



Chairperson Jan Sardi
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16 November 2023

BY EMAIL ONLY: anna.pound@accg.gov.au

Attention: Anna Pound
Assistant Director, Competitions Exemptions
Australian Competition and Consumer Commission
Level 27, 135 King Street
Sydney NSW 2000

Re: AA1000642-1 (Application) – Response to Screenrights submission

AWGACS refers to Screenrights' submission dated 27 October 2023.

AWGACS disagrees with several aspects of Screenrights' submission. However, AWGACS elects to confine its response to only those matters which may be materially relevant to the Application, as set out below.

Intended effect

- 1 AWGACS does not agree with Screenrights' statement that "*an authorisation in the terms sought would fail to achieve the outcome the Applicant intends*".
- 2 AWGACS respectfully clarifies that:
 - 2.1 Screenrights appears to have misunderstood AWGACS's intention in relation to the Rights Assignment and the Proposed Conduct, for the reasons set out in paragraphs 3 to 9 below;
 - 2.2 AWGACS has at all times intended to implement a legally effective Rights Assignment which has the practical effect of reserving Secondary Royalties in favour of its Writer Members; and
 - 2.3 there is no material term of the Application which is inconsistent with the position set out in paragraph 2.2 above.

3 AWGACS refers to paragraph 8 of Screenrights' submission, which provides:

"...

- i. *Screenrights' obligation, as the collecting society declared by the Commonwealth Attorney-General to administer the scheme, is to pay the copyright owner or its agent;*
- ii. *the Applicant it already the agent appointed by its members to receive royalties on behalf of its members;*
- iii. *as a matter of law, a right to receive Secondary Royalties is not a right or interest in copyright. Therefore, an "assignment" of that right to the Applicant would have no bearing on how Screenrights would distribute statutory royalties or resolve Competing Claims; ... "*

4 Having regard to paragraph 8 of Screenrights' submission, It would appear that Screenrights may have incorrectly adopted the assumption that AWGACS intends to take an assignment of the rights to collect Secondary Royalties on behalf of its Writer Members. However, this is not correct.

5 The description of the Rights Assignment in the Application is as follows:

*"an arrangement which involves Writer Members assigning their rights to receive Secondary Royalties to AWGACS (**Rights Assignment**)."*

6 Whilst AWGACS can understand why Screenrights may have interpreted the words "rights to receive" as meaning only the "rights to collect", AWGACS's intention was to describe an arrangement where both legal and beneficial ownership of the amounts comprising payments of Secondary Royalties arising from the use of a particular Writer Member's works, are assigned to AWGACS.

7 In order to accommodate Screenrights' concerns and retain the original intention of the Application, AWGACS proposes to remove the word "receive" from the description of the Rights Assignment in the Application as follows:

*"an arrangement which involves Writer Members assigning their rights to ~~receive~~ Secondary Royalties to AWGACS (**Rights Assignment**)."*

8 AWGACS welcomes Screenrights' feedback in relation to the recommended technical legal drafting of the Assignment Deed (which is, as set out in the Application, to be in a form prescribed by the AWGACS Board from time-to-time and is therefore able to be amended from time-to-time), to ensure that, if the Proposed Conduct is authorised, the

Assignment Deed implements the Rights Assignment in a way which is accepted by Screenrights as providing a sufficient basis upon which it may make one or more modifications to its processes for resolving Competing Claims.

9 However, with specific reference to the subject matter and purpose of the Application, being whether the public benefits would outweigh any public detriment in respect of conduct which may otherwise breach Australian competition laws, AWGACS confirms that:

9.1 it was not AWGACS's intention to describe the Rights Assignment as an assignment of the "rights to collect" Secondary Royalties;

9.2 AWGACS remains open to working with Screenrights to settle on an agreed form of the Assignment Deed; and

9.3 whilst there has been no substantive change in AWGACS's intended description of the Proposed Conduct, AWGACS is not opposed to amending the Application further to provide additional details and clarification in relation to the nature of the proposed Rights Assignment, should that be required.

If we can answer any questions or provide any further information which may be of assistance, please let us know.

Yours sincerely

Molly Ulm
AWGACS Manager