

**screenrights**

# Copyright Legislation Amendment (Fair Go for Fair Use) Bill 2013

## Screenrights submission

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**More information:**

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## Screenrights

Screenrights is a non-profit copyright society representing rightsholders in film, television and radio. We have over 3,464 members in 60 countries.

Screenrights administers a range of collective licences that enable access to audiovisual material, including educational use of broadcasts, government copying of broadcasts and retransmission of free to air broadcasts. These licences operate as remunerated exceptions to copyright, proving a simple and effective means of using audiovisual material while ensuring fair payment to copyright owners for the use of their work.

## The Bill

Screenrights is strongly opposed to the Bill, in particular the proposed fair use provision in section 251. Screenrights believes the current Act provides a fair balance between the rights of creators to protect their work and receive payment for its use, while enabling access to this work for particular socially desirable purposes. The Act provides well-understood free exceptions that allow for certain limited dealings with copyright work, and remunerated statutory licences that enable more widespread institutional use when individual licensing is either impractical or impossible.

The proposed fair use provision would undermine creators' rights and create an environment of uncertainty for rightsholders and the people who use their work.

In particular, we make the following comments in relation to the Bill:

### **The Bill pre-empts the current Australian Law Reform Commission (ALRC) Inquiry into Copyright and the Digital Economy**

Exceptions to copyright, including consideration of a broad fair use provision are the subject of an inquiry by the ALRC into Copyright and the Digital Economy. The commission is currently considering responses to its discussion paper and is expected to report in November. Screenrights (and many other organisations and individuals) voiced its concerns about fair use in its submission to the inquiry. A copy of our submission can be found at [http://www.screenrights.org/sites/default/files/uploads/Screenrights\\_ALRC\\_Sub\\_31\\_Jul\\_13.pdf](http://www.screenrights.org/sites/default/files/uploads/Screenrights_ALRC_Sub_31_Jul_13.pdf). The Bill pre-empts the ALRC report and its full consideration of all submissions.

### **Fair use detrimental to the creative sector**

Screenrights is concerned that the proposed fair use provision would seriously undermine the rights of artists and other creators to protect, and receive payment, for their work.

The provision is broad in its scope and uncertain in its application, deferring difficult questions of whether a use is fair to the courts. Our concern is that users (in particular larger institutional and commercial users) would make free use of copyright material in the hope that this would fall under "fair use". Rightsholders would often not know that their work has been used in this way and if they did, they would then face considerable cost in arguing the use was not fair, with many being reluctant to pursue their rights against well-resourced users of their material.

In submissions to the Australian Law Reform Commission there was strong objection to the proposal to introduce fair use by the Screen Producers Association of Australia, the Directors Guild, broadcasters including the ABC and SBS, News Corporation, Foxtel and the peak sporting bodies.

### **Interaction with other exceptions unclear**

It is unclear how the proposed section 251 would interact with the other exceptions in the Copyright Act, including the current free fair dealing exceptions and the remunerated statutory licences. This would create considerable uncertainty for the creative community trying to license and defend its copyright.

We are particularly concerned about the interaction between fair use and the broadcast licence for education in Part VA of the Copyright Act. This licence gives educators simple access to any program broadcast on television or radio, letting them copy, put online and use digital archives of programs in teaching. In return the education sector pays a fee, distributed by Screenrights to its members. This system provides ease of use for education and important remuneration to the people who make the programs used in teaching, many of whom are independent Australian filmmakers. Our concern is that the proposed fair use provision would undermine this system, and that our filmmakers would be forced to defend their right to be paid for the educational use of their work through the courts.

We also note that filmmakers have well established practices for licensing use of underlying works so that they can then sell broadcast, copying, exhibition and other rights in the final product. The uncertain scope of the proposed new fair use provision would seriously undermine these commercial practices and impose new costs on the production industry.

### **Possibly contravenes Australia's international obligations**

By introducing a broad fair use provision in addition to nearly all of the current exceptions in the Copyright Act, Australia would be granting far broader exceptions to copyright than in any other comparable jurisdiction. This could well be in contravention of our international obligations under the Berne Convention which require signatories to limit exceptions to "special cases".

## **Conclusion**

Screenrights believes the Bill is detrimental to the creative community, it is uncertain in its application and possibly contravenes our international obligations. In addition, it covers matters that are currently the subject of review and debate, and as such pre-empts this process of review.