

Screenrights is a non-profit company which administers copyright licences in Australia and New Zealand and collects similar royalties from Europe and North America for its 2,500 members from 52 countries.

December 2006

Feature: New copyright laws and how they affect you

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As 2006 comes to an end, the Government has passed a host of amendments to the Australian Copyright Act, affecting both how we consume content, and the rights of content creators. In this issue of **Off the air**, we outline the changes that are expected to have an impact on the audiovisual industries.

Many of these changes are expected to come into force from 1 January 2007, although some will come into force from Royal Assent.

Extension of the educational copying provisions to cover podcasting

The changes to the law will allow schools, TAFEs, universities and other educational institutions to copy podcasts and vodcasts of broadcast content under their Screenrights licences. Until now, this was not covered by the educational copying provisions in the Act. The new provisions allow greater access to educational resources while providing payment to the creators of this material.

Time shifting: recording from TV and radio for later use

The legislation allows people to copy TV and radio to replay it at a more convenient time. The copy can be watched by members of the household but cannot be sold or lent to other people.

Space and format shifting: copying for private use

The legislation allows people who own authorised copies of certain types of material to copy that material so that it can be played on another device owned by that person. This includes reproducing sound recordings of music in the same or different format (eg transferring CDs to iPods). In the case of film, however, the provisions only allow for analogue copies of films to be copied into digital format, so, for example a VHS tape of a movie could be copied onto a DVD. There is no provision that allows for reproducing digital copies of audiovisual material. This means a consumer could not, for example, make a copy of a DVD onto a portable player.

A new flexible exception for libraries, archives and educational institutions

The legislation also contains a new "flexible" exception that allows libraries, archives and educational institutions to use copyright material, including audiovisual material if:

- it's a special case;
- the use doesn't conflict with a normal exploitation of the work
- the use doesn't unreasonably prejudice the legitimate interests of the copyright owner or licensee
- the use isn't made partly for the purpose of the body obtaining a commercial advantage;
- it is for maintaining or operating a library or archive, or for the purpose of giving educational instruction.

This exception is in addition to the existing exceptions for libraries and educational institutions. In other words if an educational institution could rely on the current copying or communication licence with Screenrights, it cannot argue that the use falls within this new exception.

A new flexible exception for people with disabilities

The legislation also contains similar provisions to those outlined above allowing people with a disability to copy material into another form or with a feature that reduces a difficulty he or she has in reading, viewing or hearing that material.

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A new fair dealing defence for parody or satire

There is also a new exception that allows for a fair dealing with a work for the purposes of either parody or satire. This provision does not affect a creator's right to take legal action if his or work is treated in a derogatory way under the moral rights provisions.

Enforcement provisions

The new legislation contains a number of provisions changing the way piracy and enforcement are dealt with under the Act. These include new offences for pay TV piracy; access to, and recovery, of profits made by pirates; increased penalties for criminal infringement, including where the infringement involves digitisation of copyright material; and new offences relating to substantial (albeit non-profitable) infringement on a commercial scale.

Copyright Tribunal jurisdiction

The Copyright Tribunal's jurisdiction has been extended to cover further aspects of the statutory licences. The changes give educational institutions, collecting societies and their members access to the Tribunal to determine questions on matters such as the keeping of educational copying records and the distribution of funds to copyright owners.

Technological Protection Measures (TPMs)

Copyright owners use TPMs to control how people have access to their work in digital form. The new legislation provides more extensive protection in relation to TPMs, giving copyright owners the ability to take legal action against someone who:

- circumvents an access-control;
- manufactures, imports, distributes, offers, provides or communicates a device to circumvent an access-control or a copy-control; or
- provides a service to circumvent and access-control or copy-control.

The legislation also provides certain exceptions (including exceptions for educational institutions and libraries) allowing for access controls to be circumvented for limited purposes.

Screenrights worked cooperatively with the Government and the education sector for legislation that recognises the need to balance fairness and certainty for copyright owners in audiovisual content, with the need for confident and easy access by the educators who teach with this material.

Further details of the legislation can be found at www.ag.gov.au

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Seasons greetings from everyone at Screenrights

During the last 12 months, Screenrights set new highs in collections for its members and distributed the largest amount of royalties in the company's history. Screenrights Chief Executive Simon Lake looks back on the year that was.

With excellent collection results and the establishment of new services, 2006 has been a busy and successful period for Screenrights. During this time, we:

- Announced Screenrights' highest ever total collections (\$22.75 million during the 2005/06 financial year) for members
- Collected our first retransmission royalties for distribution to members from July 2007
- Launched ISAN Australasia, a unique new identification system for audiovisual works aimed at improving efficiencies in data and rights management and in combating piracy (see www.australasia-isan.org)
- Expanded the link between our members and the educational sector through www.enhancetv.com.au, with the introduction of new means of delivering resources to teachers who use film and TV in the classroom
- Distributed more royalties than ever in the company's history (almost \$20 million was paid out to members in the 2005/06 financial year)
- Represented our members' views to the government in its consideration of proposed changes to the Copyright Act.

On behalf of everyone at Screenrights, we look forward to continuing to work for our members during 2007, and we would like to wish you a most enjoyable holiday season.

With best wishes



Simon Lake

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A message of peace, a ten year journey and a four wheel drive

When your car becomes a work of art in a museum, there's only one way to spend your Screenrights royalty cheque – and that's on a new vehicle.

Filmmakers Michael Butler and Michelle White spent ten years travelling around Australia in an ex army ambulance that was rebuilt "for peace", filming their journey in a two part documentary for Message Sticks called **4 Wheel Dreaming**.

Butler said that the original inspiration for the trip came when he was given a didgeridoo. He wanted to find the master maker, Djalu Gurruwiwi, and when he set out he did not know who he was or where he lived. Eventually he did find him, and along the way his car was painted by 250 Indigenous artists, turning it into a mobile work of art with a message of healing and peace.

The car now spends more time in museums than on the road and Butler is keen to get himself a new four wheel drive so that he can continue taking his message of peace to children, with plans to visit schools and talk about the journey during 2007.

Payment for the program is part of the first distribution round of educational copying royalties collected in 2006. Screenrights Member Services expects to distribute \$6 million by the end of the year.

Jim Butterworth from Incite Productions in Colorado also received payment for his first film, a documentary called **Seoul Train**, which looked at the devastating consequences of the famine in North Korea.

"These royalties will have a big impact on funding research and travel expenses for the next film," he said.

Code of Conduct Compliance Report

The Report of Review of copyright collecting societies' compliance with their Code of Conduct for the year 1 July 2005 to 30 June 2006 has been released, with the report stating that there had been good compliance generally with the Code.

The report is made by J. C. S. Burchett QC, as Code Reviewer carrying out an independent review of compliance with the Code adopted by the societies in 2002. This is the third annual report made by the Code Reviewer. A copy of the Code and the review can be accessed by visiting www.screenrights.org

ACCC copyright guidelines released for comment

The Australian Competition and Consumer Commission (ACCC) has released draft guidelines on copyright licensing and collecting societies, and is seeking comments from interested parties.

The guidelines follow recent amendments to the Copyright Act extending the jurisdiction of the Copyright Tribunal to cover aspects of collective licensing, with the Tribunal to have regard to ACCC guidelines when considering certain applications concerning voluntary licences.

The guidelines provide general information to users of copyright material on their rights and obligations under the Copyright Act. They are designed to assist users in negotiating licensing arrangements with copyright collecting societies.

A copy of the draft guidelines can be found at www.accc.gov.au, with submissions due by 31 January 2007.