



Australian Government
Attorney-General's Department

**Information Law and
Human Rights Division**

INFORMATION SHEET

COMMONWEALTH-SCREENRIGHTS AGREEMENT : KEY FEATURES

Structure of the Agreement

1. The Agreement comprises a Head Agreement and a template Individual Agreement.
2. The Head Agreement is a deed of agreement between the Attorney-General's Department (AGD) and Screenrights. Matters to be resolved between the AGD and Screenrights at a whole-of-arrangement level are included in the Head Agreement. For example, this includes reviews of the sampling methodology that will be undertaken during the course of the agreement and certain confidentiality and security requirements. This allows AGD to monitor issues that affect the Commonwealth's relationship with Screenrights and to negotiate a whole-of-Commonwealth response if required. The structure also puts in place safeguards to maintain the uniformity of the Individual Agreements while allowing your agency the flexibility to alter arrangements with Screenrights to better suit your agency's needs.
3. Departments and agencies can separately contract with Screenrights by entering into an Individual Agreement to pay equitable remuneration for government copies made under s 183A of the *Copyright Act 1968* (under the attached model, this is known as 'an election to participate'). The Individual Agreement includes all the transactional detail such as the sampling methodology and the calculation details for determining equitable remuneration.
4. Key features of both the Head and Individual Agreements are explained below.

Key Clauses – Head Agreement

Clause 3.4 – Variation of the Individual Agreements

5. A key feature of the Head Agreement is that it provides for variations to be made to the Individual Agreements between Screenrights and agencies. For example, it contains a mechanism that allows variations to Individual Agreements to be agreed in writing between AGD and Screenrights (cl 3.4). This will be in addition to a variation that an agency and Screenrights could agree to themselves (cl 3.1.1.a of the Individual Agreement).
6. Where a variation to the Individual Agreements is agreed in writing between AGD and Screenrights, it cannot come into effect earlier than 30 Business Days after the execution of that agreement. Screenrights is required to provide a notice to each agency within 10 Business Days of the agreement to vary. The notice must set out the details of the variation, the date it takes effect,

the fact that the agency has the right to opt out of the variation and the mechanism and timeframe for exercising such a right.

7. The benefit of this clause is that Screenrights and an individual agency would not be required to negotiate separately with each other in relation to a standard variation that is proposed for all Individual Agreements. Agencies would retain ultimate control over whether its Individual Agreement was varied under this mechanism because it would have a right to opt out of the variation if it did not agree with it. It would also be able to terminate the Individual Agreement without fault (taking effect at the end of a year) by giving three calendar months notice.

Clause 9 – Review of sampling system

8. Similar to the current Commonwealth-Copyright Agency Limited Agreement (CAL Agreement), the Head Agreement makes provision for a review of the sampling system. Clause 9 provides for a review of the sampling system to commence once all the survey results for the 2005-2006 sampling period have been provided to Screenrights. The clause allows AGD and Screenrights to negotiate the scope of the review, and for the review to include consideration of sampling requirements for agencies that are returning nil survey results. This is an important factor given that some agencies have indicated to AGD that they are likely to return nil results.

Key Clauses – Individual Agreement

Clause 4 – Obligations of the parties

9. This clause sets out the obligations of the parties, including the terms for the calculation of equitable remuneration, the conduct for sampling, and the provision of survey results. These reflect general obligations under s 183A of the Copyright Act to pay equitable remuneration and agree on a method for calculating equitable remuneration.

Clause 5.3 – Past copying

10. The calculations for the estimates of past copying are outlined at clause 5.3. This provides that the estimate of copying for the 2002, 2003, 2004 and 2005 years will be an average of the 2005-2006 survey results and the survey results from the 2002 or 2003 sampling. If your agency conducted no sampling between 1 January 2002 and 31 December 2004, the estimate of copying for the 2002, 2003, 2004 and 2005 years will be based on the 2005-2006 survey results.

11. Please also note that clause 5.9 provides that the equitable remuneration payable for preview copies made by an agency will be nil. A ‘preview copy’ is defined to mean a copy made and used solely for the purpose of enabling an agency to determine whether or not it should be retained and used for the services of the Commonwealth and where it is destroyed by the agency within 10 Business Days after the day on which it was made.

Clause 6 – Sampling system

12. Under this clause your agency will be required to undertake sampling each year (from 2005). This reflects the requirement in s 183A(2)(b) of the Copyright Act for both parties to agree on a method of working out equitable remuneration payable to a collecting society that includes a sampling system to be used for estimating the number of copies made.

13. There is also a requirement to appoint a Copyright Survey Manager who has the responsibility and authority for all matters relating to the conduct of each sampling. The requirements for the

handling of the survey results by each party are also set out under this clause. Most of these obligations have already been met by agencies.

Clause 8 – Invoicing and payment arrangements

14. This clause sets out the obligations of all parties with regards to invoicing and payment arrangements, including where there is a mistake in calculation of equitable remuneration and where a ‘Participating Body’ is found not to be an agency (ie not an agent or emanation of the Commonwealth). Where the latter occurs, Screenrights will reimburse all payments made by the Participating Body which have not yet been distributed to copyright owners.

Clause 11 – Participating Body Material

15. This clause deals with intellectual property aspects of the ‘Participating Body Material’. ‘Participating Body Material’ is defined to include any material provided by the Participating Body (ie your agency) to Screenrights for the purposes of this agreement, or derived at any time from that material. This material includes completed survey record forms, completed resource centre forms, completed copyright survey manager reports, but not the template forms or the template copyright survey manager’s reports. Under this clause, the intellectual property in this material vests in your agency as an emanation of the Commonwealth. Your agency grants a licence for Screenrights to use, reproduce and adapt this material for Screenrights’ internal business and the purposes of the Head Agreement and the Individual Agreement.

Clause 12 – Confidential Information

16. This clause ensures that important confidential information of your agency will be protected. Confidential information may include survey record forms, resource centre forms, the copyright survey manager’s report and any other information agreed between the parties. The obligation also applies to Screenrights confidential information which, under the Individual Agreement, is the same as the confidential information that applies to agencies. The obligation to protect confidential information applies during and after the term of the Individual Agreement. Either party may impose any conditions it considers appropriate when giving consent to the disclosure of its confidential information provided the other party agrees to comply with these conditions. Please note there are certain exceptions to the obligations regarding confidential information listed under this clause.

Clause 13 – Security

17. The Individual Agreement contains strong security obligations in accordance with the Protective Security Manual. General security obligations in the Individual Agreement include an acknowledgement by Screenrights that in the course of the Individual Agreement, it may become subject to certain statutory provisions relating to security issues, and Screenrights agrees to ensure that its personnel are aware of, and comply with them. The clause also provides for obligations concerning personnel security and the provision of security reports in the case of a security incident.

Clause 14 – Protection of Personal Information

18. The Individual Agreement also contains obligations requiring the protection of personal information that is consistent with Commonwealth privacy standards. Clause 14 deals with privacy aspects of the Individual Agreement and requires Screenrights to comply with a number of obligations under the *Privacy Act 1988* including those relating to Information Privacy Principles and National Privacy Principles.

Clause 16 – Termination

19. Clause 16.1 of the Individual Agreement provides a broad right for agencies to terminate without fault after the completion of one year of the contract. This is a standard clause in government contracts and ensures that an agency can terminate an agreement if it is necessary to do so but where it cannot establish fault on the part of the other party.

20. Such a termination would take effect at the end of a year by giving three calendar months notice. Where a termination occurs under this clause, an agency would be required to make alternative arrangements to meet its obligations under s 183A of the Copyright Act. This is based on a similar clause in the CAL Agreement and reflects the legal requirement under s 183A for a declared collecting society to receive equitable remuneration for government copying.