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SUBMISSION ON THE OPERATION OF SCHEDULE 6 OF THE *BROADCASTING SERVICES ACT 1992* (DATACASTING SERVICES) ("Schedule 6")

1. SCREENRIGHTS

- 1.1 Screenrights is the copyright collecting society representing the interests of owners of copyright in audio-visual works, including film producers and distributors, scriptwriters and music copyright owners. The Society is declared under section 135P, *Copyright Act 1968* ("the Act") to administer the scheme in Part VA of the Act creating a statutory licence for the copying of sound and television broadcasts by educational institutions. Screenrights also administers a comparable scheme in New Zealand under section 48 of the New Zealand *Copyright Act 1994*.
- 1.2 Screenrights is the declared society under section 135ZZT of the Act to administer the scheme in Part VC of the Act creating a statutory licence for the retransmission of free-to-air broadcasts by pay television operators.
- 1.3 Screenrights is also the declared society under section 153F of the Act for the purpose of copying of broadcasts for the services of the Commonwealth and States under section 183 of the Act.
- 1.4 As well as administering these schemes, Screenrights provides other services to owners of copyright in audio-visual works both in Australia and overseas, including the collection of royalties for cable retransmission.
- 1.5 There are currently over 1,500 members of Screenrights, located in 40 countries. All Australian free-to-air broadcasters are members of Screenrights and receive royalties generated under the Part VA scheme in their capacity as owners of underlying rights in certain

cases. This submission does not purport to represent the views of those members. Screenrights understands that Australian broadcasters may elect to make their own submissions on the Issues Paper.

- 1.6 Screenrights welcomes the opportunity to comment on the matters raised by the Department's *Issues Paper on the Review of Schedule 6 of the Broadcasting Services Act 1992 (Datacasting Services)* ("Issues Paper"). Screenrights offers this submission to set out our belief that the new datacasting services offer new and important opportunities for the education sector and that the scope of the Part VA scheme should be broadened to include datacast services so as to avoid confusion and potential copyright infringement.

Datacasting Services

- 2.1 Screenrights acknowledges that the advent of datacasting services in Australia will lead to new and innovative services being made available to the public. Screenrights has no comment to make on the majority of issues raised in the Issues Paper, which have little impact on Screenrights' business and involve commercial considerations of the operation of datacast licences.
- 2.2 Screenrights generally approves of the current regime in Schedule 6 for the regulation of datacast licensees subject to those points raised in this submission. Most notably, Screenrights is concerned that the position of underlying rights holders in copyright material featured on datacast services are protected.
- 2.3 The advent of datacasting services creates a new environment for educational institutions that will enhance the learning experience. Screenrights operates to provide a link between the creators of audio-visual works and parties who seek to copy those works in an educational context. The educational copyright issues affecting users and owners should not be forgotten in any assessment of how datacasting services are to be regulated.
- 2.4 While datacasting services differ in the mode of delivery, it is still capable of delivering copyright material. Importantly, Clause 14 permits datacast licensees to transmit up to 10 minutes of "Category A television programs", a category defined so as to include most categories of program broadcast on television. In order to increase the value of their service we believe it is likely that datacast licensees will use the full extent of legal possibilities to transmit such programming.
- 2.5 We note that Datacasting licensees will be allowed to provide "educational programs", defined in Clause 3 of Schedule 6 as programs where:

" ...it would be concluded that the sole or dominant purpose of the matter is to assist a person in education

or learning, whether or not in connection with a course of study or instruction.”

This definition encompasses a wide range of programming. Screenrights experience in administering the Part VA Scheme reveals that a wide variety of the programs broadcast are copied and used in an educational context, not just those programs intended for educational means.

- 2.6 We note that the Issues Paper recognises that a number of state governments have proposed that datacast services could be a useful means of delivering educational courses. Screenrights agrees with this assessment and sees it as an enhancement of current teaching methods in classroom and via distance education.
- 2.7 It is certainly the case that the courses currently taught in Australian schools, colleges and universities are supplemented by the use of copies of television programs. Screenrights has collected \$10.71 million for copyright owners in films and television programs from educational institutions under the part VA Scheme in the 2001 financial year.
- 2.8 Restrictions in content such as those set out in Schedule 6 will serve to make datacasting far more of use as an information medium than an entertainment medium. As such, datacasting services may incorporate the delivery of educational services.

3. Copying and Communication of Copyright Material provided by Licensed Datacasters

- 3.1 Educational institutions in Australia are users of audio-visual material whether the material is of a specific educational nature or not. Teachers are permitted, under the Part VA licence to copy broadcasts off-air and, since March 2001, to communicate these copies in line with the new right of "communication to the public" contained in the *Copyright Amendment (Digital Agenda) Act 2000*.
- 3.2 Clause 6(b) of Schedule 6 provides that: " any matter on that service is taken not to be broadcast or televised" . Such a provision excludes the operation of the Part VA Scheme from datacast services. **We submit that the provision of datacast services should be included in the Part VA Scheme.** The failure to include the copying of datacasts within Part VA means that:
 - (i) Educational institutions do not receive the benefits of the Part VA statutory licence in respect of datacasts, leaving them exposed to the cost of obtaining the consent of all individual copyright owners and/or the distinct possibility of copyright infringement liability;
 - (ii) When unauthorised copying of datacasts by educational institutions occurs, copyright owners will receive no

remuneration unless legal measures are taken to enforce individual rights.

- 3.3 Since its inception in 1990, the Part VA Scheme has provided a convenient and expedient method of permitting educational institutions to copy material "off-air". The licence does away with the need for the copying institution to obtain permission from copyright owners for the act of reproduction while at the same time ensuring there is compensation for copyright owners.
- 3.4 Despite the restrictions on the content of datacast services in Schedule 6, it is likely that datacast services will use copyright material in the provision of those programs fitting the definition of services described in Part 1 of Schedule 6 as "content in the form of text or still visual images". Copyright material will also form a part of those programs classified by clause 3 of Schedule 6 as "educational programs".
- 3.5 Under clause 14 of Schedule 6, datacast licensees are allowed to use short extracts (ie up to ten minutes) of "Category A television programs". As stated in clause 2.3 above, it is likely, that datacast licensees will see to use as much "Category A" material as is possible to increase the value of their service to users.
- 3.6 The use by datacast licensees of Category A television programs means that copyright elements will be transmitted on datacast services; namely literary or dramatic works, artistic works, musical works, sound recordings and cinematograph films. Clauses 31(1)(a)(1), 85(1)(a) and 86(a) of the Act, and binding international obligations, stipulate that the reproduction of these elements is the exclusive right of the copyright owner. As such the copyright owner should be adequately compensated for any acts of copying by educational institutions that might occur as a result of their material being included on a datacast service.
- 3.7 Furthermore, as technologies converge it will become increasingly difficult for users to distinguish between broadcasts and datacasts. Under the current provisions of Part VA, a teacher would be entitled to copy any broadcasts but not to copy datacasts. This would cause considerable confusion and in all probability lead to unintentional infringement of copyright which is prejudicial to the interests of teachers and copyright owners both.
- 3.8 We submit that the datacast environment should be brought under the statutory regime in Part VA of the Act. The current provisions of Part VA do not allow for datacast transmissions to be copied by educational institutions. An extension of the Part VA Scheme to cover datacasts will provide certainty for educational institutions inasmuch as they will be permitted to copy datacasts under the existing statutory licence. It will also mean that copyright owners will receive remuneration for this use. Moreover, it will help ensure a greater degree of technological neutrality in the operation of Part VA across analogous media.

- 3.9 Extending the Part VA Scheme to cover all datacasters would create difficulties in administration for Screenrights. The Part VA Scheme is a mechanism to compensate the copyright owners of audio-visual works and could not be extended to cover the type of material typically found on the internet. It is also the case that licence schemes already exist which provide remuneration to the copyright owners of material copied off the internet. We therefore submit that any extension of the Part VA Scheme should exclude datacasters acting in the capacity of Internet Service Providers hosting third party content.
- 3.10 We submit that the Part VA licence should be extended to cover datacasts by amending Part VA of the Act to add the words " or datacast" after broadcast wherever they appeared and defining datacast by its meaning in the *Broadcasting Services Act 1992* so as to exclude datacasters acting in the capacity of Internet Service Providers hosting third party content.

4 Conclusion

- 4.1 Thank you for the opportunity to make this submission. We would be pleased to provide any further information that you may require, or elaborate on our views and assertions.
- 4.2 Should you require any further information from Screenrights, please contact Simon Lake, Screenrights' Chief Executive, at the address provided.
- 4.3 We wish the Committee well in its deliberations and look forward to participating further in the review process.

Respectfully submitted.

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