transmissions over the Internet.

INTRODUCTION

We are grateful to the ACCC for the opportunity to participate in the consultation process. Our focus in this submission is our membership who are part of the "news media" in Australia: broadcasters and makers of factual audio-visual content.

We refer to our earlier submission in response to the ACCC's Concepts Paper. Rather than restate our earlier submission, we propose instead to confine our comments to four matters:

- The scope of Covered New Content;
- The scope of news media businesses covered by the Exposure Draft Code;
- The exclusion of the ABC and SBS from receiving remuneration under the Exposure Draft Code; and
- Addressing some submissions made by other stakeholders in responses to the Concepts Paper.

1. Scope of Covered News Content

We understand that the policy rationale for the Code is to ensure an appropriate commercial framework for the production of news content for Australian audiences.

The Exposure Draft Code sets out definitions of Core News Content and Covered News Content. Clause 1.67 of the Explanatory Memorandum states that documentaries are intended to be excluded from Covered News Content. We are concerned that this exclusion:

- a. is not in keeping with the policy rationale for the Code;
- b. treats print content differently from audio-visual content, given for example, that opinion pieces are intended to be included in the definition of Core News Content (clause 1.53 Explanatory Memorandum);
- c. is likely to create uncertainty. For example, does it mean that a feature on *60 Minutes* or *Four Corners* would be excluded and that only subsequent media reaction would be covered in the definition? How is a docuseries to be treated? Such an outcome does not seem consistent with the policy intention of the legislation.

In our view, this definition of Covered News Content needs to accommodate documentaries. An attempt to confine the content in the Explanatory Memorandum beyond that which falls within the plain meaning of the definition in the Bill will only create more uncertainty and undermine the operation of the scheme.

2. Scope of News Media Businesses

Consistent with our previous submission, Screenrights is of the view that the Code should enable all creators of news content to be fairly remunerated.

While the focus of the Exposure Draft Code appears to be news publishers and distributors, on our reading of the Exposure Draft Code, there seems to be nothing to exclude the registration of other entities as a New Business. For example, an independent film producer could be eligible for registration as a News Business providing they met the requirements set out in s.52E. In our view this is appropriate and should be made explicit in the legislation.

In addition, we are of the view that the legislation should specifically provide for underlying rights holders in a News Source to share in any remuneration under the Code. Under s.52E(1)(B) of the Exposure Draft Code, multiple News Media Business registrations cannot exist in relation to the same News Source. This would therefore preclude a producer and broadcaster both being registered in respect of the same program. Providing for revenue sharing would overcome any potential inequities resulting from this and would also help serve the policy goals of the Code in incentivising the creation of Australian news content.

We note that this approach is consistent with the approach in the European Union where Article 15(5) of the Digital Single Market Directive expressly provides for

underlying rights holders to receive a share of the revenue received by a press publisher under the new press publisher's right.

3. Exclusion ABC and SBS

We are concerned by the proposal to exclude the ABC and the SBS from the remuneration provisions of the Code. This is for both practical and policy reasons.

A large part of both the ABC and SBS' operations is focused on news. Therefore, excluding them from the remuneration provisions of the Code is likely to distort its operation. While we note that the Exposure Draft Code includes non-discrimination provisions, we are concerned that they will not be adequate to overcome this distortion. Such provisions are notoriously difficult to enforce.

Secondly, while we acknowledge that neither the ABC or the SBS rely predominantly on advertising revenue as part of their business model, we fail to see why the Australian tax payer should continue to subsidise the operations of digital platforms such as Google and Facebook.

4. Addressing some submissions made by stakeholders

Finally, we note that both the Australian Digital Alliance and the Copyright Advisory Group of the COAG Education Council both raised issues in relation to the governance of Australian copyright collecting societies as part of their submissions in response to the Concepts Paper.

To the extent that these submissions are relevant to the current process, we note that the Bureau of Communications and Arts Research conducted a detailed review of the Copyright Collecting Societies Voluntary Code of Conduct, the results of which were published in 2018. All of the recommendations of that review have now been implemented.

CONCLUSION

In conclusion, Screenrights supports a Code that facilitates the appropriate remuneration of all news media businesses for the use of news content on digital platforms.

Please don't hesitate to contact us if we can be of further assistance.

James Dickinson
Chief Executive

Email: james@screenrights.org