

# **SUBMISSION TO THE COPYRIGHT LAW REVIEW COMMITTEE**

**In response to the Draft Report on Jurisdiction  
and Procedure of the Copyright Tribunal ("the Report")**

**Dated 3 March 2000**

## **1 INTRODUCTION**

- 1.1 Screenrights is a copyright collecting society representing the interests of copyright owners in audio-visual works including film producers, film distributors, script writers, visual artists and music copyright owners.
- 1.2 Screenrights is the declared society under section 135P of the *Copyright Act 1968* ("the Act") to administer the scheme in Part VA of the Act ("the Part VA Scheme"). The Part VA Scheme creates a statutory licence for the copying of radio and television transmissions by educational institutions.
- 1.3 The Committee is referred to the submissions made by Screenrights in July 1999 ("the July Submission").
- 1.4 This further submission has been prepared in response to some of the recommendations contained in the Report. Reference is made to the paragraph numbers of the Report in respect of which Screenrights is making submissions.

## **2 OUTPUT ARRANGEMENTS**

### **Paragraph 11.28**

- 2.1 The Committee recommends that "the current detailed requirements for record keeping under Parts VA and VB, and s. 47A be repealed, in favour of a provision that those details be left to the agreement of the parties, or failing that, by the Copyright Tribunal".
- 2.2 Screenrights agrees with the Committee's strategy of deregulation but submits that the provisions of sections 135K and 135L of the Act, together with the accompanying Regulations, should be retained in some form.

- 2.3 Screenrights strongly believes that the requirements set out in section 135K and regulation 23B of the Copyright Regulations relating to the marking of copies and the reporting of particulars of copying represent the minimum requirements for marking and record keeping necessary to administer the scheme and rejects any contention that the current provisions are inflexible or onerous. Screenrights needs to have the basic information required in section 135K and regulation 23B to effectively distribute royalties to relevant rights holders and could not agree to a system which did not facilitate the provision of that minimum level of information.
- 2.4 Screenrights is fully committed to a more streamlined approach with one administrative system in accordance with the Committee's recommendations, but anticipates a lengthy transitional period between the abolition of the present system, or the decision of a new institution to join the scheme, and the introduction of an agreed, or Tribunal determined, system. During that transitional period it is essential that some basic arrangements are in place to avoid the possibility that the scheme becomes unmanageable. In other words, there must be some system of notification as well as some minimum requirements which will apply automatically until they are augmented or varied by agreement or a Tribunal determination.
- 2.5 Screenrights believes that it will be necessary to retain a provision similar to the current section 135G(1), which refers to the service of a remuneration notice by an administering body. That notice provision should be subject to the provisions of section 135K. Screenrights notes that regulation 23B(1)(c) already makes provision for agreement between the parties.
- 2.6 Screenrights submits that the provisions relating to the inspection of records set out in section 135L are essential to the administration of the Part VA scheme and should be retained to apply to whatever scheme has been agreed between the parties. Screenrights strongly believes that a statutory right of inspection is essential to the efficient administration of the Part VA scheme, because agreement on this issue has been notoriously difficult in the past. As with section 135K, this section should provide for variation by agreement or Tribunal determination.

### **Paragraph 11.38**

- 2.7 Subject to the comments above, Screenrights approves of the recommendation that section 135G, section 135H and section 135J be abolished and agrees that it would promote a culture of negotiation and agreement between parties by doing away with two unrelated systems (ie record keeping and sampling) and instead placing the onus on the parties to reach a consensus on a model for the administration of statutory licences. Also, in the event that the parties need to resort to the Copyright Tribunal it will have a degree of flexibility in its decision making.

### **Paragraph 11.39**

- 2.8 Screenrights approves of the recommendation that the Copyright Tribunal should be empowered to decide upon both the amount of equitable remuneration and the method for determining it in the absence of agreement between the parties.

### **Paragraph 11.40**

- 2.9 If Screenrights' submissions in relation to section 135K are accepted by the Committee, Screenrights submits that there should also be a transitional regime in which any existing records or sampling notices remain in force until such time as an alternative system has been agreed or has been the subject of a Tribunal determination.

### **Paragraph 11.68**

- 2.10 Screenrights approves of the recommendation that the jurisdiction of the Copyright Tribunal should be confined to the review of licences and schemes administered by a collecting society.

### **Paragraph 11.108**

- 2.11 Screenrights approves of the Committee's recommendation that no amendment be made to the Act to establish a register of collecting societies.

## **3 INPUT ARRANGEMENTS**

### **Paragraph 12.14**

- 3.1 Screenrights approves of the recommendation that " the jurisdiction of the Copyright Tribunal not be amended to include a power to review input arrangements generally" .

## **4 DECLARATION OF COLLECTING SOCIETIES**

### **Paragraphs 13.13**

- 4.1 Screenrights approves of the recommendation that the Attorney-General retain the power to declare collecting societies.

### **Paragraphs 13.14**

- 4.2 Screenrights has concerns with the Committee's recommendation that " the Attorney-General may exercise a discretion to refer the matter (ie the seeking of a declaration) to the Tribunal if s/he considers it appropriate in the circumstances" and would submit that the Attorney-General should not have such a broad discretion. The Attorney-General could make a reference to the Federal Court when a question of law is involved.

## **5 COMPULSORY REFERRAL OF LICENCE SCHEMES**

### **Paragraph 14.15**

- 5.1 Screenrights approves of the recommendation that there should be no change to the jurisdiction of the Tribunal to include a mechanism for compulsory referral of licence disputes. The parties should retain the discretion to approach the Tribunal if and when they see fit.

## **6 ANOMALIES IN LICENSING SCHEMES**

### **Paragraph 17.08**

- 6.1 Subjects to the comments above, Screenrights approves of the recommendation that the jurisdiction of the Tribunal be extended to determine "any matters that are necessary or convenient to be assessed by use of a record-keeping system".

### **Paragraph 17.15**

- 6.2 Screenrights approves of the recommendation regarding the powers of the Tribunal to determine different rates of equitable remuneration where the circumstances require it to do so.

## **7 UNTRACEABLE COPYRIGHT OWNERS**

### **Paragraph 18.16**

- 7.1 Screenrights has serious doubts as to the necessity for a mechanism for the granting of licences by the Copyright Tribunal for the use of copyright material where the copyright owner is unknown or untraceable.
- 7.2 Screenrights submits that the proposed mechanism effectively constitutes an additional statutory exception to the exclusive rights of copyright owners which is unwarranted.
- 7.3 Screenrights is not aware of any compelling need for such a mechanism and does not believe this issue has been tested. Before such an important decision is made an informal debate needs to be had.

## **8 CONCLUSION**

- 8.1 Thank you for the opportunity to make this submission. Screenrights would be pleased to provide any further information that you may require, or elaborate on any points raised in the submission.
- 8.2 Should you require any further information from Screenrights, please contact Lionel Docker, Screenrights' Legal Counsel, at the address provided.

Respectfully submitted.

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