



# DISTRIBUTION POLICY

As approved by the Board effective 21 February 2024



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## ROYALTY COLLECTION SERVICES

### *Australian Educational Service*

- 1.1 Screenrights administers the provisions in Division 4 of Part IVA of the Copyright Act 1968 (Cth) (the 'Australian Act'), allowing educational institutions to copy from radio and television, and communicate these copies subject to certain conditions, including the payment of a fee to the relevant copyright owners.

### *New Zealand Educational Service*

- 1.2 Screenrights administers similar provisions in the *Copyright Act 1994* (NZ) (the 'New Zealand Act'). These provisions do, however, differ from those in the Australian Act in an important respect. Copyright owners who wish us to undertake this service on their behalf must appoint us to do so.

### *Australian Government Service*

- 1.3 Screenrights administers s183 of the Australian Act, allowing state and federal government departments to copy from television and radio subject to certain conditions, including the payment of a fee to the relevant copyright owners.

### *Australian Retransmission Service*

- 1.4 Screenrights administers the provisions of Part VC of the Australian Act, allowing cable, satellite and other services (the 'retransmitters') to retransmit free-to-air broadcasts subject to certain conditions, including the payment of a fee to the relevant copyright owners.



*Note: the Australian royalty collections services referred to above are strictly speaking not licences, but are remunerated exceptions to copyright. They are commonly referred to as "statutory licences" and for convenience we use the term "licence" and "licence fees" throughout this policy.*

## **Distribution Policy**

- 1.5 The licence fees that Screenrights collects from these Services is distributed according to Screenrights' Distribution Policy as determined by the Board, having regard to the relevant provisions in the respective Copyright Acts, the Copyright Act Regulations, Attorney General Guidelines, Screenrights' Constitution and the Code of Conduct for Copyright Collecting Societies. The Board is elected by Screenrights' members.

## MONITORING USE

### Monitoring Copying and Communication

- 2.1 Sampling procedures are used for collection and distribution purposes.
- (a) Under the Australian Education and New Zealand Educational Service, records of streams of copies to licensed educational institutions are supplied to Screenrights by Resource Centres.
  - (b) Under the Australian Government Service, government departments and agencies provide to Screenrights a part-year sample of their records on a regular basis that provides an appropriate representation of their usage for a 365-day Distribution Period.

### Monitoring Retransmission

- 2.2 Royalties for the retransmission of television are based on a rate per subscriber, per retransmitted television channel, per month. Royalties for the retransmission of radio channels are based on a rate per subscriber, per month.

#### Retransmission Sample

- 2.3 A Retransmission Sample is used to determine the retransmitted television programs paid each distribution year. The sample consists of 365 days (366 days in a leap year) for each of the retransmitted television channels.
- 2.4 The relative income of each territory determines the number of days they are represented in the sample.
- 2.5 The specific days chosen to represent each of the channel locations is random.

#### Part-Year Retransmission Sample

- 2.6 A part-year sample is used when the value of the pool of royalties available to distribute to a channel is insufficient to efficiently distribute to a full 365-day sample.
- 2.7 To determine the number of days in a part-year sample Screenrights determines an amount that it considers efficient to distribute to a single day of television programming. The distributable amount is divided by the efficient amount per day to calculate the number of days in the part-year sample as follows:



No. of Days in Part  
Year Sample

=

Distributable Amount  
Efficient Amount per Day



Let's say there is \$50,000 available to distribute across all programs on a channel for an entire year.

Most channels broadcast between 12,000 and 15,000 programs a year - so that \$50,000 won't go very far. On average a single program would be allocated only \$4.00.

That's not efficient for Screenrights to distribute or ultimately fair to rightsholders.

In these circumstances Screenrights creates a sample of retransmitted programs across the year, but the sample does not cover all 365 days. We want to allocate royalties to as many programs as possible while still keeping our administrative expenses low so we try to sample as many days as we can.

We work out how many days we can efficiently include in the sample by first estimating the minimum amount that we could reasonably allocate across a day's worth of programming.

Let's say that a reasonable minimum amount is \$1,000. There's usually somewhere between 30 and 40 programs on a channel each day. This means that on average a program would be allocated \$25 to \$34. That's more efficient to distribute.

The number of days that would be covered in the Part Year Sample is then determined by using the formula:

$$\text{No. of Days in Part Year Sample} = \frac{\$50,000}{\$1,000}$$

This would mean that the number of days in the Part Year Sample is 50.

2.8 The efficient amount per day is reported to the Board each year.

2.9 The days sampled are determined by an independent statistical authority.

### **Radio channels**

2.10 Retransmitted radio programs are paid on a per channel rather than a per program basis.

## **CALCULATING THE DISTRIBUTABLE AMOUNT FOR EACH COLLECTION SERVICE**

### **Accounting Periods**

3.1 Accounting periods are determined by Screenrights. No period extends beyond 30 June in any year but shorter periods may be adopted. Accounting periods equate with Australian financial years from 1 July to 30 June.

### **Defining the Gross Distributable Amount**

3.2 "Distributable amount" in relation to an accounting period is defined in Regulation 17(3) of the Copyright Act Regulations 2017 (Cth) as the amount of equitable remuneration received by the society that is attributable to that period (in accordance with the practice of the society) or otherwise available for distribution.

3.3 The gross distributable amount includes amounts referable to the period whether or not they were actually received in that period.

### **Deducting Expenses**

- 3.4 Once the gross distributable amount for each collection service for the accounting period is determined, administrative costs are deducted according to the following principles:
- (a) operating expenses are apportioned across each of the collection services;
  - (b) no change is made to the apportionment of expenses under the Australian Educational Service other than to charge part of the overheads to new services;
  - (c) fixed costs are borne by each collection service in proportion to the contribution of each collection service to the total gross collections (subject to (d) below);
  - (d) costs referable solely or primarily to a specific collection service may be charged against that collection service.

### **Allocation to Cultural Fund**

- 3.5 Once operating expenses are deducted, a distribution of up to 1% is made to the Cultural Fund, as the Board consider appropriate.

### **Allocation to IBNR Fund**

- 3.6 Once a distribution has been made to the Cultural Fund, an allocation is made to the IBNR Fund, as the Board considers appropriate.

- 3.7 Claims “incurred but not reported” may be met from the IBNR Fund.

- 3.8 This includes payments:

- (a) to a member of a share of the distributable amount being a share already paid in error to another member. (Note that the amount paid in error will be offset against any entitlement that an overpaid member may have in the future);
- (b) to a relevant copyright owner not otherwise specifically provided for;
- (c) to correct errors, including data entry errors;
- (d) based on records submitted after allocation has been made;
- (e) for ad hoc claims from members (see Ad Hoc Claims); and
- (f) for exceptional use (see Exceptional Use).

### **Allocation to Artistic Works Fund**

- 3.9 Once an allocation is made to the IBNR Fund, an allocation is made to an artistic works pool for payment of copyright owners in artistic works as follows:

Collection Service	Allocation to Artistic Works
Australian Educational Service	1.9%
New Zealand Educational Service	1.85%
Australian Government Service	1.85%
Australian Retransmission Service	1.9%

### **Trust Funds and the Distribution Period**

- 3.10 Under its Constitution, Screenrights has established the Article 17.2 Trust Funds. All money owing to relevant copyright owners is transferred to the relevant fund and held in trust until

they are distributed to the relevant Qualified Person or returned to the gross distributable funds.

- 3.11 Money owing to copyright owners is held in trust for the "Distribution Period". Article 18.3 regulates the maximum duration of the Distribution Period, being four years with the option of extension by a maximum addition of two years where the Board is satisfied that circumstances exist to justify holding the money in trust for a further period of not more than two years.
- 3.12 When a Distribution Period expires, any undistributed royalties are transferred into the gross distributable amount for the following distribution year for reallocation.
- 3.13 Money is also held in the relevant Article 17.2 Trust Fund where there is a dispute as to the person or entity entitled to collect the royalties as set out under Competing Claims (below) or where the accumulated money allocated to a member is less than the minimum distributable amount, as the Board determines. Money held in the IBNR Fund is also transferred to the Article 17.2 Trust Funds.
- 3.14 Any allocation to a work in which the copyright has expired is not distributable and is transferred into the gross distributable amount for the following distribution year for reallocation.
- 3.15 Screenrights continues to seek out rightsholders entitled to claim while those sums remain in the Article 17.2 Trust Funds.

### **Competing Claims**

- 3.16 Where two or more members dispute the right to claim the same Potential Share, the amount of the disputed Potential Share will be held in trust in the relevant Article 17.2 Trust Fund for the Distribution Period.
- 3.17 If the dispute is resolved by the members within the Distribution Period, the Potential Share will be paid in accordance with the resolution, as notified by the members to Screenrights.
- 3.18 If the dispute is not resolved within the Distribution Period, the disputed Potential Share will be transferred to the Competing Claims Fund (CCF Year), where it may remain for a maximum of one year.
- 3.19 If the dispute is resolved within the CCF Year, then the Potential Share is paid in accordance with the resolution and that payment is final and binding.
- 3.20 If the dispute is not resolved within the CCF Year, then the Potential Share is returned to the gross distributable funds in accordance with the Constitution.

## **ESTABLISHING THE DISTRIBUTION POOLS**

### **Division of Royalties into Funds and Sub-Funds**

- 4.1 The royalties available for distribution are kept separate by Collection Service in funds.



Let's say there is \$20 million available for distribution under the Australian Educational Service in a given year. Some of that \$20 million has been collected from the school sector, some from the TAFE sector and some from the university sector. These funds are kept separate so that royalties collected from a particular sector are allocated to the television and radio programs used by that sector.

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4.2 The funds are then divided into sub-funds based on the category of licensee and type of usage.



Let's say that \$4 million has been collected from the university sector and all programs used by the university sector have been monitored using the sampling methodology. These royalties are allocated to a Sub-Fund for sampling universities.

Universities can copy programs from the TV and radio and they can also communicate the copies they have made of the programs. Copying royalties are kept separate to communication royalties because copied and communicated programs are valued differently. Royalties for television programs are kept separate to royalties for radio, music video programs and so forth because they are also valued differently. (For more information, see CALCULATING ROYALTIES)

That's why the Sub-Fund is further divided into Distribution Pools for each different type of use by the university.

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### **Further Division of Royalties into Distribution Pools**

4.3 The sub-funds are further divided to create distribution pools for each unique combination of right (copying, communication, retransmission) and scheme of allocation (see Scheme of Allocation to Copyright Components).

#### ***Retransmission Collection Service***

4.4 Royalties for the retransmission of television programs are divided into channel pools for each of the retransmitted television channels. The relative size of each pool is determined by viewership reported annually by an external ratings agency.

4.5 Royalties for the retransmission of radio programs are divided into radio channel pools for each unique retransmitted radio channel. Where audience share data is available for any retransmitted radio channel, the size of the pools are determined on the basis of the relative audience share of each channel. In the absence of audience share data the royalties are divided evenly amongst the retransmitted radio channel pools.

### **Calculating the Dollar Value of a Distribution Pool**

4.6 The point value of programs (see Calculating Royalties) is used to determine the relative value of each distribution pool for the Distribution Period as follows:

- (a) Each program is associated with a specific distribution pool;
- (b) The total point value of each distribution pool is determined by summing the point values of the associated programs;
- (c) The total value of the sub-fund is calculated by summing the total point values of all the distribution pools related to the sub-fund; and
- (d) The dollar value of a distribution pool is calculated by dividing the total points of the distribution pool by the total points of its related sub-fund, then multiplying the result by the total dollar value of the sub-fund.

4.7 The formula for calculating the dollar value of a distribution pool is:



$$\text{Dollar Value of Distribution Pool} = \frac{\text{Total Points of Distribution Pool}}{\text{Total Points of Related Sub-Fund}} \times \text{Total Value of Related Sub-Fund}$$

## CALCULATING ROYALTIES

### Educational Collection Services

5.1 Screenrights receives records of streams of copies by resource centres on behalf of licensed educational institutions. Screenrights uses these records as a proxy for copying and communication by the recipient educational institution. Screenrights treats a stream during a twelve month period as evidence of copying and communication by the educational institution of that program during that period. Subsequent streams by the same institution of the same program during the same period are not included in distribution.

*Note: This policy maintains the anniversary copying and communication provisions which were in the Australian Copyright Act. These provisions were removed in the simplification of the statutory licence in 2017 and the parties were given discretion how to treat anniversary copies. To ensure consistency of treatment with past years, Screenrights continues to apply the prior provisions for the purposes of distribution.*

### Educational and Government Collection Services

#### Program Categories

5.2 Program categories affect the value of each minute copied or communicated.

5.3 For television programs, the program categories are:

Program Category	Point Value of Category
Category A	No longer in use.
Category B	10 points per minute
Category C	3 points per minute

**Category B** is any program not falling within the definition of a Category C program.

**Category C** is a program classified by Screenrights as being:

- news;
- current affairs (magazine);
- series;
- serials;
- light entertainment;
- sports programs; or
- advertisements

5.4 For radio programs, the program categories are:

Program Category	Point Value of Category
Category M	10 points per 15 minutes
Category T	10 points per 15 minutes
Category MT	10 points per 15 minutes

**Category M** is a program consisting principally of music;

**Category T** is a program consisting principally of talk, literary works or dramatic works, notwithstanding that music may be included in the program; and

**Category MT** is a program featuring both music and talk.

### **Sample Weights**

5.5 Under the Australian Educational Government Service, a sample weight may be applied to state government department surveys based on a cap on usage for specific channels.

### **Advertisement Component**

5.6 For programs with advertisements that are copied by government departments and agencies, a percentage of the number of minutes is deducted from the number of minutes copied to compensate for the advertising component within a copied or communicated program.

### **Point Calculation for Copies**

5.7 The point value of a copied program is determined based on:

- The number of copies made (under the Educational Services, streamed programs represent one copy per institution that streamed the program);
- How many minutes of the program were copied; and,
- What type of program was copied and how it was categorised per 5.2 above.

### **Point Calculation for Communications**

5.8 The point value of a communicated program is determined based on the value of the copied program that was communicated.

## **Retransmission Collection Services – Television Programs**

### **Duration Factor**

5.9 Screenrights determines the duration of each program. Each program is then allocated **1 point per minute** retransmitted.

5.10 The duration is the time between the start of the program and the start of the program that follows it.

### Advertising Component

- 5.11 No consideration is given to the advertising component of programs on the presumption that advertising affects the duration of each program on a given channel consistently. There are no points allocated to the incidental advertising component within a retransmitted program.

### Ratings Band Factor

- 5.12 The number of minutes retransmitted in each ratings band affects the value of the program. A ratings band factor is applied based on the number of minutes in the following ratings bands:

Ratings Band	Ratings Band Period	Factor Applied to Minutes in Ratings Band
PrimeTime	18.00 and 22.29	1.0
Night Shoulder	22.30 and 23.59	0.3
NightTime	00.00 and 05.59	0.1
DayTime	06.00 and 17.59	0.3

### Sample Weights

- 5.13 To maintain the relative value of each retransmitted program a sample weight is applied on a channel basis.

### Point Calculation for Retransmitted Television Programs

- 5.14 The point value of a retransmitted television program is determined based on:

- Duration;
- Ratings Band Factor per 5.12 above; and,
- Sample Weight.

### Retransmission Collection Services – Radio Programs

- 5.15 Radio royalties are allocated on a per channel rather than a per program basis. Each channel is classified as one of the following:

**Music channel:** is a channel which primarily broadcasts music;

**Talk channel:** is a channel which primarily broadcasts talk (such as talk-back or news channels);

**Music/Talk channel:** is a channel which broadcasts both music and talk, but which cannot be classified as either a Music or a Talk channel.

- 5.16 Retransmission royalties for radio programs are paid by channel, without provision of an allocation per radio program broadcast.

### Program Valuation

- 5.17 Each program is associated with a specific distribution pool.
- 5.18 The amount of royalties available for a program is calculated using the point value of a program and the dollar value of its distribution pool.
- 5.19 The value of a program is determined as follows:
- the total number of points is calculated for each distribution pool by summing the point value of all programs associated with the pool;

- the value of a single point is calculated by dividing the dollar value of the distribution pool by the total number of points; and
- the value of each program is calculated by multiplying the point value of the program by the value of a point.

5.20 The following formula is applied to calculate the value of a point:



$$\text{Value of a Point} = \frac{\text{Dollar Value of Distribution Pool}}{\text{Total No. of Points}}$$

5.21 The following formula is applied to calculate the value of a program:



$$\text{Value of a Program} = \text{Point Value of a Program} \times \text{Value of a Point}$$

## SCHEME OF ALLOCATION TO COPYRIGHT COMPONENTS

6.1 Once an allocation per program is made, an allocation is then made to each of the various copyrights subsisting in the program.

### Television Programs

6.2 The scheme of allocation to copyright components in television programs is as follows:

Collection Service	Cinematograph Film	Literary & Dramatic Works	Musical & Associated Literary Works	Sound Recordings of Musical Works	Broadcast/Communication Work
Australian Educational Service	68.5%	22.1%	7.4%	2.0%	N/A
New Zealand Educational Service	67.1%	21.7%	7.3%	1.9%	2.0%
Australian Government Service	67.1%	21.7%	7.3%	1.9%	2.0%
Australian Retransmission Service	68.5%	22.1%	7.4%	2.0%	N/A

### Unscripted programs

6.3 When a television program does not contain a literary or dramatic work of authorship, the owner of the relevant copyright in the film receives the script share.

### Internet Programs

6.4 The scheme of allocation to copyright components in internet programs under the New Zealand Educational Service and the Australian Government Service is as follows:

### Audio-visual Programs

Collection Service	Cinematograph Film	Literary & Dramatic Works	Musical & Associated Literary Works	Sound Recordings of Musical Works	Broadcast/Communication Work
New Zealand Educational Service	67.1%	21.7%	7.3%	1.9%	2.0%
Australian Government Service	67.1%	21.7%	7.3%	1.9%	2.0%

### Audio Programs

Collection Service	Audio Program Category	Literary & Dramatic Works	Sound Recording	Musical & Associated Literary Works	Sound Recordings of Musical Works	Broadcast/Communication Work
New Zealand Educational Service	T	49.0%	49.0%	N/A	N/A	2.0%
	M	N/A	N/A	49.0%	49.0%	2.0%
	MT	24.5%	24.5%	24.5%	24.5%	2.0%
Australian Government Service	T	49.0%	49.0%	N/A	N/A	2.0%
	M	N/A	N/A	49.0%	49.0%	2.0%
	MT	24.5%	24.5%	24.5%	24.5%	2.0%

### Music Video Programs

6.5 The scheme of allocation to copyright components in music video programs is as follows:

Collection Service	Cinematograph Film	Literary & Dramatic Works	Musical & Associated Literary Works	Sound Recordings of Musical Works	Broadcast/Communication Work
Australian Educational Service	51.8%	16.7%	24.8%	6.7%	N/A
New Zealand Educational Service	50.7%	16.4%	24.5%	6.4%	2.0%
Australian Government Service	50.7%	16.4%	24.5%	6.4%	2.0%
Australian Retransmission Service	51.8%	16.7%	24.8%	6.7%	N/A

## Radio Programs

### Educational and Government Collection Services

6.6 The scheme of allocation to copyright components in radio programs is as follows:

Collection Service	Radio Program Category	Literary & Dramatic Works	Sound Recording	Musical & Associated Literary Works	Sound Recordings of Musical Works	Broadcast/ Communication Work
Australian Educational Service	T	50.0%	50.0%	N/A	N/A	N/A
	M	N/A	N/A	50.0%	50.0%	N/A
	MT	25.0%	25.0%	25.0%	25.0%	N/A
New Zealand Educational Service	T	49.0%	49.0%	N/A	N/A	2.0%
	M	N/A	N/A	49.0%	49.0%	2.0%
	MT	24.5%	24.5%	24.5%	24.5%	2.0%
Australian Government Service	T	49.0%	49.0%	N/A	N/A	2.0%
	M	N/A	N/A	49.0%	49.0%	2.0%
	MT	24.5%	24.5%	24.5%	24.5%	2.0%

### Performers' Protection Rights

6.7 Where a sound recording of a program contains a live performance that:

- attracts performers' protection rights under Part XIA of the Australian Act; and
- the performer is entitled to remuneration under Part IVA Division 4 of the Australian Act for the exercise of those rights;

the share of the sound recording allocation for the portion of the program containing the performance is deemed the allocation for the exercise of those performers' protection rights.

### Retransmission Collection Services

6.8 The scheme of allocation to copyright components in radio channels is as follows:

Collection Service	Radio Channel Category	Literary & Dramatic Works	Sound Recording	Musical & Associated Literary Works	Sound Recordings of Musical Works
Australian Retransmission Service	Music	5.0%	5.0%	45.0%	45.0%
	Talk	45.0%	45.0%	5.0%	5.0%
	MusicTalk	25.0%	25.0%	25.0%	25.0%

## Sound Recordings of Musical Works

### Television Programs

- 6.9 Royalties are allocated to copyright owners in sound recordings of musical works in television programs in the following manner:

Class of Sound Recording	Proportion
Commercial Sound Recordings	55.61%
Commissioned Sound Recordings	33.67%
Library Sound Recordings	10.72%

### Radio Programs

- 6.10 Royalties are allocated to copyright owners in sound recordings of musical works in radio programs in the following manner:

Class of Sound Recording	Proportion
Commercial Sound Recordings	90.00%
Commissioned Sound Recordings	10.00%

## DISTRIBUTION

### General Distribution Principles

#### Claiming Royalties

- 7.1 The final step is the distribution of the money collected to each of the relevant copyright owners or their agents. All relevant copyright owners or their agents are entitled to become members of Screenrights and must become a member to collect royalties.
- 7.2 Screenrights' Constitution defines a Copyright Owner as a person who is the legal or beneficial owner of copyright in a Copyright Work. A Copyright Work means a protected subject matter in which copyright subsists in Australia or elsewhere. Agent means the person entitled to exercise all the rights of the Copyright Owner or Registered Title Owner.
- 7.3 Claims to royalties may be made at any time by submitting registrations to programs. Where royalties are subject to the 30 June deadline in the given calendar year, the latest a registration may be submitted to Screenrights is 30 April.

#### Warranting a Claim

- 7.4 Prior to distribution, Screenrights requires the relevant copyright owner or their agent to warrant that they own or control the relevant rights by registering the program in accordance with Screenrights' registration requirements.

#### Capacity of Claim

- 7.5 On a discretionary basis, information about the capacity in which a claim is made may be required, such as whether the person or entity is the copyright owner, exclusive licensee, assignee, agent, administrator, trustee or executor.

#### Claiming on Behalf of the Copyright Owner

- 7.6 Where someone other than the owner of copyright makes a claim, he or she may be required to provide the name of the owner and verify that they represent that owner.

### **Additional Information**

- 7.7 In normal circumstances, Screenrights relies on the warranty provided by the relevant copyright owner or their agent. However, Screenrights does reserve the right to make further enquiries and to seek additional information if required.

### **Minimum Distributable Amount**

- 7.8 Upon receipt of a claim, a member is paid the amount allocated, provided that there are no competing claims and that the amount exceeds the minimum distributable amount as determined by the Board.
- 7.9 Sums less than the minimum distributable amount are placed in the Article 17.2 Trust Fund (see Article 17.2 Trust Fund). Screenrights keeps track of amounts owing to members held in trust so that they can be paid when the aggregate meets the minimum distributable amount.

### **Distribution to Copyright Owners in Musical Works**

- 7.10 Royalties for musical works (and associated literary works) are allocated in collaboration with the Australasian Performing Right Association (APRA) and distributed to Australasian Mechanical Copyright Owners Society (AMCOS) and APRA, as the relevant collection societies, on behalf of the rightsholders they represent.

### **Distribution to Copyright Owners in Sound Recordings of Commercial Music**

- 7.11 Royalties for sound recordings of commercial music are distributed to the Australian Recording Industry Association (ARIA), Phonographic Performance Company of Australia (PPCA) and Phonographic Performance NZ (PPNZ), depending on the relevant territory and relevant rights. Royalties are distributed to these entities as representatives for the classes of copyright owners normally entitled to receive these royalties.

### **Distribution to Copyright Owners in Library Sound Recordings**

- 7.12 Royalties for sound recordings of library music are distributed to the Australasian Mechanical Copyright Owners Society (AMCOS), as the relevant collection society, on behalf of the rightsholders it represents.

### **Distribution of Retransmission Royalties to Copyright Owners in Radio Channels**

- 7.13 The 'talk' portion of channels classified as either Talk or Music/ Talk are split between the relevant rightsholders in accordance with an allocation determined by Screenrights (following an analysis of the retransmitted radio channels) on an annual basis, and paid upon completion of a warranty to the effect that:
- (a) the entity owns the relevant right in retransmitted radio programs;
  - (b) it acknowledges it has received a predetermined share of the royalties allocated to literary and dramatic works and the sound recording comprising the program together with other copyright owners in Radio programs; and
  - (c) it will not contest its share.

### **Special circumstances**

- 7.14 There are a number of special circumstances where there are exceptions to the usual warranty process. These are outlined below.

### ***Distribution of royalties to Footage Suppliers***

- 7.15 Where royalties are owed to suppliers of footage in compilation programming (“Suppliers”), such as news and movie review programs, the outstanding sum is split amongst the relevant Suppliers based on information Screenrights receives from the Copyright Owners of the host programs.

### ***Unidentified infomercial programs***

- 7.16 Where royalties have been allocated to infomercial programs without sufficient information to enable the identification of the product and therefore the potential copyright owner, the allocated sums are pooled and distributed proportionately across identified infomercial programs in the same Distribution Period.

### ***Public Domain***

- 7.17 If a Potential Share within a program is determined to be in relation to Rights in the Public Domain under Australian and New Zealand copyright law, then the Potential Share is returned to the gross distributable funds in accordance with the Constitution.

## **EXCEPTIONAL PAYMENTS**

### **Ad Hoc Payments**

#### ***Educational and Government Collection Services***

- 8.1 Where a copyright owner purports to have evidence of copying or communication by an institution/department where there has been no Potential Share identified by Screenrights, they may make an 'ad hoc' claim.
- 8.2 To make an ad hoc claim the copyright owner must complete a statutory declaration that states:
- the title of the program;
  - the transmission date(s);
  - the total duration of the program;
  - that they have evidence the program has been copied or communicated by a specific institution/department;
  - the name of the institution(s); and
  - that no permission was given by the claimant to the institution/department to copy or communicate the program.
- 8.3 The claimant must then forward the statutory declaration and the evidence of copying or communication to Screenrights, who will contact the institution/department to determine that copying or communication occurred.
- 8.4 Screenrights will meet an ad hoc claim where the evidence reveals one or more copies or communications of a given program were made. On this basis, “substantial” means “at least one copy or communication”.
- 8.5 Screenrights pays an amount based on the relevant sector’s Resource Centre record valuation for the distribution year in which the copying of communication took place. Where an ad hoc claim is made for prior distribution years, Screenrights will pay an amount based on the record-keeping formula for the distribution year in which the copying or communication took place (or in the absence of this information, the most recent year of transmission).

- 8.6 If the amount calculated for the claim is less than the minimum distributable amount, Screenrights will retain the amount in trust until the threshold is reached.
- 8.7 Screenrights will only meet an ad hoc claim from those years where the Distribution Period has not expired. The relevant distribution year will be that in which the act of copying or communication took place. If this cannot be established, the year of transmission will be relevant. In the event that the claimant cannot provide the specific transmission year in which copying or communication took effect, Screenrights will rely on the latest broadcast date as proved by the claimant.
- 8.8 If, in the opinion of the Chief Executive, all of the above factors are met, Screenrights will make the payment on the claim from the IBNR Fund.

### ***Retransmission Collection Services***

- 8.9 Where a retransmitted television program for which Screenrights has collected remuneration is not represented in the Retransmission Sample it will not receive an allocation. Where a copyright owner purports to have evidence of the retransmission of a program in these circumstances, Screenrights may make an 'ad hoc' payment.
- 8.10 To make an ad hoc claim the copyright owner (the 'claimant') must complete a statutory declaration that states:
- the title of the program;
  - the broadcast date(s);
  - the commencement time of the broadcast;
  - the channel on which it was broadcast;
  - the total duration of the broadcast;
  - that they have evidence the program was retransmitted; and
  - that no permission was given by the claimant to the retransmitter(s) to retransmit the program.
- 8.11 The claimant must then forward the statutory declaration and the evidence of retransmission to Screenrights, who will determine whether the program was retransmitted and, if so, on how many occasions in the relevant Distribution Period.
- 8.12 Screenrights will meet an ad hoc claim where the evidence reveals one or more retransmissions of the program were made and not captured in the Retransmission Sample, provided the matters outlined below have been taken into account:
- Screenrights will only meet an ad hoc claim from those distribution years where the Distribution Period has not expired.
  - Screenrights will not meet a claim where:
    - the program has been remunerated under the Retransmission Sample in any Distribution Period;
    - if it is a series, this extends to any episode of the series retransmitted; and
    - if it is a one-off program, this extends to any retransmission of the program; or
    - the claimant has been remunerated in the relevant Distribution Period (for any program).
- 8.13 If, in the opinion of the Chief Executive, all of the above criteria are satisfied, Screenrights will make payment from the IBNR Fund.

- 8.14 The amount paid will vary depending on whether the program:
- received no allocation as a result of the Retransmission Sample approach; or
  - should have received an allocation under the Retransmission Sample approach, but did not appear in the broadcast data.
- 8.15 In the first instance, Screenrights will pay an amount equivalent to the allocation the program would have received if a census, rather than a Retransmission Sample, approach had been used to determine the remunerated broadcasts. In the second instance, Screenrights will pay an amount equivalent to the allocation the program should have received had it been included in the Retransmission Sample.

## **Exceptional Use**

### *Classification of exceptional use*

- 8.16 A claim cannot be made for an ad hoc payment and an exceptional use payment for the same use of copyright.
- 8.17 In some cases legitimate but atypical use under a Screenrights licence may be identified, either in the data collected by Screenrights or through being reported to Screenrights. The Exceptional Use policy sets out how atypical use may be remunerated.
- 8.18 The classification of an activity as 'exceptional use' under a royalty collection service will be determined by Screenrights at its sole discretion. Screenrights may seek advice from an independent statistical authority to assist it in its determination. Where exceptional use is identified in a survey, Screenrights may decide that the records for this unusual activity under the licence will be excluded from the records that form the basis of the distribution.
- 8.19 An exceptional payment may be made for exceptional use. The valuation and approval process for exceptional payment is set out below.

### *Valuation and approval of payments, if any, for exceptional use*

- 8.20 Payments for exceptional use are made at Screenrights' absolute discretion. Screenrights will only consider making a payment for exceptional use where there is substantiated evidence for such use.
- 8.21 Screenrights may in its absolute discretion request supporting documentation to inform its decision regarding the valuation process. A statutory declaration may be required.
- 8.22 The determination of whether a payment is made and the amount of a payment, if any, for exceptional use will be made on a case-by-case basis.
- 8.23 Final decisions regarding exceptional payment will be made by the Screenrights Board.

## **GOVERNANCE**

### **Audit**

#### *Australian and New Zealand educational copying records*

- 9.1 Independent auditors monitor the data entry and distribution process for the Australian and New Zealand sampling services. A sample of entered records is compared against supplied data by the independent auditors

### **Australian Retransmission broadcast records**

9.2 The Retransmission Sample data is audited for compliance to the sample design.

### **Access to records and confidentiality**

9.3 Generally, information disclosed in records, samples and other documentation is available only to authorised employees of Screenrights, all of whom have signed a confidentiality agreement.

9.4 Screenrights is, however, required to provide members with reasonable access to records of the organisation should any member wish to have such access.

## **ALLOCATION TO COPYRIGHT OWNERS IN ARTISTIC WORKS**

### **Educational and Government Collection Services**

10.1 For the purpose of allocation to the copyright owners in artistic works, the relevant programs for research, identification and payment are copied and communicated programs. Records used will be all Resource Centre records, or, a statistical sample of Resource Centre records.

### **Step 1. International Payment Process**

10.2 Payments to copyright owners in artistic works will be made by way of reciprocal arrangements with international artistic works collecting societies based on the program's country of production. This excludes programs produced in countries in which no reciprocal arrangement can be accessed. The artistic works allocation made to the relevant programs will be distributed once a valid warranty is received.

10.3 Further artistic works claims against the relevant programs will be directed to the appropriate international artistic works collecting society for remuneration.

10.4 Any amounts returned by international artistic works collecting societies will form part of the Artistic Works Registration Pool referred to in Step 2.

### **Step 2. Registration Process**

10.5 The amount remaining after Step 1 will form the Artistic Works Registration Pool against which claims for the remaining programs will be accepted in line with the requirements outlined below.

- (a) Screenrights will invite registration of claims by copyright owners in artistic works and their representatives (the 'registrants').
- (b) A points calculation will be used to determine the value of each registration on a per program (or series) basis, as follows:
  - i. Works in a program or series;

<b>Works</b>	<b>Point Value of Category</b>
1-2 non-featured works	1 point
3 or more non-featured works	2 points
1 featured work	2 points
2 or more featured works	3 points

- ii. Copies of a program or series;

Number of Copies	Point Value of Category
1 copy	1 point
2 or more copies	2 points

- iii. On this basis:
  - a. the minimum number of points per registrant, per program (or series) will be 2 points; and
  - b. the maximum number of points per registrant, per program (or series) will be 5 points.
- (c) In the final year of the Distribution Period, to prepare for the payment of royalties, the dollar value of each point will be calculated in the following manner:
  - i. total points will be summed;
  - ii. total value of the Artistic Works Registration Pool will be summed; and,
  - iii. the Artistic Works Registration Pool less 1% will be divided by the total pool points to determine the point value for allocation to the registered programs.
- (d) At the completion of the Distribution Period any funds remaining in the Artistic Works Registration Pool will be transferred into the gross distributable amount for the following distribution year for reallocation.

### **Retransmission Collection Service**

- 10.6 The royalties for the retransmission of artistic works payable to rightsholders in artistic works under the Australian Retransmission Service will be allocated on existing identified use of artistic works in audiovisual works.
- 10.7 An allocation will be made to records of copying and communication identified under the Australian Educational Service where the program was broadcast on a free-to-air Channel or an affiliate AND the program was broadcast in the relevant distribution year.
- 10.8 An allocation will be made to records from any other identified and confirmed sources of the use of artistic works in audiovisual works, as approved by the Board, to supplement records drawn from the Australian Educational Service.
- 10.9 The need for statistical weighting, if any, of records drawn from the Australian Educational Service or approved supplementary sources is determined by Management and presented to the Board.
- 10.10 Royalties are then allocated and distributed in accordance with Step 1 and Step 2 of the artistic works policy for Educational and Government Collection Services.