



The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

— 9 August 2013

Dear Ms Wynn

Please find attached Screen Australia's submission to the Australian Law Reform Commission's Discussion Paper on Copyright and the Digital Economy. We appreciate the ALRC's flexibility in accepting this late submission.

Please do not hesitate to contact Georgie McClean, Manager, Strategy and Research on 02 8113 1004 / georgie.mcclean@screenaustralia.gov.au, should the Commission wish to discuss our submission in further detail.

Thank you for the opportunity to provide comment on the Discussion Paper.

Yours sincerely,

A handwritten signature in black ink, appearing to be "Fiona Cameron".

Fiona Cameron
Chief Operating Officer



Screen Australia submission to the ALRC Copyright Review

Screen Australia is the Commonwealth Government screen agency responsible for the Australian screen production industry. We provide support to Australian film, television, documentary and digital media makers. Screen Australia welcomes the opportunity to comment on the ALRC's Copyright and the Digital Economy Discussion Paper.

The media landscape continues to undergo many changes with the converging of media forms and multiplying of distribution platforms. These are transforming the way we access content. As audience behaviours evolve and new business models emerge, it is essential to ensure that Australia's copyright framework strikes an appropriate balance between the rights of copyright holders and creators and the rights of consumers.

Copyright legislation fosters the creation of intellectual property. It provides the framework through which screen content is financed and produced by enabling content producers to monetise their IP and raise finance. Royalty payments generated by copyright legislation are an important additional income source to not only content producers but also other investors in the production, such as the broadcasters. The promise of a return on investment is a strong incentive for broadcasters and financiers to invest in new content, enabling the producer to share the risk and incentivise the making of new content. It also encourages producers and broadcasters to develop strategies to extend the use and impact of new content in a range of contexts. Furthermore, the current framework provides certainty for content consumers and creators. It ensures that the content producer retains control but still allows consumers reasonable freedoms for content use.

As such, the current financing framework supporting the Australian screen industry rests upon several important aspects of the copyright regime, without which there may be considerably less investment in Australian content. Some of the ALRC's proposed changes to legislation therefore have the potential to significantly undermine the ability of the screen industry to maintain viable businesses. This in turn reduces the amount of Australian content available to Australian audiences.

Under the *Screen Australia Act 2008*, Screen Australia is required to support and promote development of a commercially sustainable Australian screen production industry. As a result, Screen Australia supports the regulatory levers that contribute to the ongoing viability of the sector. One such lever is the current statutory licensing scheme, which contributes heavily to

the financing of the Australian production sector and which the ALRC proposes replacing with a voluntary scheme. This particularly impacts upon the Australian documentary sector, as explored in the following section.

Documentary Case Study

The current education statutory license benefits both content creators, particularly documentary producers, and educational institutions. It directly contributes to the sustainability of the documentary production sector through the additional income source. It also provides much needed certainty for educators who can then use copyright content as support material in classrooms.

In 2011/12 Screenrights collected \$29.7 million in education royalties for distribution to content creators.¹ According to Screenrights, Australian documentary content covering Australian history and contemporary issues attracts the largest share of education royalties. Australian documentary producers regard the Screenrights' royalties as '*important to the ongoing viability of their business, and close to 20 per cent said this money was essential*'.²

A sustainable local documentary production sector is crucial for the ongoing creation of high quality non-fiction content that is relevant and engaging for Australian audiences overall and particularly students. Two such productions that have had exceptional success in the educational sector are *First Australians*, produced by Blackfella Films and broadcast on SBS, and *Addicted to Money*, produced by Electric Pictures and broadcast on the ABC. Blackfella Films is a small Indigenous-led production company based in Sydney with a diverse slate of features, factual and drama. Electric Pictures is a Perth-based mid-sized independent production company specialising in documentary. Whilst the royalties generated by these productions may not be representative of the returns to all documentaries, they demonstrate the potential returns to production companies.

¹ <<http://www.screenrights.org/news/2013/03/content-and-circumstance-affect-education-royalties>>
4 March 2013

² *Copyright and The Digital Economy Issues Paper*, submission by Screenrights
<http://www.alrc.gov.au/sites/default/files/subs/215._org_screenrights.pdf>, p32, 30 November 2012

Blackfella Films' *First Australians* is a seven part series first broadcast by SBS in October 2008. It recounts the beginnings of modern Australia from 1788 up until the Mabo decision in 1993 from the perspective of Indigenous Australians. Since first being screened on television five years ago, it has generated over \$1 million in Screenrights income from the educational sector.* These returns have contributed substantially to the sustainability of the production company and have allowed the producers to reinvest in new content.

Supporting content for *First Australians* to complement educational use included an interactive website from which audiences could stream the extended first episode free of charge, participate in discussions and download podcasts, an ATOM (Australian Teachers of Media) study guide and an accompanying book published by Melbourne University Press. SBS made an unprecedented investment in the website, which remains the most significant investment the broadcaster has made in online extensions for any type of program.

Electric Pictures' *Addicted to Money* was a three part series first broadcast on the ABC in November 2009. It offers a viewers an engaging commentary on what caused the global financial crisis and what might lie ahead, crossing the world from Europe to Iceland to China, the US, Australia and Latin America. The production received over \$200,000 in screen rights of which a significant portion was returned to Electric Pictures. This income was reinvested in the development of new ideas for content and assisted to cash flow the Producer Offset on other productions.

Electric Pictures has said that they have a genuine interest in ensuring that their productions are of real value to audiences beyond their initial broadcast and royalties paid through Screenrights demonstrate a program's success with audiences. The additional income provides financial stability for the company, enabling them to remain engaged with the market value of their back catalogue as well as continue to develop new content.

* <http://www.screenrights.org/news/2013/07/first-australians-has-earned-more-than-1m-in-education-royalties>

In the case of content covered under statutory licences, 80 per cent of this content was invested in by the public broadcasters ABC and SBS.³ For example, whilst a large portion of royalties paid for *First Australians* would have gone to the producer, a portion would have also gone to SBS. This income would have contributed to costs incurred as well as been reinvested in SBS' production slate.

Royalty returns also are an incentive for broadcasters to invest in education through appropriate outreach initiatives, thus adding to the public value of the content. SBS now invests

³ <<http://www.screenrights.org/news/2013/03/content-and-circumstance-affect-education-royalties>>, 4 March 2013

in partnership outreach activities, many of them related to educational uses, for key documentary commissions. The ABC extends the public value of its commissioned content in a range of ways, including through their educational web portal 'Splash' and by regularly informing schools of new titles. The ABC, SBS and Screen Australia have identified educational uses of Australian screen content as an area of interest, partnering with Queensland University of Technology in an industry linkage research project recently funded by the Australian Research Council entitled '*Australian Screen Content in Primary, Secondary and Tertiary Education: Uses and Potential*'.

Ultimately, should broadcasters be left with a significant reduction in returns on their investment, they will be less likely to invest in new content. With regard to the public broadcasters, who invest most heavily in documentary content, this may lead to calls for increased government support to cover funding shortfalls to invest in the ongoing production of a diverse documentary slate that also serves the education sector.

Similarly, production businesses affected by the repealing of statutory licences through the loss of income will increase their calls on government funding support. There is also potential for business closures which will reduce the capacity of the Australian documentary production sector to meet the diverse requirements of Australian audiences.

Beyond the benefit of statutory licences to documentary producers and investors, educators also benefit from the certainty and consistency that the licensing scheme provides. It enables teachers to copy and screen broadcast content with the certainty that they are not infringing copyright and at a consistent price. The current scheme ensures that content creators do not have to police the use of their content by educational institutions and that institutions do not have the administrative burden of clearing rights.

The proposed voluntary licensing scheme will remove the certainty provided by the current system and increase the legal burden on educational institutions and content producers. It could create a situation where individual negotiation, as well as the detection and prosecution of infringement, increases legal processes and costs and where the boundaries of the legislation need to be tested case-by-case in court. However, Screen Australia does recognise that there may be a need to amend the statutory license to account for the nature of copying, storage and transmission of audiovisual content in the digital environment.

Ensuring the ongoing creation of content for Australian audiences

A sustainable local production sector is critical for serving the needs of local audiences. A 2011 Screen Australia / Auspoll survey revealed that 91 per cent of Australians believe it's important that the country has a local film and television industry that creates Australian stories. This was followed by recognition of the employment opportunities that the industry brings, as well as ensuring that Australia's stories and history are recorded.

The importance of Australian screen content for Australian audiences was confirmed by qualitative research commissioned by Screen Australia in 2013 into how Australians engage with local content and the cultural value they ascribe to it. The study found that Australians appreciate that Australian screen stories are distinct from the content produced elsewhere and that they contribute to our sense of national identity and cultural values. The educative role of local screen stories (particularly in relation to Indigenous Australia) was also emphasised.

It is therefore critical that there remains a strong support base for the creation of Australian content and the copyright system and related rights structure will continue to contribute heavily to this base. Screen Australia recognises that the multiplying of distribution platforms is potentially outpacing the rigid rights structure legislated for in the Copyright Act and that there is an opportunity to revise these. Ultimately however, this should not undermine the need for appropriate benefits to be returned to copyright holders through any changes to the *Copyright Act 1968*. This will ensure the ongoing creation of new work.