

**screenrights**

**Submission in response to:**

**Draft Guidelines on the Application of Competition  
Law to Intellectual Property Rights (NZ)**

**Submission by Screenrights**

**15 February, 2023**

*This submission may be published*

## Introduction

1. Screenrights welcomes the opportunity to comment on the Draft Guidelines on the Application of Competition Law to Intellectual Property Rights.
2. Screenrights is a non-profit collecting society representing creators in the screen production sector. Screenrights has more than 5,000 members in 69 countries worldwide. Our members are writers, artists, producers, directors, sales agents, broadcasters and distributors.
3. Screenrights is a licensing body established within the terms of Part 8 of the *Copyright Act 1994* (NZ) ('the Act'). Screenrights operates a licensing scheme that authorises the copying of licensed communication works and the communication of such copies by New Zealand educational establishments in the circumstances set out in section 48 of the Copyright Act. Screenrights' licences cover schools, polytechnics, universities and other institutions.
4. The Screenrights Educational Licence provides teachers and their students with access to films, documentaries, news and current affairs, and other screen content for teaching purposes.
5. We collect royalties ("equitable remuneration") on behalf of our members who own the rights in the copyright material made available under the licence.
6. Screenrights works with online resource centres to deliver licensed material to educators. Resource centres provide Screenrights with records of the programs used in licensed schools and universities which enables us to accurately remunerate the rights holders for the use of those works.
7. In the last financial year, Screenrights collected over 1.2 million records of program usage through the resource centres in New Zealand.

## Collecting societies and market power

8. The role of a collecting society is to provide efficient and equitable means for the collective licensing of copyright works, where individual transactions would otherwise be impractical for rights holders and consumers.
9. Paragraph 85 of the draft guidelines refers to the purported market power of collecting societies, and suggests that collecting societies may be anti-competitive, acting as "gatekeepers" to the accessing of important copyright.

10. Screenrights rejects the assertion that it may act as a gatekeeper.
11. In fact, the reverse is true – the Screenrights licence provides an access mechanism. Moreover, Screenrights rejects any suggestion that Screenrights has significant market power. To the contrary, we supply content in a market that offers many channels and where the number of channels is growing not decreasing.
12. The licences offered by Screenrights are not exclusive and nothing precludes rights holders from entering into separate negotiations with licensees.
13. Under Screenrights' licensing agreements with our members, the right to license is non-exclusive and members can license directly or appoint other organisations to supply the content. In practice, both are commonplace. Furthermore, the provisions in the Act do not provide for a sole collecting society and it is open to copyright owners to form or license an alternative collecting society.
14. The competition in the market in which Screenrights operates is strong, with myriad options available for the consumption of audio-visual material in education, including through free-to-air and subscription television, broadcast catch-up services, subscription and advertising supported video on demand, EdTech platforms, packaged media and more.
15. This competition has created a healthy range of services delivering value to educators. Screenrights' response to the highly competitive educational content market is to offer services designed specifically to meet the needs of teachers and students.
16. Screenrights works in partnership with online resource centres to provide affordable access to licensed programs to schools, universities and other educational establishments.
17. New Zealand's two educational resource centres – ETV<sup>1</sup> and ClickVlew<sup>2</sup> – provide greater access to content for educational purposes than any other jurisdiction in the world, including in Australia where Screenrights also operates.

### **Equitability of licence fees**

18. Paragraph 86.3 of the draft guidelines notes that, in order to lessen the potential harm to competition, the licence fee for a blanket licence to use the collecting society's entire repertoire can be adjusted downwards to take account of any

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<sup>1</sup> [ETV](#)

<sup>2</sup> [ClickView](#)

licences that are negotiated bilaterally between copyright holders and licensees. In practice, this occurs through the negotiation of licence fees with educational establishments.

19. Furthermore, Screenrights is governed by the framework established under Part 8 of the Act, which requires that the licence fees for the access to materials are equitable. The measures already set out in ss149-155 of the Act provide the mechanisms for applications and disputes relating to licence schemes through the Copyright Tribunal. Screenrights submits that acknowledging the existing framework would be helpful within the guidelines.

20. We note that neither the education sector nor Screenrights has had to seek a ruling from the Copyright Tribunal in the past twenty years. This demonstrates again the fair and proper operation of the licensing scheme.

**For further information:**

