



Screenrights' Competing Claim Resolution Procedures (CCRP)

Overview

Set out below are options for resolution of Competing Claims in order of application, if required.

Self Service

Informal approaches to resolution by the parties, including temporary resolution.

see page 3.

Express Resolution Process (ERP)

A framework for the timely resolution of non-complex Competing Claims utilising a simple set of Presumptions.

see pages 4-7.

Alternative Dispute Resolution (ADR) Procedure

Internal Determination and Expert Determination pathways where a Competing Claim has not been resolved between the parties using a Self Service option or via the ERP where applicable.

see pages 8-14.

Background

- (a)** 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”).
- (b)** 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.
- (c)** 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.
- (d)** Where a Competing Claim has previously been resolved under the Competing Claim Resolution Procedures, any determination can be relied on to resolve Competing Claims in relation to the same rights.
- (e)** Screenrights has a limited Distribution Period in which to distribute royalties. On 30 June of the final year of the Distribution Period, royalties that have not been distributed (“Expiring Royalties”) are forfeited and are rolled into the next pool of royalties made available for distribution and then reallocated, UNLESS the royalties are subject to an unresolved Competing Claim.
- (f)** Where royalties are subject to an unresolved Competing Claim at the conclusion of the Distribution Period, the royalties are moved into a separate Competing Claims Fund (CCF) and the parties are given an additional year (“the CCF Year”) to resolve the Competing Claim in relation to those royalties (“CCF Royalties”).
- (g)** If the Competing Claim still remains unresolved by 30 June of the CCF Year, the CCF Royalties will be forfeited by the parties and 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 15 June of the CCF Year, in order for Screenrights to process the resolution by 30 June.
- (h)** If the parties are not able to resolve the Competing Claim between themselves, Screenrights offers a framework of resolution procedures (Screenrights’ Competing Claim Resolution Procedures or CCRP) to assist in resolving Competing Claims, which is the subject of this guide.

1. Self Service

A. Review Relevant Agreements

- (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 set deadlines.
- (b) You can contact Screenrights to gain further information about the programs and rights involved and see the Screenrights Resolution website for information on how similar competing claims were resolved in the past (see 3.5 Publication of Past Determinations).

B. Resolution Between the Parties

- (a) A Competing Claim may be resolved between the parties by agreement at any time.
- (b) The agreement may either be comprised of:
 - i. a final resolution as to the proper rightsholder of the royalties, thereby resolving the Competing Claim, or
 - ii. a temporary resolution by limited mutual agreement on a suitable outcome in relation to the currently available royalties from the CCF Year or final year of a Distribution Period 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.

C. Limited Mutual Agreement

A limited mutual agreement on a suitable outcome in relation to royalties subject to the Competing Claim may include a party agreeing to waive their claim on a one-off basis without varying their title registration or an agreed royalty sharing arrangement limited to currently available royalties from the CCF Year or final year of a Distribution Period.

D. Notification of Agreement Reached

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 Resolution website).
- (b) Where parties to a Competing Claim come to a limited mutual agreement on a suitable outcome in relation to the royalties from the CCF Year or final year of a Distribution Period without a final resolution as to the proper rightsholder, the parties should use the available mechanisms to do so as set out on the Screenrights Resolution website. Any questions on the available mechanisms can be sent to resolution@screenrights.org.

2. Express Resolution Process (ERP)

If the parties are not able to resolve the Competing Claim between themselves and Screenrights has identified that a relevant presumption may be applicable, Screenrights may initiate the Express Resolution Process (ERP), a framework for the timely resolution of competing claims. The ERP focuses on Competing Claims which seem to be of a non-complex nature utilising a simple set of presumptions based on principles of Australian copyright and contract law and standard industry agreements as set out below.

Class of Presumption	Basis of Presumptions	Presumption
Applicable Law	<p>Australian copyright law under the Copyright Act applies to Statutory Royalties. Moreover, under Australian copyright law:</p> <p>(i) Statutory Royalties are payable to copyright owners.</p> <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>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> <p>(ii) Copyright ownership may be completely assigned without restriction.</p>	<p>Presumption 1. 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>
		Presumption 2. No longer in use.
		Presumption 3. No longer in use.
Contract terms for assignment of copyright in the film and television industry	<p>The SPA-AWG Children's Television Agreement 2011 assigns the copyright comprised in the script to the producer without a reserved right to Statutory Royalties for the writer. This agreement, which came into effect on 1 July 2011, is often used for children's miniseries and series produced in Australia.</p>	<p>Presumption 4. The industry agreed contract applies and therefore Statutory Royalties allocated for a script of a children's miniseries or series that commenced production in Australia on or after 1 July 2011 are payable to the producer or their assignee or successors in title (e.g. distributor or investor).</p> <p>The Presumption does not apply to children's miniseries and series that commenced production prior to 1 July 2011.</p>

Class of Presumption	Basis of Presumptions	Presumption
Contract terms for payment of Statutory Royalties	The SPA-AWG Series and Serials Agreement 2008 contains a reserved right to Statutory Royalties for the writer. This agreement, which came into effect on 1 January 2008, is often used for series and serials that produced in Australia, other than children's television programs.	<p>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.</p> <p>The Presumption does not apply to series and serials that commenced production prior to 1 January 2008.</p>
Contract terms for payment of Statutory Royalties	The SPA-AWG Miniseries and Telemovie Agreement 2010 contains a reserved right to Statutory Royalties for the writer. This agreement, which came into effect on 1 January 2010, is often used for miniseries and telemovies produced in Australia.	<p>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.</p> <p>The Presumption does not apply to miniseries and telemovies that commenced production prior to 1 January 2010.</p>
		Presumption 7. No longer in use.
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 does not have the requisite authority in relation to that category of rights or territories.
		<p>Presumption 9. No longer in use.</p> <p>**Presumption 9 has been removed from the ERP and incorporated into the broader Competing Claim Resolution Procedures as a mechanism for applying earlier decisions as precedents to Competing Claims arising over the same rights. See 3.6 Past Determination Presumption.</p>
Contract terms for payment of Statutory Royalties	The SPA-AWG Series and Serials Agreement 1999 contains a reserved right to Statutory Royalties for the writer. This agreement, which came into effect on 1 July 1999, was often used for series and serials that were produced in Australia prior to 1 January 2008. The agreement was superseded by the SPA-AWG Series and Serials Agreement 2008 which came into effect on 1 January 2008.	<p>Presumption 10. The industry agreed contract applies and therefore Statutory Royalties allocated for a script of a television series or serial that commenced production:</p> <p>(a) on or after 1 July 1999; and</p> <p>(b) on or before 31 December 2007</p> <p>are payable to the writer/s of a script.</p> <p>The Presumption does not apply to series and serials that commenced production prior to 1 July 1999 or subsequent to 31 December 2007.</p>

Where a relevant Presumption is not identified as potentially applicable the matter, the ERP does not apply and so the matter may move to resolution under the Alternative Dispute Resolution (ADR) Procedure for Competing Claims.

A. Screenrights initiates the ERP 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 above 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.

B. 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. Any party who does not have the Presumption in their favour will have an opportunity to respond and then Screenrights will notify you of the outcome.

C. 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 status of your claim to the Statutory Royalties will become 'withdrawn'.
- (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 application of the Presumption was challenged successfully by the provision of sufficient evidence. In this case, the ERP does not resolve the matter. Therefore, the matter may move to resolution under the Alternative Dispute Resolution (ADR) Procedure. Alternatively, the parties may still wish to consider resolving the matter using the Self Service options, or
 - ii. The application of the Presumption was not challenged successfully by the provision of sufficient evidence. In this case, the ERP has generally resolved the matter in relation to the currently available royalties (unless you take the opportunity to make one further submission, where available - see point D. (b)). In this event, the status of your claim to the Statutory Royalties will be made 'withdrawn' and the Presumption will continue to be applied to future royalties unless you later provide sufficient evidence to reinstate your claim (see point D.)

D. What if the status of your claim to Statutory Royalties is made 'withdrawn' under the ERP?

Your claim to royalties may be reinstated. The options available depend on why the status of your claim was made 'withdrawn' as follows:

- (a) The status of your claim was made 'withdrawn' after you did not submit an application within sixty (60) days.
 - i. In relation to the royalties at issue at the time that Screenrights notified you that a Presumption was applied to the Competing Claim, you will have no further claim to those royalties.
 - ii. In relation to future royalties, you may submit a written application to challenge the continued application of the relevant Presumption to reinstate your claim at any time. 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) The status of your claim was made 'withdrawn' after you submitted an application within sixty (60) days as it did not contain sufficient evidence.
 - i. In relation to the royalties at issue at the time of the original written application, you may submit one further written application to challenge the application of a relevant Presumption to reinstate your claim. The further written application must be received by Screenrights within fourteen (14) days of receipt of notice from Screenrights that the application of the Presumption was not challenged successfully. This is to ensure Screenrights has sufficient time to process the application. A late application will only be considered in relation to future royalties.
 - ii. In relation to future royalties, you may submit a written application with additional evidence at any time to challenge the application of a Presumption to reinstate your claim.

E. What if my claim is reinstated?

If your claim is reinstated, then the ERP has not resolved the Competing Claim.

F. What if the ERP does not resolve the Competing Claim?

- (a) The Competing Claim may move to resolution under the Alternative Dispute Resolution (ADR) Procedure for Competing Claims.
- (b) Alternatively, the parties may still wish to consider resolving the matter using the Self Service options.

G. What if you do not agree with a Screenrights' decision under the ERP?

- (a) The only decision made under the ERP is whether or not you have provided sufficient evidence to challenge the applicability of a Presumption.
- (b) If Screenrights makes a decision under the ERP that you have not provided sufficient evidence to challenge the applicability of the Presumption, then as set out above at point D. you have opportunities to provide further evidence.
- (c) Should you require assistance on what further evidence to provide, you can contact Screenrights' Resolution team for guidance.

H. General

- (a) What is the format of a written application under the ERP?

The written application must not exceed five (5) pages plus any evidence such as supporting documentation and must be attached to a fully completed ERP Evidence Submission Form (available on the Screenrights Resolution website).

- (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). If post is used, the application must be received by Screenrights on or before the date of any relevant deadline.

- (c) How long does Screenrights have to respond to my written application?

Screenrights will respond within thirty (30) days of receipt of the application.

- (d) What is "sufficient evidence" to successfully challenge the application of a Presumption?

- i. A contract (or an extract of key terms) that clearly contradicts the basis of a Presumption is

likely to be sufficient to challenge the application of a Presumption.

- ii. Screenrights will in good faith consider any other evidence provided which may challenge the application of a Presumption.
- (e) What is not “sufficient evidence”?
- i. 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.
 - ii. 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.

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 and may present that evidence under the ADR Procedure for Competing Claims.

3. Alternative Dispute Resolution (ADR) Procedure for Competing Claims

3.1 INTERNAL DETERMINATION

Where a Competing Claim is not able to be resolved between the parties using a Self Service option or via the ERP where applicable, Screenrights offers Internal Determination as a pathway for resolution of Competing Claims.

A. Initiating an Internal Determination

- (a) Internal Determinations may occur following a request by one of the parties or in the CCF year may be initiated by Screenrights.
- (b) Screenrights may also elect that an Independent Expert decide the issue as further described below under the Screenrights Initiated Expert Determination heading.

B. Key Dates

- (a) Screenrights will conduct scheduled rounds of Internal Determinations. Key dates are published on Screenrights’ Resolution website (<https://resolution.screenrights.org>).
- (b) If a request for Internal Determination in relation to a CCF Royalty is not received by the key date as set out on Screenrights’ Resolution website (<https://resolution.screenrights.org>) in the CCF Year and if by 15 June Screenrights has not been notified of the use of a Self Service option in relation to the Competing Claim (in accordance with Step 1. C. above), the CCF Royalties will be forfeited by the parties, rolled into the next pool of royalties made available for distribution and then reallocated.

C. Requests by party for Internal Determination

- (a) A party to the Competing Claim may request in writing that a Screenrights Representative make an Internal Determination on the Competing Claim.
- (b) Note the key date as published on Screenrights’ Resolution website (<https://resolution.screenrights.org>) by which a request in relation to a CCF Royalty must be received.

- (c) 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 within thirty (30) days of receipt of the notice for the Screenrights Representative to consider.

D. Screenrights Initiated Internal Determination

- (a) Where a Competing Claim is in relation to a CCF Royalty, Screenrights may initiate a mandatory Internal Determination whereby it will invite parties to a Competing Claim in relation to CCF Royalties to make submissions for Internal Determination by the date set out on Screenrights' Resolution website (<https://resolution.screenrights.org>) in the CCF Year.
- (b) All parties will be sent a written notice (which may include email) from Screenrights to submit a written application within thirty (30) days of receipt of the notice for the Screenrights Representative to consider.

E. What to include in the written application

- (a) The written application must not exceed five (5) pages plus any supporting documentation and must be attached to a fully completed Internal Determination Submission Form (available on the Screenrights Resolution website). This form will require an acknowledgement that a summary of the resulting determination will be published (see – 3.6 Publication of Past Determinations).
- (b) The Internal Determination 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). If post is used, the application must be received by Screenrights on or before the date of any relevant deadline.

F. What is involved in an Internal Determination?

- (a) 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.
- (b) If Screenrights does not receive a written application from a party within thirty (30) days of Screenrights' notice, an Internal Determination may be made in favour of the other party/parties without further reference to that party.
- (c) If a decision is not made in your favour and you do not submit a request for Independent Expert Determination within five (5) working days from the notice (as per 3.2, below), the status of your claim will be made 'withdrawn' or your claim will be amended in accordance with the Internal Determination.
- (d) Screenrights will pay the relevant royalties in accordance with the Internal Determination in the next available royalty payment run, unless an in time request is made for an Independent Expert Determination.
- (e) In relation to the future royalties, the Past Determination Presumption applies but you may submit additional evidence at any time to reinstate or adjust your claim (see 3.6 Past Determination Presumption).
- (f) In making the Internal Determination, 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 determination under the ADR Procedure set out below, Screenrights will ensure the determination is made independently via a Screenrights Initiated Expert Determination – see below.

3.2 INDEPENDENT EXPERT DETERMINATION: Member Request

If you are not satisfied with an Internal Determination made by Screenrights under the ADR Procedure you may request for the determination to be referred to an Independent Expert.

The Independent Expert will be chosen from a panel which has been put together by an independent organisation.

A. Starting the process

- (a) You need to submit an Independent Expert Determination Form to Screenrights within five (5) working days of receiving the relevant Internal Determination from Screenrights. The form will include guidance on the range of past costs for Independent Expert Determinations.
- (b) The Independent Expert Determination 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). If post is used, the application must be received by Screenrights on or before the date of any relevant deadline.

B. Notice of potential precedent (where applicable)

- (a) Where Screenrights is of the view that a previous Expert Determination could serve as a precedent to support the Internal Determination in question (see 3.5 Publication of Past Determinations), Screenrights will promptly notify you of the potential precedent. If you still wish to proceed, you must advise Screenrights in writing within five (5) working days of the notice.
- (b) Where a potential precedent has been identified by Screenrights, the Independent Expert will be requested to make a determination on whether the suggested precedent is in fact applicable to the determination in question, in addition to making the determination itself. The applicability of the precedent has cost implications (see: "Costs of the Independent Expert" below).

C. Conflicts of interest and appointment of an Independent Expert

- (a) A panel of Independent Experts will be available to parties to nominate in order of their preferred Independent Expert for their matter. Reasonable efforts will be made to engage an Independent Expert that both parties to the Competing Claim have indicated a high preference for, however the choice of Independent Expert will also be subject to the professional availability of the Independent Expert.
- (b) If there is a disclosed conflict of interest, the parties may either accept the Independent Expert, or any party or Screenrights may exercise the right to have an alternative person appointed.
- (c) On appointment, the Independent Expert will be provided with all the documents used by Screenrights to make its Internal Determination.

D. Joinder of claims (where applicable)

If you request Independent Expert Determinations for matters with similar substantive issues, Screenrights may suggest to the Independent Expert that the matters be determined together. It will be up to the Independent Expert to decide if that should happen taking into account the views of the parties.

E. Cost estimate

- (a) Where you have submitted an Independent Expert Determination Form, and where applicable, you have confirmed that you wish to proceed even though a potential precedent has been identified, the Independent Expert will provide you with an estimate of their costs at the outset.
- (b) You then have seven (7) days to accept this estimate in writing.
- (c) If you refuse to accept the cost estimate, the Independent Expert will not proceed and

Screenrights' Internal Determination will stand.

- (d) If you accept the cost estimate, the Independent Expert will proceed to make a determination following receipt of a signed Expert Determination Agreement.
- (e) Please refer to the "Costs of the Independent Expert" section below for further details of the total costs and conditions involved in using this procedure.

F. Expert Determination Agreement

- (a) The Independent Expert will proceed to make a determination following receipt by Screenrights of a signed copy of the Expert Determination Agreement, which is an agreement between the relevant parties to the Competing Claim, Screenrights and the Independent Expert.
- (b) The agreement will include an acknowledgement that a summary of the resulting determination will be published (see 3.5 Publication of Past Determinations) and that the party requesting the Expert Determination will pay costs where appropriate. (see Costs of the Independent Expert).

G. Format of submissions considered by the Independent Expert

An Expert Determination is made on the parties' written submissions.

H. Basis of Expert Determination

An Expert Determination will be made on the merits of the parties' submissions.

I. Timing of Expert Determination

Screenrights will make all reasonable efforts to ensure that the Independent Expert completes the determination within thirty (30) days from receipt of the signed Expert Determination Agreement.

J. Costs of the Independent Expert

A cost estimate will be provided to you for the Independent Expert to make a determination. You will then be asked to confirm whether you wish to proceed in light of the potential costs consequences for you. The costs to you depends on the outcome, as explained below:

Expert Determination is in the Member's Favour

Where the determination made by the Independent Expert is in your favour, the costs of the Independent Expert will be completely covered by Screenrights.

Expert Determination is not in the Member's Favour

Where the Independent Expert Determination is not in your favour, you must reimburse Screenrights within thirty (30) days of receipt of an invoice for costs of the Independent Expert as follows:

- (a) You must reimburse Screenrights for 50% of the costs where:
 - i. Screenrights has not identified a precedent as applicable; or
 - ii. the Independent Expert determines that a precedent identified by Screenrights is not applicable.
- (b) You must reimburse Screenrights for 100% of the costs where the Independent Expert makes a determination that a precedent identified by Screenrights is applicable.
- (c) You will also be responsible for any costs you may incur in relation to your own preparation (e.g. costs of advice and disbursements).
- (d) The ongoing use of this Member Request for Independent Expert process is conditional upon your compliance with the costs policy outlined above, including making payments in a timely manner.

3.3 INDEPENDENT EXPERT DETERMINATION: Screenrights Initiated

This procedure allows Screenrights to elect that an Independent Expert from the panel will decide an issue where Screenrights is called to make an Internal Determination under the ADR Procedure for Competing Claims.

A. In what circumstances will Screenrights elect for a Screenrights Initiated Expert Determination?

- (a) Screenrights reserves a discretion to make such an election for any reason. For reference purposes, circumstances in which Screenrights may elect to do so may include:
 - i. Where Screenrights considers that the matter is complex.
 - ii. Where Screenrights does not have the internal resources available to make the determination.
 - iii. Where Screenrights is of the view that taking into consideration the interests of all concerned, it would be preferable for the Internal Determination to be made externally.
- (b) This procedure is distinct from circumstances where Screenrights seeks a recommendation from an Expert and makes its own determination, in which case it is an Internal Determination for the purposes of a Member Request for Independent Expert Determination.

B. How will the procedure be started?

- (a) Screenrights will notify the relevant parties to the Competing Claim that it intends to make the election in writing.
- (b) In any case Screenrights will make reasonable efforts to ensure that the determination will be made within a similar timeframe that Screenrights would usually have to make an Internal Determination, wherever possible in light of the availability of the Independent Experts.

C. Who are the parties?

The parties to the procedure will be the same parties to the Internal Determination relating to the Competing Claim.

D. Who will decide it?

- (a) A panel of Independent Experts will be available to the parties to nominate in order of their preferred Independent Expert for their matter.
- (b) Reasonable efforts will be made to engage an Independent Expert that both parties to the Competing Claim have indicated a high preference for, however the choice of Independent Expert will also be subject to the professional availability of the Independent Expert.

E. Effect of determination

Since an Independent Expert makes a determination instead of Screenrights, the determination will not be considered an Internal Determination. Therefore, the Member Request for Independent Expert Determination is not available.

F. Costs

- (a) Screenrights will pay the cost of the Independent Expert for the determination. Members will be in the same position in terms of costs as if Screenrights were making the determination.
- (b) This means members will need to pay any associated costs they may have incurred in relation to the Internal Determination process (e.g. costs of advice and disbursements).

G. Joinder of claims

If you and other Members have similar substantive issues in your respective competing claims or if you are involved in several competing claims with similar substantive issues that require an Internal Determination, Screenrights may suggest that the matters be determined together. It will be up to the Independent Expert to decide if that should happen, taking into account the views of the parties.

H. Conflicts of Interest

If there is a disclosed conflict of interest, the parties may either accept the Independent Expert, or any party may exercise the right to have an alternative person appointed.

I. Information exchange and format of the Independent Expert procedure

On appointment, the Independent Expert will be provided with all the documents that would have been available to Screenrights to make its Internal Determination. The format of the procedure will be similar to the format that would have been used by Screenrights in making its Internal Determination.

3.4 EFFECT OF DETERMINATIONS GENERALLY

In relation to each Internal Determination or Independent Expert Determination under the ADR Procedure for Competing Claims:

- (a) As between Screenrights and each party to the Competing Claim, the determination will be final and binding in relation to the payment of royalties comprised in the Competing Claim, except that where the determination is an Internal Determination there is an opportunity for review by Independent Expert Determination. 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 determination in paying relevant royalties;
- (c) Screenrights is entitled to amend a claim or make the status of a claim 'withdrawn' on the basis of determinations under the ADR Procedure for Competing Claims;
- (d) Determinations will be published as further described below; and
- (e) The Past Determination Presumption applies as further described below.

3.5 PUBLICATION OF PAST DETERMINATIONS

Screenrights wishes to assist Members to self-manage Competing Claims wherever possible, without the costs and time involved in using an external determination maker.

- (a) In pursuit of this aim, Screenrights will publish a summary of past determinations on the Screenrights Resolution website (<https://resolution.screenrights.org>) to guide Members who face Competing Claims of a similar nature. The summary will include reasons for the determination as well as the outcome in order to help Members identify if their Competing Claim raises similar issues to the past determinations.
- (b) As it is important to protect the confidential information of parties to the Competing Claim, the names of the parties involved will be removed and Screenrights will make reasonable efforts not to include information that may be commercially sensitive such as payment terms.
- (c) Past Expert Determinations relating to you are binding on you and Screenrights for the specific Competing Claim decided and may also have value as a precedent for other similar Competing

Claims.

- (d) In the Member Request for Independent Expert Determination process referred to above, a past Expert Determination may be identified by Screenrights as a potential precedent with cost consequences.
- (e) Copies of determinations relating to other Members can be made available to you on request with the consent of the parties to the determination. 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.

3.6 PAST DETERMINATION PRESUMPTION

Past determinations include Internal Determinations and Expert Determinations made under the Competing Claims Resolution Procedures. These past determinations can be used by Screenrights as a basis for the application of the Past Determination Presumption if future royalties become available.

- (a) Under the Past Determination Presumption, where a Competing Claim has been resolved by such a past determination, that past determination can be relied on to resolve future Competing Claims in relation to the same rights.
- (b) If you have had your claim status made 'withdrawn' following such a past determination you may seek to have your claim to royalties reinstated at any time in relation to future royalties. Similarly, if your claim has been amended following a past determination, you may also seek to have your claim to royalties adjusted at any time in relation to future royalties.
- (c) This involves you submitting a written application to challenge the continued application of the Past Determination Presumption.
- (d) The written application must not exceed five (5) pages plus any supporting documentation and must be attached to a fully completed Past Determination Evidence Submission Form. Screenrights will make reasonable efforts to respond within thirty (30) days of receipt of the



*If you would like any details about the resolution pathways above, please contact the Screenrights Resolutions team at **(02) 8038 1300** or by email at resolution@screenrights.org.*

application.

- (e) By way of guidance, for a claim to be reinstated or adjusted, Screenrights would usually expect that either there is new evidence that the rights position between the parties has changed since the time of the past determination or that some critical contract that was not available at the time of the past determination is now available and puts the past determination into question. A claim will not be reinstated where no new evidence is provided.
- (f) Until a claim is reinstated, Screenrights is able to rely on the outcome of the past determination to pay any Statutory Royalties entitlement to the other party or parties to the Competing Claim. If a claim is successfully reinstated, the parties may resolve the matter using Self Service options or by requesting an Internal Determination.

Definitions

Term	Meaning
“ADR”	Alternative Dispute Resolution
“amend”	in relation to a change by Screenrights to a claim for royalties following a determination means that one or more components of the claim (such as Script or Film or Commissioned Sound Recordings) have been amended by Screenrights to a different percentage (%) claim.
“Competing Claim”	refers to where Screenrights receives more than one registration for a title from different members asserting a claim to the same royalty.
“Distribution Period”	refers to the limited period in which Screenrights has to distribute royalties, a period which starts at the end of the financial year in which the royalties are generated. The length of the Distribution Period is currently transitioning from six (6) to four (4) years. Royalties from the 2014, 2015 and 2016 distribution years will close simultaneously on 30 June 2020.
“Independent Expert”	Means an independent expert from the panel of experts which have been selected by an independent organisation.
“notify” or “notice”	refers to notice in writing which may include email.
“Presumption”	refers to a presumption made under the ERP or the Past Determination Presumption under the ADR Procedure for Competing Claims.
“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 Copyright Act 1968 (Cth) unless otherwise indicated.
“withdrawn”	in relation to a change by Screenrights to a claim for royalties following a determination means either that a claim has been withdrawn entirely or that one or more components of the claim (such as Script or Film or Commissioned Sound Recordings) has been amended by Screenrights to a zero percentage (0%) claim.
“working day”	means any day except Saturday or Sunday or a day that is a public or bank holiday anywhere throughout Australia.