



screenrights

27 October 2006

Early Childhood and Primary Education
Secondary Education
Technical and Further Education
Vocational Education and Training
Higher Education
Adult and Community Education

Senator Marise Payne
Chair
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600

Dear Senator Payne

Copyright Amendment Bill 2006

We congratulate the Government on the introduction of this important package of copyright reforms and we appreciate the opportunity for a further review of the Bill through the Senate Legal and Constitutional Affairs Committee.

This letter is on behalf of Screenrights, the Audio Visual Copyright Society Limited, and the Copyright Advisory Group of the Ministerial Council on Employment Education Training and Youth Affairs ("CAG").

CAG and Screenrights have some significant concerns about the drafting of two provisions of the Bill as introduced into Parliament: proposed section 28A and proposed section 200AAA. We believe that this drafting may not appropriately implement the Government's policy decisions, as we understand them, and may have some significant unintended consequences. This letter does not address the policy issues inherent in the Bill about which the parties naturally have quite differing views. However, we have been able to set these differences aside to resolve our concerns on the drafting.

CAG and Screenrights have different concerns about the drafting. Screenrights is concerned that the proposed sections go beyond the specific policy intention, and CAG is concerned that they do not clearly cover some particular uses mentioned in the Explanatory Memorandum.

Screenrights and CAG have been able through discussion to identify solutions which address each of our concerns, and which, we believe, more closely reflect the Government's stated intentions. Outlined below is a brief summary of our concerns and the mechanism which we submit may be a way to address these concerns.

Section 28A Communication of works or other subject-matter in the course of educational instruction

The concern from Screenrights' perspective regarding this section was that it may inadvertently cover communications which, in part, are for the purpose of facilitating classroom performance at some time, but have a further purpose which might have been captured by the statutory licence in Part VA (or by direct licensing by copyright owners) and which would otherwise have been remunerated. CAG is concerned that the drafting of the section was incomplete because the new exception for communications does not achieve consistency with the rights granted under section 28, and specifically does not include broadcasts.

CAG and Screenrights can see merit in each other's concerns, and have worked together to find a solution that is workable for both interests. In our view, a simple and effective solution is to create a new subsection to section 28 to exempt communications made merely to facilitate a performance under section 28. We believe this meets the stated policy intention, and also addresses our concerns.

Section 200AAA Caching on server for educational purposes

We understand that the Government's policy intention is to create a new exception which will cover two forms of copying and communication of websites: proxy caching and temporary "storing" of internet content for the purposes of child protection (described as "active caching"). We note that the Explanatory Memorandum refers to both proxy and active caching.

CAG is concerned that proxy caching is not, in fact, captured by the drafting of s200AAA. Screenrights is concerned that the exception could be interpreted to allow virtually continuous "caching" of internet content thereby undermining existing and proposed licensing opportunities.

Again, we recognise merit in each other's concerns, and have agreed an approach to address them in a way which is consistent with the Government's policy. In essence, we submit that these two issues need to be addressed in separate provisions specifically drafted to cover the particular purpose and functions required for the exemption. As such we have suggested that section 200AAA be redrafted to cover proxy caching, and a new section (200AAB) be created for temporary copies and communications for the purposes of child protection in primary schools, kindergartens and pre-schools (as referred to in the definition of *educational institution* in section 10(1)).

Screenrights and CAG have worked collaboratively to find solutions to what we believe are merely technical problems with the drafting. In the interests of illustrating this solution, we have taken the liberty of preparing alternative drafting which the Committee may find helpful in its considerations of our concerns.

We have attached the proposed drafting to this letter which we believe, taken as a package, would address the concerns of both Screenrights and CAG about these provisions of the Bill.

We would appreciate the opportunity to meet jointly with the Committee to discuss the thinking behind our proposed drafting.

We are grateful for the opportunity to consider and comment on the Bill. We have also provided copies of this letter and our proposed drafting to the Attorney-General. We would be most appreciative of any consideration you may be able to give to this matter.

Yours sincerely,



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