

## What is Screenrights?

Screenrights is a non-profit copyright collecting society for producers, distributors, rightsholders in scripts, music, sound recordings of music and artistic works, and other rightsholders in film, television and radio programs. We distribute royalties for various uses of our members' works, including retransmission of free to air broadcasts of their work by other services, such as pay television, in Australia.

The purpose of this information sheet is to explain the circumstances in which directors are entitled to a share of retransmission royalties following changes to the Copyright Act giving directors limited rights in their films.

## What are retransmission royalties?

Retransmission royalties are generated when free to air television or radio broadcasts are retransmitted across a different network. This is because provisions in the Australian Copyright Act allow broadcasts of copyright material to be retransmitted in Australia provided the retransmitter pays a royalty to the copyright owners.

Screenrights has been appointed by the Australian Government to administer these provisions, with royalties payable to rightsholders in programs that are retransmitted from 4 March 2001.

The Copyright Tribunal has set the royalty rate for the retransmission by pay television operators of the five free to air networks and the current multi channels, ABC2 and SBS World News, at 22.5 cents per subscriber per month

## What rights do film directors have?

The Copyright Amendment (Film Directors' Rights) Act provides for film directors to be joint copyright owners, along with producers, for the purposes of the statutory retransmission scheme. Ownership of copyright is limited to a right to receive a share of the retransmission royalties to be collected by Screenrights. These provisions commenced operation on 19 December 2005.

## What films are covered by the provisions?

The directors' rights provision applies only to films made after 19 December 2005.

The Australian Copyright Act protects both films made by Australian citizens and residents and foreign films where the maker is a citizen or resident of a country which is a party to an international copyright treaty. In practice most countries are now members of the Berne Convention, the UCC Convention or the WTO and therefore most foreign films will be protected under Australian copyright law.

Foreign directors will therefore be entitled to claim the directors' copyright in the same way that Australian directors may claim.

## In what circumstances are directors excluded from claiming retransmission royalties?

The amendments provide that a director will be regarded as a "maker" of the film and therefore a joint owner (along with the producer) of copyright in the film (in the limited way outlined above). There are a number of limitations on the application of the provisions:

- The amendments have no effect where they are inconsistent with contractual rights entered into prior to 19 December 2005.
- The amendments apply only to films that are not commissioned films. Copyright in a film made under a commission continues to be held by the commissioning party subject to any agreement to the contrary. Under the Copyright Act a film is "commissioned" if it is made in pursuance of an agreement for payment of valuable consideration to the maker of the film.
- Directors who are employees generally will not hold rights – the director's right will be held by the employer unless there is a contractual agreement to the contrary.

## What royalties will a director receive?

In accordance with its distribution policy, Screenrights allocates 68.5% of distributable funds to the owner of copyright in the film (normally the producer). If a director becomes an owner of a share of the copyright in the film (either through the operation of the new provisions or otherwise) it is possible for the director or the director's agent to register that claim with Screenrights.

## Who gets the film allocation in a retransmitted program?

Under the Australian Copyright Act, Screenrights must pay the specified share of royalties allocated to each retransmitted program to the relevant rightsholder at the time of broadcast in the film.

For retransmission royalties, the relevant right is the right to retransmit the film component incorporated in the program in Australia.

For Screenrights' purposes, under the Australian Copyright Act, the producer is the first owner of the relevant rights in the film. After December 2005, directors were also entitled to ownership of copyright in films under certain circumstances. These rules are subject to exceptions and legal advice should always be sought.

However, in order to determine who is entitled to the Screenrights royalties, it is usually necessary to look beyond the first owner and consider if any agreements have been entered concerning the relevant right.

If you are uncertain as to the effect of particular clauses in a contract on your entitlement to Screenrights royalties, we recommend you seek legal advice.

Screenrights cannot offer legal advice but we are happy to view a contract to determine whether we would be likely to accept a claim. Where there is a conflict over entitlement to royalties, Screenrights' Alternative Dispute Resolution (ADR) Policy will apply. This policy is available on our website.

## Directors' Rights –

### Retransmission royalties for film directors

#### What do I need to do to collect retransmission royalties?

You must register the titles in which you have a claim to a share of the film component of retransmission royalties with Screenrights. If you are already a member of Screenrights, you should contact Member Services to discuss your registrations and ensure that your registrations cover Australian retransmission royalties.

If you are not yet a member, you will need to join Screenrights and register your titles with us. This is simple and free.

Membership and Registration Forms are available on the website.

#### How can I ensure that I get Screenrights royalties?

When you are negotiating agreements concerning the making or subsequent distribution of a film, it is advisable to specifically address the issue of who is entitled to claim Screenrights royalties. In drafting such agreements, rightsholders should always seek independent legal advice. Screenrights does publish suggested draft clauses that you may wish to include in your agreement. These clauses could be adapted for use in agreements between directors and producers.

Contact us or visit our website for a copy of these clauses.