

Overview of Current Competing Claim Resolution Procedures

When two or more members submit registrations to Screenrights for the same title and claims overlap, Screenrights in the first instance asks the members in question to review their claims and speak with each other.

When parties are unable to reach a resolution themselves, Screenrights has a range of Competing Claim Resolution Procedures in place to assist members including the Express Resolution Process (ERP), Alternative Dispute Resolution (ADR) procedures and the independent expert pathways. The ERP provides express pathways to the resolution of certain competing claims by applying presumptions based on Australian copyright law, standard industry practice and industry agreed contracts. Currently there are different resolution pathways under the ADR depending on the dollar value of the competing claim/s. For low value claims (under \$500) there is only a limited pathway available.

Screenrights recently introduced a Competing Claims Fund to provide members with an additional year to resolve competing claims at the conclusion of the distribution period. The objective of the fund is to ensure that all members have sufficient time to resolve their competing claims before royalties expire. The Competing Claims Fund commences July 2019. Royalties for unresolved competing claims that would have expired on 30 June 2019 will now be rolled into the Competing Claims Fund to allow a further year for resolution.

The review of the effectiveness of the ERP and other resolution pathways is an ongoing process, and we continue to work with industry to ensure that resolution pathways are fair and administratively manageable for all parties. To respond to identified areas for improvement, Screenrights is proposing the changes set out below.

Proposed changes to Competing Claim Resolution Procedures

	Subject	Current Policy	Proposed Change	Implication for Members
1.	Resolution pathways	The Express Resolution Process (ERP) exists alongside the Alternative Dispute Resolution (ADR) procedure. Competing claims that cannot be reviewed under the ERP are referred to the	Merge the Express Resolution Process (ERP) and the Alternative Dispute Resolution (ADR) into one Competing Claims Resolution Procedure (CCRP).	A simpler resolution procedure with clear stages.

		ADR for alternative resolution pathways.		
2.	ERP policy	<p>The ERP utilises a set of presumptions based on principles of Australian copyright and contract law and standard industry agreements. A party to a competing claim with a presumption not in their favour provides a submission to challenge the application of the presumption. If they overturn the application of the presumption, then the other party may make a submission try to support the application of the presumption. Only after these steps have failed to resolve the matter are the ADR pathways available. This means that the ERP can involve separate steps by each party.</p>	<p>The ERP will be simplified to focus on competing claims which seem to be of a non-complex nature using a simple set of presumptions, such as a presumption that a certain standard industry agreement was used. There is only one step involved - the party with the presumption not in their favour provides a submission to challenge its applicability. If it is challenged successfully the competing claim may move straight to internal determination under the ADR.</p>	<p>A streamlined ERP serves as a 'low touch' resolution stage.</p>
3.	ADR pathways	<p>The resolution pathways available to members are contingent on the value of the competing claim. The ADR offers different resolution pathways depending on whether the competing claim is 'low value' (<\$500),</p>	<p>Eliminate thresholds so that regardless of the dollar value of the claim the same ADR pathway options are available to all members. As such, internal determinations by Screenrights will be a resolution pathway available to all members regardless of the value</p>	<p>A simpler, more equitable ADR stage.</p>

		<p>'medium value' (\$500 - \$9,999) or high value (\$10,000+).</p>	<p>of their competing claims, and not just available for competing claims of medium value. If a member is unsatisfied with the outcome, an expert determination process will be available. However, there may be costs involved for the member unless the Expert finds in their favour. Where a member requests an independent expert decision, costs will generally range from \$2,000 - \$10,000 depending on complexity of submissions* (see <i>below for more information</i>).</p>	
4.	Temporary resolution options	<p>Members have the option to share the available royalties that are in their final distribution year without amending their registration.</p>	<p>Extend the options for a member to resolve a competing claim without amending their registration, including waiving their claim for a given royalty on a one-off basis or sharing the royalties subject to a competing claim, such options to be made available at any time.</p>	<p>A pragmatic means of releasing funds that does not impact a Member's claim for future royalties.</p>

5.	Presumption 9 of the ERP	<p>Where a competing claim has previously been reviewed by an independent expert and/or under Screenrights' ADR procedure, presumption 9 of the ERP is applied to the competing claim.</p> <p>Presumption 9 of the ERP states:</p> <p><i>"Where a Competing Claim has been resolved by an</i></p>	<p>Remove Presumption 9 from the ERP and incorporate it into the CCRP as a mechanism for applying earlier decisions as precedents to competing claims arising over the same rights.</p>	<p>By simplifying the ERP so that it operates as a filter into the ADR, there's no need for an independent expert review of an ERP decision. Accordingly, the broad scope of Presumption 9, which also covers the</p>
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		<p><i>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.”</i></p> <p>Where the competing claim cannot be resolved under the ERP, the parties are referred to the ADR for alternative options.</p>		<p>review of ERP decisions, is no longer required. The implication for members is that we can offer a streamlined and simplified process of relying on precedents that sits under the CCRP generally.</p>
6.	Availability of internal determinations	<p>Any member can request an internal determination of a medium value competing claim at any time.</p> <p>The deadline for a member to request an Internal Determination of a medium value competing claim involving royalties in their final year of distribution is 30 April.</p>	<p>Twice a year, Screenrights will conduct a round of internal determinations. Members may request for an internal determination of a competing claim at these scheduled times.</p> <p>Where a competing claim is in the Competing Claims Fund Year, Screenrights may request that the parties involved in the competing claim provide a submission for Screenrights to make an internal determination. Screenrights will make its determination based on the submissions</p>	<p>Structured pathways at predictable times to aid administration of competing claims.</p> <p>Mandatory Internal Determinations to resolve competing claims quickly in order to release funds for titles with expiring royalties.</p>

			provided by the parties, including in circumstances where only one party chooses to engage in the process.	
7.	Independent experts	Where a member has requested an independent expert decision or where Screenrights wishes to refer an internal determination to an expert, Screenrights contacts an independent organisation to appoint a suitable independent expert.	Rather than relying on one organisation to source an independent expert each time, a panel of independent experts will be established to allow members to nominate preferred experts for their matter. Reasonable efforts will be made to engage an expert that both parties to the competing claim have in their preferred list.	A panel process will be more efficient and provides greater transparency to members who can review the qualifications of the experts.
8.	Removal and/or amendment of registrations by Screenrights	Decisions made under the ADR apply to the distribution of disputed royalties only; they do not affect the underlying registrations of members. The members may face the competing claim again should any additional royalties be collected by Screenrights for the title in question. The ERP however allows opportunities for Screenrights to remove or amend a member's registration in relation to a competing claim.	Remove or amend registrations on the basis of determinations under the CCRP.	Bring consistency to CCRP outcomes.

*Where a member requests an independent expert decision, costs will generally range from \$2,000-\$10,000 depending on complexity of submissions. The payment of costs by a member or Screenrights, in full or in part, is contingent on (i) whether Screenrights has identified an applicable precedent (a previous Expert Determination) and notified the member of that precedent; and (ii) whether or not the Expert's decision is in the member's favour.

Member engagement process

How can I have my say on the proposed changes?

Screenrights is seeking your feedback on the proposed changes, specifically:

- Do you agree/disagree with the proposed changes?
- What other things should be considered in making any changes?
- What further information do you need to decide?

You can make a submission by:

- Completing an online survey [here](#)
- Writing by email to ccrpconsultation@screenrights.org or mail to
CCRP Consultation
Screenrights
Level 1, 140 Myrtle St
Chippendale NSW Australia 2008
- Requesting a consultation to discuss the proposed changes.

The closing date and time for submissions is 5pm AEST Monday 29 July.