



## Competing Claim Resolution Procedures:

# Express Resolution Process (ERP)

## I. Screenrights initiates the process

- A.** Based on information provided by the parties in the course of registering and maintaining the registration of a program, Screenrights may identify that a Presumption as set out in [Table 1](#) of this Express Resolution Process (ERP) may apply to a Competing Claim where the circumstances appear to support this.
- B.** Upon identifying that a Presumption may apply, Screenrights will notify the parties to the Competing Claim that the ERP will be applied to assist in the resolution of the Competing Claim. The notice will also indicate whether or not a Presumption is in a given party's favour.

## II. What if 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 at this point. Any party who does not have the Presumption in their favour will have an opportunity to respond and then Screenrights will notify you that one of the following outcomes applies:

- A. Presumption is overturned:** If another party to the Competing Claim provides sufficient evidence to overturn the Presumption, their claim to the Statutory Royalties will be preserved. From the date of Screenrights' notice to you of this outcome, you will have:

**Sixty (60) days to submit a written application** containing evidence to support the Presumption using an [ERP Evidence Submission Form](#). If:

- (a) *You do not provide an application within sixty (60) days:* Your claim to the Statutory Royalties will be removed (see section [IV\(a\) - What if your claim is removed under the ERP?](#)).
  - (b) *You provide an application within sixty (60) days:* Screenrights will notify you within thirty (30) days of receipt of that application whether:
    - I. Sufficient evidence was provided: In this case, each party's claim to Statutory Royalties will be preserved and the ERP does not resolve the Competing Claim; or
    - II. Sufficient evidence was not provided: As a result, your claim to the relevant Statutory Royalties will be removed. (see section [IV\(b\) - What if your claim is removed under the ERP?](#))
- B. Presumption is put into question:** Where another party to the Competing Claim does not provide sufficient evidence to overturn the Presumption but does provide sufficient evidence to put the Presumption into question, each party's claim to the Statutory Royalties will be preserved. In these cases, the express nature of the ERP is not appropriate to resolve the Competing Claim and the parties may seek alternative options (see section [V - What if the ERP does not resolve the Competing Claim?](#))

### III. What if a presumption is not in your favour?

If you are notified that a Presumption is not in your favour, from the date of that notice you have:

**Sixty (60) days to submit a written application** containing evidence to challenge the application of the Presumption using an [ERP Evidence Submission Form](#). If:

- (a) *You do not provide an application within sixty (60) days:* Your claim to the Statutory Royalties will be removed (see section [IV\(a\) - What if your claim is removed under the ERP?](#)).
- (b) *You provide an application within sixty (60) days:* Screenrights will notify you within thirty (30) days of receipt of that application whether:
  - I. The Presumption is overturned: 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 the opportunity to respond in accordance with the procedure outlined in section [II A above](#). If that party does not submit an application with sufficient evidence to support the Presumption, then Screenrights is able to rely on the overturning of the Presumption to pay any Statutory Royalties entitlement to you that remains payable; or

- II. The Presumption is put into question: Each party's claim to Statutory Royalties will be preserved. In these cases, the express nature of the ERP is not appropriate to resolve the Competing Claim and the parties may seek alternative options (see section [V - What if the ERP does not resolve the Competing Claim?](#)); or
- III. Sufficient evidence was not provided: Your claim to the relevant Statutory Royalties will be removed (see section [IV\(b\) - What if your claim is removed under the ERP?](#)).

## IV. What if your claim is removed under the ERP?

Your claim to royalties may be reinstated. The options available depend on why your claim was removed as follows:

- (a) *Your claim was removed after you did not submit an application within sixty (60) days.*

In relation to the royalties at issue at the time of the original written application, you will have no further claim to those royalties.

In relation to future royalties, you may submit a written application to either challenge or support a Presumption (as the case may be) to reinstate your claim at any time. The written application must be submitted using an [ERP Evidence Submission Form](#). Screenrights will respond within thirty (30) days of receipt of the application. However, until a claim is reinstated, Screenrights is able to rely on the outcome of the ERP to pay any Statutory Royalties entitlement to the other party or parties to the Competing Claim.

- (b) *Your claim was removed after you submitted an application within sixty (60) days as it did not contain sufficient evidence.*

In relation to the royalties at issue at the time of the original written application, you may submit one further written application to either challenge or support a Presumption (as the case may be) to reinstate your claim. Screenrights will only accept this application if received by Screenrights prior to the next quarterly payment run, the final dates for receipt of applications being 1 March, 1 June, 1 September and 1 December in relation to each quarter. This is to ensure Screenrights has sufficient time to process the application prior to the next relevant payment run. For applications received after those cut-off dates, the application will only be considered in relation to future royalties.

In relation to future royalties, you may submit additional evidence at any

time to either challenge or support a Presumption (as the case may be) to reinstate your claim.

In both cases, the written application must be submitted using an [ERP Evidence Submission Form](#). Screenrights will respond within thirty (30) days of receipt of the application. However, until a claim is reinstated, Screenrights is able to rely on the outcome of the ERP to pay any Statutory Royalties entitlement to the other party or parties to the Competing Claim.

## v. What if the ERP does not resolve the competing claim?

In such cases, Screenrights will advise the parties that they may continue to resolve the matter directly between themselves or under the Alternative Dispute Resolution (ADR) Procedure for Competing Claims.

## vi. What if you do not agree with the Screenrights' internal decision?

If Screenrights makes an internal decision under the ERP that you do not agree with (such as a decision by a Screenrights' Resolution team member that sufficient evidence was not provided), you have five (5) working days from receipt of the internal decision to request that a decision be referred to an independent expert (appointed by an independent organisation). The use of this procedure requires payment of an upfront fee of \$300 (+gst) and may include other costs. Please refer to the [Member Request for Independent Expert Decision](#) document for further details of the costs of using this procedure.

## vii. General

### A. What is the format of a written application under the ERP?

You must include an [ERP Evidence Submission Form](#) indicating in the relevant section that you are making a written application, attached to the written application itself, which must not exceed five (5) pages plus any evidence such as supporting documentation.

### B. Where can I access the ERP Evidence Submission Form and who do I submit my written application to?

The [ERP Evidence Submission Form](#) is located on Screenrights' Resolution website (<https://resolution.screenrights.org>). Written applications should

be submitted to the Screenrights' Resolution team by email ([resolution@screenrights.org](mailto:resolution@screenrights.org)). If post is used, the application must be received by Screenrights on or before the date of any relevant deadline.

### C. 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.

### D. What is a Screenrights Initiated Expert Decision?

Where Screenrights is called to make an internal decision under the ERP, such as a decision made by the Screenrights' Resolution team in relation to the provision of 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 in section [VI above](#).

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

## E. 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.



If you would like any details about the ERP, please contact the Screenrights Resolutions team at **+61 2 9904 0133** or by email at [resolution@screenrights.org](mailto:resolution@screenrights.org).



**Table 1. What are the Presumptions?**

Class of Presumption	Basis of Presumptions	Presumption
	<p>Australian copyright law under the Copyright Act applies to Statutory Royalties. Moreover, under Australian copyright law:</p> <ol style="list-style-type: none"> <li>Statutory Royalties are payable to copyright owners.</li> </ol> <p>Statutory Royalties under the Copyright Act of Australia are distinct from statutory remuneration rights to royalties that do not require copyright ownership as exist in laws of other territories.</p> <p>Applicable Law</p> <p>Accordingly, the recognition of enduring rights of authors (not tied to copyright ownership) 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.</p> <ol style="list-style-type: none"> <li>Copyright ownership may be completely assigned without restriction.</li> </ol>	<p><b>Presumption 1.</b> For cinematograph films made prior to 19 December 2005, no share of Statutory Royalties is payable to the director, but from that date a share of Statutory Royalties for retransmission is payable to the director subject to the exceptions set out in s98 of the Copyright Act.</p> <p>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.</p> <p><b>Presumption 2.</b> 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.</p> <p>Presumptions 5 and 6 represent exceptions to this Presumption 2 given the clear terms of the relevant industry agreed contracts.</p>

## Class of Presumption

### Basis of Presumptions

Contract terms for assignment of copyright in the film and television industry

The writer's 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 3.** The producer of a cinematograph film has 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.

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.

Contract terms for payment of Statutory Royalties

For feature films, documentaries and short programs produced in Australia there are no industry agreed contracts for writers.

**Presumption 4.** Statutory Royalties are not 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.

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.

**Presumption 5.** The industry agreed contract 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 payable to the writer/s of a script where the script is solely created by the writer/s.

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).



## Class of Presumption

### Basis of Presumptions

**Presumption 6.** The industry agreed contract 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 payable to the writer/s of a script where the script is solely created by the writer/s.

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).

**Presumption 7.** Statutory Royalties are not payable to the writer/s of a script for any film or television program produced in New Zealand.

**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 does not have the requisite authority in relation to that category of rights or territories.

**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 be relied on to resolve future Competing Claims in relation to the same rights.

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.

For all film and television programs produced in New Zealand, there are no industry agreed contracts for writers of scripts.

Agents must have written authority signed by their principal to claim Statutory Royalties on behalf of the principal.

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.

Representation by Agents

Competing Claim Resolution Procedures.