



Competing Claim Resolution Procedures:

Alternative Dispute Resolution (ADR) Procedure for Competing Claims

Background

- i.** A competing claim arises when Screenrights receives more than one registration for a title from different members (each a “party”, together the “parties”) asserting a claim to the same royalty (“Competing Claim”).
- ii.** Where Screenrights identifies a Competing Claim has arisen, the Competing Claim will be notified to the parties in question via the MyScreenrights web portal so the parties can try to resolve the Competing Claim and advise Screenrights of the correct claimant/s. Generally, the onus is on the parties to the Competing Claim to resolve it.
- iii.** Most of these Competing Claims arise out of confusion over the particular right or territory for which Screenrights collects royalties, or even out of confusion over programs with identical or substantially similar titles. In these cases, Competing Claims can be clarified easily by discussions and correspondence between the parties and Screenrights.
- iv.** Screenrights has a limit of six years to distribute royalties from the time such royalties are collected in a distribution period with the deadline for distribution falling on 30 June in the year in question (“Deadline”). A royalty to which a Deadline applies in the current calendar year (a “Deadline Royalty”) that is still subject to an unresolved Competing Claim on 15 June in the calendar year of the Deadline (as outlined in Table 1) will be forfeited by the parties, rolled

into the next pool of royalties made available for distribution and then reallocated. It is therefore in the parties' interests to resolve the Competing Claim prior to the Deadline.

- V. If the parties are not able to resolve the Competing Claim between themselves, Screenrights offers a framework of resolution procedures ("Competing Claim Resolution Procedures") to assist in resolving Competing Claims. Four (4) steps may be available. Step 3 is the ADR Procedure for Competing Claims, the main subject of this guide. The Steps 1, 2 and 4 and the related procedure of a Screenrights Initiated Expert Decision are also briefly described below for ease of reference and context.

STEP 1. Informal Approaches to Resolution by the Parties

- A. If you are notified that you are a party to a Competing Claim, we encourage you to first review the relevant agreements to confirm your understanding of your position and then to contact the other party to resolve the Competing Claim, being mindful of the deadlines outlined in Table 1. Where needed, parties can draw upon the resources of the Screenrights Resolutions team to better inform their discussions and correspondence. For example, parties to a Competing Claim may call Screenrights to request relevant information, such as information about the programs and rights involved. Parties may also refer to the Screenrights website to see information on how similar competing claims were resolved in the past. These resources are offered as a membership service designed to facilitate the resolution of Competing Claims between the parties themselves. The parties can then further engage with each other to discuss the Competing Claim and if possible reach an agreement. As this is a Competing Claim between the parties as to their respective rights, Screenrights usually expects the parties to resolve the Competing Claim between themselves before Screenrights will have any further involvement. Screenrights will only become involved in early resolution of the Competing Claim where the Express Resolution Process outlined in Step 2 applies.
- B. A Competing Claim may be resolved between the parties by agreement at any time. The agreement may either be comprised of a final resolution as to the proper rightsholder of the royalties, thereby resolving the Competing Claim, or a limited mutual agreement on a suitable outcome in relation to the royalties in question without resolving the underlying Competing Claim. Screenrights must be notified of the agreement (in accordance with C. below) for the royalties to be paid accordingly. In relation to a Competing Claim involving a Deadline Royalty, Screenrights must be notified of the agreement no later than 15 June in the calendar year of the Deadline or the Deadline Royalties will be forfeited by the parties, rolled into the next pool of royalties made available for distribution and then reallocated.

- C.** Notification to Screenrights of agreement reached in relation to a Competing Claim may be by any of the following methods:
- (a)** Where one or more parties to the Competing Claim must alter their title registrations as a result of the agreement reached on the proper rightsholder, they may amend their registration by:
 - i.** making relevant alterations via MyScreenrights; or
 - ii.** submitting a completed Variation of Claim or Withdrawal of Claim form, as appropriate (available on the Screenrights website).
 - (b)** Where parties to a Competing Claim are not able to reach agreement on the proper rightsholder, but wish to agree on how to share royalties currently available for distribution, the parties can direct Screenrights to pay the royalties accordingly by submitting a completed Mutual Agreement to Share Royalties form (available on the Screenrights website) signed by all parties to the Competing Claim. Signing in counterparts is acceptable. The form does not affect the underlying registrations, so the Competing Claim is maintained in relation to future royalties.

STEP 2. Express Resolution Process (ERP)

- A.** At any time that a Competing Claim has been identified by Screenrights and has not been resolved between the parties, Screenrights may identify that a presumption as set out in the Express Resolution Process (ERP) may apply. In such circumstances Screenrights will notify the parties to the Competing Claim.
- B.** Briefly, the ERP acknowledges that in some circumstances a Competing Claim is likely to be resolved in favour of a particular claimant given the application of Australian copyright law, industry agreed contracts and industry practice. The process aims to resolve Competing Claims at an earlier stage where possible. In certain circumstances however, the parties may then proceed to the ADR Procedure for Competing Claims set out in Step 3. See the detailed ERP guide, nutshell and flowchart from for more information (available on the Screenrights website).

STEP 3. ADR Procedure for Competing Claims

- A.** Where a Competing Claim is not able to be resolved between the parties or via the ERP where applicable, Screenrights offers four (4) pathways for resolution under the ADR Procedure for Competing Claims.

- B.** In relation to each determination and Mediation outcome (“Decision”) reached under the ADR Procedure for Competing Claims pathways below:
- (a)** As between Screenrights and each party to the Competing Claim, the Decision will be final and binding in relation to the payment of royalties comprised in the Competing Claim. For the avoidance of doubt, it remains open to the parties to resolve the underlying legal issues between themselves in a court of law;
 - (b)** Screenrights is entitled to rely on the Decision in paying relevant royalties; and
 - (c)** The Decision will serve as a precedent to resolve Competing Claims for future royalties in relation to the same right under presumption 9 of the ERP.
 - (d)** Screenrights wishes to assist members to self-manage Competing Claims wherever possible, without the costs and time involved in using an external decision maker. In pursuit of this aim, Screenrights will publish a summary of all Decisions made under the ADR Procedure for Competing Claims. Publication will be a useful tool for other members facing a Competing Claim of a similar nature. As it is important to protect the confidential information of parties to the Competing Claim, the names of the parties involved and any confidential information will be removed. Copies of Decisions will be made available to members on request with the consent of the parties to a Decision. If all parties agree, they will be afforded the opportunity to assist in identifying and deleting confidential and commercially sensitive information such as payment terms.
- C.** Screenrights will act in accordance with its published Conflicts of Interest policy. Accordingly, in circumstances where a party claims royalties in relation to a given program and that party is also a party to a Screenrights Disbursement Administration Service Agreement for the same program, then wherever a person nominated by Screenrights (a “Screenrights Representative”) would usually make a Decision under the ADR Procedure set out below, Screenrights will ensure the Decision is made independently via a Screenrights Initiated Expert Decision – see below.
- D.** The appropriate pathway for resolving the Competing Claim under the ADR Procedure for Competing Claims depends on the value of the Competing Claim and the timing of its identification. The four (4) pathways are as follows:

1. Low Value Competing Claim (less than AU\$500)

- 1.1 If by 15 June in the calendar year of the Deadline applicable to a Low Value Competing Claim, Screenrights has not been notified of an agreement in relation to the Competing Claim (in accordance with Step 1. C. above) so the royalties can be paid accordingly, the Deadline Royalties will be forfeited by the parties, rolled into the next pool of royalties made available for distribution and then reallocated, subject only to the circumstances set out below.
- 1.2 In the event that one party to a Low Value Competing Claim does not substantively respond to three (3) successive attempts to resolve a Competing Claim in relation to a Deadline Royalty or a royalty where at least twelve (12) months have passed since Screenrights notified the parties of the Competing Claim via MyScreenrights, Screenrights may pay some or all of the royalties in question in favour of the solution-seeking party/parties as further described below:
- (a) The solution-seeking party must provide Screenrights with a written application containing sufficient evidence demonstrating that it has tried without success to contact another party in order to settle a Low Value Competing Claim. This evidence must at a minimum include three (3) written letters or emails from the solution-seeking party (each a "Communication") the contents of which reasonably and in good faith propose to the other party to resolve the Low Value Competing Claim.
- (b) Further, there must be:
- i. at least two (2) weeks between each Communication;
 - ii. not more than three (3) months between the first and the last Communication with all such Communications occurring within twelve (12) months of the written application;
 - iii. no evidence of any substantive response to the offer from the other party. Communications that merely indicate that a response will be forthcoming will not be considered a substantive response by Screenrights; and
 - iv. a statutory declaration signed by the solution-seeking party confirming that the party followed the Communications procedure set out above and it could not reach the other party and/or that the other party did not reply with a substantive response. The statutory declaration must be received by 15 June in relation to any Deadline Royalty. If the solution-seeking party is based in a territory other than Australia, the territory equivalent to a statutory declaration may be submitted provided that it has been notarised by a notary public.

- (c) Following receipt of such evidence (provided that it fully complies with the requirements above to the satisfaction of Screenrights), Screenrights will attempt to contact the other party/parties in writing (which may include email) requesting a response within seven (7) days.
- (d) On the basis of the response or lack thereof, a Screenrights Representative may, considering any material available to it, make a determination to pay the relevant royalties or a percentage thereof to the solution-seeking party. Screenrights may use its discretion to have the determination made independently via a Screenrights Initiated Expert Decision – see below. Screenrights will pay the relevant royalties in accordance with the determination in the next available royalty payment run.
- (e) Upon request, Screenrights will provide reasons for the payment or partial payment to any party to the Low Value Competing Claim.

2. Medium Value Competing Claim (AU\$500–AU\$9,999): Resolved by Internal Determination

- 2.1 In the event that the parties cannot reach an agreement or if one party claims in writing that the other party is not responding to its requests to resolve a Medium Value Competing Claim, a party to the Competing Claim may request in writing that a Screenrights Representative make a determination on the Competing Claim (“Internal Determination”), provided that in relation to a Deadline Royalty, the request is received by 30 April in the calendar year of the Deadline as outlined in Table 1.
- 2.2 If the request for Internal Determination in relation to a Deadline Royalty is not received by 30 April in the calendar year of the Deadline and if by 15 June Screenrights has not been notified of an agreement in relation to the Competing Claim (in accordance with Step 1. C. above) so the royalties can be paid accordingly, the Deadline Royalties will be forfeited by the parties, rolled into the next pool of royalties made available for distribution and then reallocated.
- 2.3 Within five (5) days following an in time request for Internal Determination, all parties will be sent a written notice (which may include email) from Screenrights to submit a written application for this purpose for the Screenrights Representative to consider.
- 2.4 The written application must not exceed five (5) pages plus any supporting documentation and must be attached to a fully completed Competing Claim Resolution Form (available on the Screenrights website).

- 2.5 The Screenrights Representative will make the Internal Determination based on all written applications and Competing Claim Resolution Forms received and such other material available to the Screenrights Representative that in the Screenrights Representative's view is relevant to the Competing Claim. Screenrights may use its discretion to have the Internal Expert Decision – see below.
- 2.6 If Screenrights does not receive a written application and a fully completed Competing Claim Resolution Form from a party within thirty (30) days of Screenrights' notice, a determination may be made in favour of the other party/parties without further reference to that party.
- 2.7 Screenrights will pay the relevant royalties in accordance with the determination in the next available royalty payment run.

3. High Value Competing Claim (AU\$10,000 and over): Options

- 3.1 In the event that any of the following occurs:
- (a) Any or all of the claimants to a High Value Competing Claim indicate on a fully completed Competing Claim Resolution Form (available on the Screenrights website) that they do not wish to contact each other but wish to resolve the Competing Claim; or
 - (b) The High Value Competing Claim involves a Deadline Royalty in a given calendar year; or
 - (c) All claimants request via separate fully completed Competing Claim Resolution Forms (available on the Screenrights website) that Screenrights assist in resolving the High Value Competing Claim by Mediation or Expert Adjudication as further described below,

then Screenrights will ensure that an independent organisation by notice in writing (which may include email) offers to set up a mediation process between the parties ("Mediation") or an expert adjudication process ("Expert Adjudication"), each as set out further below.

- 3.2 The independent organisation will use reasonable endeavours to try to assist the parties to reach agreement on the process to be used, however if all parties are unable to agree as to the process within thirty (30) days of the notice to the parties and the Competing Claim involves a Deadline Royalty, any party may request in writing within seven (7) days thereafter that a Screenrights Representative resolve the Competing Claim involving the Deadline Royalty by Internal Determination in accordance with the

Medium Value Competing Claim process set out above. Screenrights may use its discretion to have the Internal Determination decided independently via a Screenrights Initiated Expert Decision – see below.

- 3.3** In any event, in relation to a Deadline Royalty, if the High Value Competing Claim is not resolved by Mediation, Internal Determination or Expert Adjudication by the timelines outlined in Table 1 and if by 15 June Screenrights has not been notified of an agreement in relation to the Competing Claim (in accordance with Step 1. C. above) so the royalties can be paid accordingly, then the Deadline Royalties will be forfeited by the parties, rolled into the next pool of royalties made available for distribution and then reallocated.
- 3.4** The procedures for a Mediation or Expert Adjudication are set out below:
- 3.5** A Mediation will proceed as follows:

Mediation

- (a)** An independent organisation will arrange a meeting between the parties where the independent organisation will act as a facilitator, or if the parties prefer and agree to pay the cost, Screenrights will offer to set up a process of mediation between the parties using an independent mediator (“the Mediator”) appointed by the independent organisation.
- (b)** The Mediator must have no conflict of interest. If a strong objection is raised to the appointment of a particular Mediator, Screenrights or the claimants may exercise the right to have an alternative mediator appointed by the independent organisation.
- (c)** The Mediation (whether conducted by the independent organisation or a Mediator) will take place at a date and time that is convenient to the parties to the Competing Claim (except that in relation to a Deadline Royalty the date must be before 31 March in the calendar year of the Deadline), independent organisation and the Mediator. This at a preliminary conference at which the parties will be required to sign an agreement to enter into Mediation and in the case of the independent Mediator, to pay the costs of the Mediator in advance.
- (d)** Screenrights will pay the costs of the independent organisation. The parties must pay the full cost of the Mediator in equal shares and must bear their own legal and other associated costs of the Mediation.
- (e)** The Mediation will be conducted on a without prejudice basis. At any time during the Mediation either party may elect to withdraw from the Mediation.

- (f) If the Mediation is carried to a conclusion, all parties will be bound by the outcome of the Mediation in relation to the payment of royalties comprised in the Competing Claim and Screenrights will pay the relevant royalties in accordance with the Mediation outcome in the next available royalty payment run.
- (g) If for whatever reason the Mediation is not carried to a conclusion, the parties may proceed to Expert Adjudication unless it is a Deadline Royalty in which case Screenrights has the absolute discretion to resolve the Competing Claim by Internal Determination in accordance with the Medium Value Competing Claim process set out above.

3.6 An Expert Adjudication will proceed as follows:

Expert Adjudication

- (a) An Expert Adjudicator will be appointed by an independent organisation to undertake the Expert Adjudication. The Expert Adjudicator must have no conflict of interest. If any of the parties raises a strong objection to the appointment of a particular Expert Adjudicator based on a specified conflict of interest, they may exercise the right to require the independent organisation to nominate and appoint alternative adjudicator.
- (b) The parties will agree with the Expert Adjudicator on the format for written submissions to be provided by the parties prior to the Expert Adjudication and whether the parties and/or their representatives will attend the Expert Adjudication to make oral submissions.
- (c) Prior to the commencement of any Expert Adjudication, an estimate of the cost of the Expert Adjudication by the Expert Adjudicator will be provided to the parties to the Competing Claim by the independent organisation. Where the estimated costs will exceed the total amount of the Competing Claim, any party may request in writing within seven (7) days of receiving the estimate that a Screenrights Representative resolve the Competing Claim by an Internal Determination in accordance with the Medium Value Competing Claim process set out above. Screenrights may use its discretion to have the Internal Determination decision made independently via a Screenrights Initiated Expert Decision – see below. By way of initial guidance, in our experience an Expert Adjudication by an Expert Adjudicator can cost in the range of AU\$8,000 to AU\$12,000.
- (d) Screenrights will pay up to AU\$2,000 to cover the cost of the Expert Adjudication by the Expert Adjudicator. Any costs in excess of AU\$2,000 will be deducted from the relevant royalties.

- (e) The parties to the Competing Claim must pay their own legal and associated costs incurred in relation to the Expert Adjudication, including the costs of representation if a party wishes to be represented by a lawyer or some other representative at an Expert Adjudication.
- (f) Screenrights acknowledges that distance may be a factor for some parties where it has been agreed with the Expert Adjudicator to make oral submissions at an Expert Adjudication. So, where requested, the independent organisation will make reasonable arrangements for telephone or video conferencing in order for parties to make oral submissions.
- (g) The Expert Adjudicator will provide an opinion on the Competing Claim using all available material. In relation to a Deadline Royalty, the Expert Adjudicator will be under no obligation to consider any materials or oral submissions submitted by the parties less than one month from 15 June in the Deadline year, 15 June being the final day by which Competing Claims subject to Expert Adjudication must be concluded, as outlined in Table 1.
- (h) The determination of the Expert Adjudicator will be communicated to the parties.
- (i) Screenrights will pay the royalties in accordance with the Expert Adjudicator's determination in the next available royalty payment run following the notification of such determination, subject to any deductions for the cost of the Expert Adjudicator.
- (j) The Expert Adjudication will be conducted on a confidential and without prejudice basis however, if the matter subsequently comes before the courts, a court may request evidence of the Expert Adjudication.
- (k) Further, in the interests of transparency and case history and subject to obligations of confidentiality, Screenrights will make a summary of the determination of the Expert Adjudicator available via its website which explains the basis for the determination in general terms without directly identifying the relevant program or the parties to the Competing Claim. See Step 3. B. (d) above.

4. Late Identification of Medium Value and High Value Competing Claims: Resolved by Expedited Internal Determination

- 4.1 In the event that a Medium Value or High Value Competing Claim in relation to a Deadline Royalty is identified and notified to the parties after 30 April in the calendar year of the Deadline, if the parties cannot reach an agreement or if one party claims in writing that the other party is not responding to its requests to resolve the Competing Claim, a party to the Competing Claim may request in writing that a Screenrights Representative make an expedited determination (“Expedited Internal Determination”), provided that the request is received by 31 May in the calendar year of the Deadline as outlined in Table 1.
- 4.2 If the request for Expedited Internal Determination is not received by 31 May in the calendar year of the Deadline and all of the parties to the Competing Claim have not advised Screenrights in writing (which may include email) by 15 June that they have resolved the Competing Claim and that they all agree with the outcome, then the royalties will be forfeited by the parties, rolled into the next pool of royalties made available for distribution and then reallocated.
- 4.3 Within two (2) working days following a request for Expedited Internal Determination, all parties will be sent a written notice (which may include email) from Screenrights to submit a written application for this purpose for the Screenrights Representative to consider.
- 4.4 The written application must not exceed five (5) pages plus any supporting documentation and must be attached to a fully completed Competing Claim Resolution Form (available on the Screenrights website).
- 4.5 The Screenrights Representative will make the Internal Determination based on all written applications received and such other material available to the Screenrights Representative that in the Screenrights Representative’s view is relevant to the Competing Claim. Screenrights may use its discretion to have the Internal Determination decided independently via a Screenrights Initiated Expert Decision – see below
- 4.6 If Screenrights does not receive a written application and a fully completed Competing Claim Resolution Form from a party within five (5) working days of Screenrights’ notice, a determination may be made in favour of the other party/parties without further reference to the party who has not submitted a written application.
- 4.7 Screenrights will pay the royalties comprised in the Competing Claim in accordance with the determination in the next available royalty payment run.

STEP 4. Member Request for Independent Expert Decision

Where Screenrights has made an internal decision under the ADR Procedure for Competing Claims, such as an Internal Determination on a Medium Value Competing Claim, a member who disagrees with the decision may seek to have the decision made by an independent expert arranged by an independent organisation, both external to Screenrights. In such cases, a member has fourteen (14) days from receipt of the internal decision to request this procedure.



For further details on the Independent Expert Decision process, please see the guide entitled [Member Request for Independent Expert Decision](#).



Screenrights Initiated Expert Decision

Where Screenrights is called to make an internal decision under the ADR Procedure for Competing Claims, such as an Internal Determination on a Medium Value Competing Claim, Screenrights may elect not to make the decision itself and at its own cost send the decision to an independent expert appointed by an independent organisation, both external to Screenrights. In such circumstances, the decision made will not be considered an internal decision for the purposes of the Member Request for Independent Expert Decision pathway outlined above.

For further details on the Screenrights Initiated Expert Decision process, please see the guide entitled [Screenrights Initiated Expert Decision](#).



*If you would like any details about the resolution pathways above, please contact the Screenrights Resolutions team at **(02) 9904 0133** or by email at resolution@screenrights.org.*



TABLE 1:

In relation to a Deadline Royalty, the following timelines in each calendar year must be adhered to:

Date	Event
28 February	Final day to request an Expert Adjudication.
31 March	Final day for a Mediation to be scheduled.
30 April	Final day for registration of a claim.
30 April	Final day to request Internal Determination.
31 May	Final day to request an Expedited Internal Determination.
15 June	Final day to advise Screenrights that a Competing Claim has been resolved between the Members concerned.
15 June	Final day for receipt by Screenrights of a statutory declaration outlining relevant Communications in relation to a Low Value Competing Claim.
15 June	Final day by which Competing Claims subject to Internal Determination must be concluded.
15 June	Final day by which Competing Claims subject to Expert Adjudication must be concluded.
15 June	Final day by which Competing Claims subject to Expert Internal Determination must be concluded.

Note: If any of the dates listed above fall on a weekend or a public holiday the preceding business day will be the relevant date.