



Competing Claim Resolution Procedures:

Express Resolution Process (ERP) — formerly Express Dispute Resolution Process

I. What is the process?

1. Based on information provided by the parties in the course of registering and maintaining the registration of a program title to a Competing Claim, Screenrights may identify that a Presumption as set out in this Express Resolution Process (ERP) may apply where the circumstances appear to support this.
2. Upon identifying that a Presumption may apply, Screenrights will notify the parties that it aims to resolve the Competing Claim in accordance with this ERP and will indicate in the notice whether a Presumption is in your favour or a Presumption is not in your favour. The next steps in each case are outlined below.
3. **You receive notice that a Presumption is in your favour**

If you are notified that a Presumption is in your favour, you do not need to take any further steps in the first instance. However, you may need to take further steps in the future if one of the two circumstances outlined below occur:

- 3.1 Presumption is overturned:** If another party to the Competing Claim provides sufficient evidence to overturn the Presumption, Screenrights will notify you if this occurs. In such cases, their claim to Statutory Royalties will be preserved and you will have sixty (60) days from the date of the notice to submit a written application to the Screenrights Resolutions team containing evidence to support the Presumption. The written application must not exceed five pages plus any supporting documentation, and must be attached to a fully completed ERP Submission Form (available on the Screenrights website). If:

- (a) *You do not provide such evidence within 60 days:* Your claim to the Statutory Royalties will be removed. You may submit a further written application in the format outlined above at any time in an effort to support the Presumption and reinstate your claim and Screenrights will respond within 30 days of receipt. However, until your claim is reinstated, Screenrights is able to rely on the overturning of the Presumption to pay any Statutory Royalties entitlement to other party or parties to the Competing Claim that overturned the Presumption;
- (b) *You do provide such evidence within 60 days:* Screenrights will notify you within 30 days of receipt of that evidence whether you have provided sufficient evidence to support the Presumption. One of the following outcomes will apply:
- I. Sufficient evidence to support Presumption: Screenrights will inform you that you have provided sufficient evidence to support the Presumption and each party's claim to Statutory Royalties will be preserved. In such cases, you may proceed to resolve the matter directly with the other party or under the Alternative Dispute Resolution (ADR) Procedure for Competing Claims; or
 - II. Sufficient evidence not provided: Screenrights will inform you that you have not provided sufficient evidence to support the Presumption and your claim to the relevant Statutory Royalties will be removed. If you are dissatisfied with the decision, you can submit a further written application in the format outlined above, but only one further application may be made in relation to the royalties at issue at the time of the original written application. Screenrights will again respond within 30 days of receipt. However, until sufficient evidence is provided to support the Presumption, your claim will not be reinstated as a Competing Claim and Screenrights is able to rely on its assessment of the relevant evidence to pay any Statutory Royalties entitlement to the other party or parties to the Competing Claim. See also Member Request for Independent Expert Decision below.

3.2 Presumption is put into question: If another party to the Competing Claim provides sufficient evidence to put the Presumption into question but not to overturn it, Screenrights will notify you if this occurs. In such cases, each party's claim to Statutory Royalties will be preserved and you may proceed to resolve the matter directly with the other party or under the ADR Procedure for Competing Claims.

4. You receive notice that a Presumption is not in your favour

If you are notified that a Presumption is not in your favour, you have sixty (60) days from the date of the notice to submit a written application to the Screenrights Resolutions team containing evidence to overturn the Presumption or to put the Presumption into question. The written

application must not exceed five pages plus any supporting documentation, and must be attached to a fully completed ERP Submission Form (available on the Screenrights website). If:

- (a) *You do not provide such evidence within 60 days:* Your claim to the Statutory Royalties will be removed. You may submit a further written application in the format outlined above at any time in an effort to overturn the Presumption or put the Presumption into question and reinstate your claim. Screenrights will again respond within 30 days of receipt. However, until your claim is reinstated, Screenrights is able to rely on the Presumption to pay any Statutory Royalties entitlement to other parties to the Competing Claim; or
- (b) *You do provide such evidence within 60 days:* Screenrights will notify you within 30 days of receipt of that evidence whether you have provided sufficient evidence. One of the following outcomes will apply:
- I. Sufficient evidence to overturn Presumption: Screenrights will inform you that you have provided sufficient evidence to overturn the Presumption. Your claim to Statutory Royalties will be preserved and the party that had the Presumption in their favour will be notified of this outcome and will have sixty (60) days from the date of the notice to submit a written application to the Screenrights Resolutions team containing evidence to support the Presumption as outlined at paragraph 3.1 above. If no application is received within (60) sixty days or if sufficient evidence is not provided to support the Presumption, then Screenrights will pay the relevant Statutory Royalties entitlement to you; or
 - II. Sufficient evidence to put Presumption into question: Screenrights will inform you that you have provided sufficient evidence to put the Presumption into question. Each party's claim to Statutory Royalties will be preserved and you may proceed to resolve the matter directly with the other party or under the ADR Procedure for Competing Claims.
 - III. Sufficient evidence not provided: Screenrights will inform you that you have not provided sufficient evidence to overturn the Presumption or to put the Presumption into question and your claim to the relevant Statutory Royalties will be removed. If you are dissatisfied with the decision, you can submit a further written application in the format outlined above, but only one further application may be made in relation to the royalties at issue at the time of the original written application. Screenrights will again respond within 30 days of receipt. However, until sufficient evidence is provided to overturn the Presumption or to put the Presumption in to question, your claim will not be reinstated as a Competing Claim and Screenrights is able to rely on its assessment of the relevant evidence to pay any Statutory Royalties entitlement to the other party or parties to the Competing Claim. See also Member Request for Independent Expert Decision below.

II. What is “sufficient evidence” to overturn a Presumption or put a Presumption into question?

- A contract (or an extract of key terms) that clearly contradicts the basis of a Presumption is likely to be sufficient to overturn a Presumption.
- A contract term that states that laws of a territory other than Australia govern a contract is not sufficient evidence by itself that Australian copyright law under the Copyright Act does not determine the proper recipient of Statutory Royalties. It will be necessary to show that other terms of the contract, (express or implied) determine who is the proper recipient.
- A screen credit that does not expressly identify the named person as the, or an, owner of the copyright is not sufficient evidence of a copyright interest or a right to Statutory Royalties.
- Otherwise, Screenrights will in good faith consider any other evidence provided which may overturn a Presumption or put a Presumption into question.

For the avoidance of doubt, “sufficient evidence” can not be considered conclusive of the rights position as other parties to a Competing Claim may be in possession of evidence that conflicts with or overrides the “sufficient evidence” provided.

III. Definitions:

“Competing Claim”	refers to where Screenrights receives more than one registration for a title from different members asserting a claim to the same royalty.
“notify” or “notice”	refers to notice in writing which may include email.
“Presumption”	refers to a presumption made under this ERP.
“Statutory Royalties”	refers to royalties administered by Screenrights for educational use, government use and retransmission under the Copyright Act and for educational use under the New Zealand Copyright Act.
“the Copyright Act”	refers to the <i>Copyright Act 1968</i> (Cth) unless otherwise indicated.

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IV. What are the Presumptions?

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

Class of Presumption	Relevant Circumstances	Presumption
Applicable Law	Australian copyright law under the Copyright Act applies to Statutory Royalties.	Presumption 1. For cinematograph films made prior to 19 December 2005, no share of Statutory Royalties is usually payable to the director, but from that date a share of Statutory Royalties for retransmission is usually payable to the director subject to the exceptions set out in s98 of the Copyright Act.
	Moreover, under Australian copyright law, Statutory Royalties are payable to copyright owners and copyright ownership may be completely assigned without restriction. Accordingly, the recognition of enduring rights of authors under foreign copyright law (eg. a prohibition on the assignment of a right of remuneration) is not by itself relevant to determining the proper recipient of Statutory Royalties.	This Presumption acknowledges that since 19 December 2005 directors of cinematograph films have been entitled to share in retransmission royalties, subject to specific exceptions set out in the Copyright Act. Subject to those exceptions and unless a contract provides otherwise, directors and producers are therefore both entitled to receive a share of the retransmission royalties for a film produced after 19 December 2005, although the Copyright Act does not specify in what proportion. Screenrights makes no Presumption in relation to the respective shares between producers and directors and will consider Competing Claims to such royalties under the ADR Procedure for Competing Claims. Screenrights strongly advises members to ensure that their contracts specify the proportions in which directors and producers are to share retransmission royalties.
Contract terms for assignment of copyright in the film and television industry	The writers agreement between a writer and a producer of a cinematograph film usually assigns the copyright comprised in the script to the producer subject to certain reserved rights which may be expressly stated in the agreement.	Presumption 2. Where a writer has assigned the copyright comprised in a script for the purposes of production of a cinematographic film then the related right to receive Statutory Royalties usually resides with the assignee. Exceptions to this Presumption 2 whereby a writer retains or is granted rights to Statutory Royalties must be clearly demonstrated. Presumptions 5 and 6 represent exceptions to this Presumption 2 given the clear terms of the relevant industry agreed contracts. Presumption 3. The producer of a cinematograph film has usually been assigned the entire copyright comprised in a script by the writer/s of the script subject to certain reserved rights which may be expressly stated in a contract.

Class of Presumption	Relevant Circumstances	Presumption
Contract terms for payment of Statutory Royalties	<p>For children’s television programs the industry agreed contracts for writers used broadly in the industry, the Children’s Television Agreement of 1 July 2011, does not specifically provide for the payment of Statutory Royalties to the writer/s of scripts.</p> <p>For feature films, documentaries and short programs produced in Australia there are no industry agreed contracts for writers.</p>	<p>Presumption 4. Statutory Royalties are not usually payable to the writer/s of a script for any feature film, documentary, children’s television program or short program produced in Australia given the terms of relevant industry agreed contracts.</p>
	From 1 January 2008, an industry agreed contract, namely the SPA-AWG Series and Serials Agreement 2008, has often been used for series and serials that commence production in Australia, other than children’s television programs.	<p>Presumption 5. The industry agreed contract usually applies and therefore Statutory Royalties allocated for a script of a television series or serial that commenced production in Australia on or after 1 January 2008, other than a children’s television program, are usually payable to the writer/s of a script where the script is solely created by the writer/s.</p> <p>The Presumption does not apply to series and serials that commenced production prior to 1 January 2008 and the Presumption in such cases is that the relevant Statutory Royalties are payable to the producer or their assignee or successors in title (e.g. distributor or investors).</p>
	From 1 January 2010, an industry agreed contract, namely the SPA-AWG Miniseries and Telemovie Agreement 2010 has often been used for miniseries and telemovies produced in Australia.	<p>Presumption 6. The industry agreed contract usually applies and therefore Statutory Royalties allocated for a script of a miniseries or telemovie which commenced production in Australia on or after 1 January 2010 are usually payable to the writer/s of a script where the script is solely created by the writer/s.</p> <p>The Presumption does not apply to miniseries and telemovies that commenced production prior to 1 January 2010 and the Presumption in such cases is that the relevant Statutory Royalties are payable to the producer or their assignee or successors in title (eg. distributor or investors).</p>
	For all film and television programs produced in New Zealand, there are no industry agreed contracts for writers of scripts.	<p>Presumption 7. Statutory Royalties are not usually payable to the writer/s of a script for any film or television program produced in New Zealand.</p>

Class of Presumption	Relevant Circumstances	Presumption
Representation by Agents	Agents must have written authority signed by their principal to claim Statutory Royalties on behalf of the principal.	Presumption 8. Where a principal advises Screenrights that the principal has not specifically granted an agent the right to represent the principal in relation to a certain category of rights or in relation to certain territories, the agent usually does not have the requisite authority in relation to that category of rights or territories.
Competing Claim Resolution Procedures.	Where a Competing Claim has been resolved by an independent expert under the Competing Claim Resolution Procedures or has been otherwise resolved by a decision made under the ADR Procedure for Competing Claims, the result is highly likely to be the same for future royalties.	Presumption 9. Where a Competing Claim has been resolved by an independent expert under the Competing Claim Resolution Procedures or otherwise resolved by a decision made under the ADR Procedure for Competing Claims, any determination or decision can usually be relied on to resolve future Competing Claims in relation to the same rights.



Member Request for Independent Expert Decision

Where Screenrights has made an internal decision under the ERP, such as a decision made by the Screenrights Resolutions team in relation to sufficient evidence, 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 ERP, such as a decision made by the Screenrights Resolutions team in relation to sufficient evidence, 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 ERP, please contact the Screenrights Resolutions team at **(02) 9904 0133** or by email at resolution@screenrights.org.*