

## COMPETING CLAIMS RESOLUTION PROCEDURE

### 1. SUMMARY

- 1.1 A **Competing Claim** arises when more than one member asserts a claim to the same royalty. Screenrights will notify members when a Competing Claim arises in relation to available royalties.
- 1.2 Members are encouraged to review their claims, contact the other member(s) to resolve the dispute and update their registrations on reaching agreement (**Resolution by Agreement**). See the section on Resolutions by Agreement below at [3.29](#).
- 1.3 Where members are unable to resolve the Competing Claim independently, Screenrights offers the following procedures to assist members to resolve their Competing Claims:
- (a) the **Express Resolution Process (ERP)**; and
  - (b) the **Assisted Resolution Process (ARP)**.
- 1.4 The ERP is based on a set of presumptions based on principles of Australian copyright and contract law and standard industry agreements (see the **Presumptions** [here](#)). The ERP is designed to expedite the resolution of non-complex Competing Claims and is explained in more detail below at [2](#).
- 1.5 The ARP facilitates communications between members to help resolve Competing Claims. The ARP is explained in more detail below at [3](#).
- 1.6 Screenrights will notify members if the ERP applies, or when they have the option to participate in the ARP to resolve the Competing Claim.
- 1.7 The key timeframes are set out [here](#).
- 1.8 Screenrights' role is to facilitate the resolution of Competing Claims by members, monitor members' timely engagement in these processes and to record the outcome. Screenrights does not assess or determine the validity of any Competing Claim.
- 1.9 Members can contact Screenrights to gain further information about the programs and rights involved and may also wish to seek legal advice about their position.

### 2. EXPRESS RESOLUTION PROCESS (ERP)

- 2.1 The ERP will apply if Screenrights considers that a [Presumption](#) applies to the Competing Claim. This assessment is based on information provided by members when registering their titles.
- 2.2 If Screenrights identifies that a Presumption may apply to the Competing Claim under the ERP, members will be notified:
- (a) which Presumption is being applied;
  - (b) whether or not the Presumption is in the member's favour; and

- (c) that they have **60 days** to challenge the Presumption by submitting written evidence to support their challenge to displace the Presumption.
- 2.3 Screenrights does not consider the merits of any evidence submitted as part of the ERP.
- 2.4 Where a challenge (which complies with [2.9](#) below) is received within **60 days**, the ARP applies.
- 2.5 If no challenge is received within **60 days**, the Competing Claim is resolved in accordance with the Presumption. Screenrights will amend the registrations and pay the royalties consistent with the applicable Presumption.
- 2.6 If no Presumption applies, members are encouraged to resolve the competing claim directly. Members also have the option to request that the ARP apply to resolve the Competing Claim.
- 2.7 The ARP is not available in relation to a Competing Claim that has been resolved through the ERP.

### **What if a Presumption is in your favour?**

- 2.8 If you are notified that a Presumption is in your favour, you do not need to take any further steps. It may be that the other member wishes to provide evidence to challenge the Presumption or reach an agreement.

### **What if a Presumption is not in your favour?**

- 2.9 If you are notified that a Presumption is not in your favour, you have **60 days** to challenge the application of the Presumption (ending at 5pm AEST/AEDT on the 60th day after the date of the notification by Screenrights).
- 2.10 A member who wishes to challenge the application of the Presumption must provide the following information to Screenrights by email ([resolution@screenrights.org](mailto:resolution@screenrights.org)) within the **60-day** objection period:
  - (a) the [ERP Evidence Submission Form](#); and
  - (b) a written submission and [evidence](#) in support of your challenge to the application of the Presumption.
- 2.11 No extensions of time are available.
- 2.12 Screenrights will respond to your [ERP Evidence Submission Form](#) within **14 days** of receiving the form and the ARP will commence on the date of Screenrights' response.
- 2.13 Where a challenge (which complies with [2.10](#) above) is received within **60 days**, Phase 2 of the ARP applies (see below at [3.10](#)).
- 2.14 If you do not provide Screenrights with the completed [ERP Evidence Submission Form](#) together with a written submission and supporting evidence **within the 60 day objection period**, your objection will be considered withdrawn and you will have no further claim to the available royalties. Future royalties will be paid in accordance with the relevant Presumption. You may at any time, however, submit evidence challenging the continued application of the relevant Presumption in relation to future royalties, in which case the ARP will be initiated.

- 2.15 Screenrights will determine, in its absolute discretion, whether the [ERP Evidence Submission Form](#), written submission and supporting evidence have been sufficiently completed and provided within the objection period. Screenrights does not have any obligation to consider the merits of any evidence submitted or to inform a member prior to applying a Presumption if insufficient information has been provided.
- 2.16 If no challenge is received within **60 days** Screenrights will apply the Presumption, amend the relevant member's registrations and pay the royalties in line with the applicable Presumption. In relation to future royalties however, it is open to the member against whom the Presumption is applied to challenge its continued application by submitting evidence, in which case the ARP will be initiated.
- 2.17 If no Presumption applies, members are encouraged to resolve the competing claim directly. Members also have the option to request that the ARP apply to resolve the Competing Claim (see below at [3](#)).

### 3. ASSISTED RESOLUTION PROCESS (ARP)

- 3.1 The ARP has been developed to assist members by providing a structured framework in which to communicate and resolve Competing Claims together. The ARP is initiated when a member requests assistance or when the ERP does not resolve a Competing Claim.
- 3.2 Screenrights' role in the ARP is to facilitate the resolution of Competing Claims by members, monitor members' timely engagement in these processes and to record the outcome. Screenrights does not assess or determine the validity of any Competing Claim.
- 3.3 The ARP is designed to encourage members to engage constructively to resolve a Competing Claim themselves. If Screenrights considers, in its absolute discretion, that in any phase of the ARP a member has failed to comply with the ARP constructively and in good faith, Screenrights may amend or delete that member's registration for the title on the basis that the member is deemed to have withdrawn their conflicting claim.
- 3.4 If at any time the ARP results in changes to registrations meaning that there are no longer conflicting claims to the title, then the Competing Claim will be treated as resolved and royalties will be distributed in accordance with the amended registrations.

#### Time Limits for Resolving a Competing Claim

- 3.5 Screenrights has 4 years under its Constitution in which to distribute royalties from each royalty "pool" (**Distribution Period**). If there are any undistributed royalties left at the end of that period, they are added into the next royalty pool unless the royalties are subject to an unresolved Competing Claim. These Competing Claim royalties are moved into the separate Competing Claims Fund (**CCF**) and members are given an additional year (the **CCF Year**) to resolve the Competing Claim in relation to those royalties (**CCF Royalties**).
- 3.6 If members are unable to resolve a Competing Claim to CCF Royalties by 30 June of the CCF Year (a total of 5 years), those CCF Royalties will be forfeited. If an ARP applies to royalties from other, open Distribution Periods, any resolution through the ARP will apply only to those royalties.
- 3.7 For Screenrights to process the resolution of the Competing Claim by 30 June of that year, the members

with a Competing Claim must advise Screenrights of any resolution before 15 June that year otherwise the CCF Royalties in relation to that claim, as at 30 June, will be forfeited.

### **The Four Phases of ARP**

- 3.8 The ARP is comprised of four distinct phases. It commences when Screenrights receives a request from a member to participate in the ARP or when there is a successful challenge to the application of a Presumption under the ERP (**ARP Start Date**).

#### ***Phase 1 – Confirmation, Amendment or Withdrawal of Registration***

- 3.9 Phase 1 gives members an opportunity to consider their position in relation to the registration(s) giving rise to the Competing Claim.
- (a) Within 10 business days of the ARP Start Date, Screenrights will send to the members a notice requesting that they review their agreements and confirm, amend or withdraw their claim (**Phase 1 Notice**).
  - (b) Within 45 days of Screenrights sending the Phase 1 Notice (ending at 5pm AEST/AEDT on the 45th day after the Notice is sent by Screenrights); a member must notify Screenrights in writing as to whether the member confirms, amends or withdraws their registration. This must be done either via MyScreenrights or [resolution@screenrights.org](mailto:resolution@screenrights.org).
  - (c) If a member does not respond to the Phase 1 Notice within the allocated time; the member's registration will be deemed to be withdrawn.
  - (d) If, following amendments or withdrawals of registrations by one or more members (including deemed withdrawals under (c) above) there is no longer any conflict; Screenrights will consider the Competing Claim resolved and distribute royalties in accordance with the updated registration.

#### ***Phase 2 - Submissions***

- 3.10 If the Competing Claim is not resolved in Phase 1, Screenrights will send a written notice (**Phase 2 Notice**) to members requiring the members to provide submissions to support their claims **within 60 days (ending at 5pm AEST/AEDT on the 60th day after the Notice is sent by Screenrights)**.
- 3.11 Submissions in response to the Phase 2 Notice must include:
- (a) documents supporting the member's legal claims (contracts and/or supporting documents identifying the member's entitlement to claim the rights in conflict);and
  - (b) a written summary (no more than 5 pages) identifying the relevant provisions within the documents, a description of the documents supplied and reasons as to how the documents support the claim.
- 3.12 Documents submitted to substantiate a Competing Claim in Phase 2 must be complete, legible, in English and signed, though confidential and sensitive information that is not relevant to the member's claim may be redacted.
- 3.13 Screenrights will review each member's submission for compliance with (a) and (b) above. Screenrights does not assess or determine the degree to which the material provided supports or detracts from the

validity of a member's claim.

- 3.14 If Screenrights does not receive a response from a member to the Phase 2 Notice that complies with (a) and (b) above within the 60 day time limit: the member's registration will be deemed withdrawn or amended to the extent that it conflicts with another registration (for which submissions have been received) and amended or deleted by Screenrights accordingly.
- 3.15 If, following any amendments or withdrawals of registrations by one or more members during Phase 2 (including deemed withdrawals under (d) above) there is no longer any conflict: Screenrights will consider the Competing Claim resolved and distribute royalties in accordance with the updated registrations.

### **Phase 3 - Negotiation**

- 3.16 If the Competing Claim has not been resolved in Phase 2, Screenrights will notify the members by sending them a "**Phase 3 Notice**", which will direct them to resolve the dispute through direct negotiations within **90 days (Negotiation Period)**. The Negotiation Period ends at 5pm AEST/AEDT on the 90th day after the Phase 3 Notice is sent by Screenrights.
- 3.17 Within the Negotiation Period, members must actively engage in negotiations and retain evidence of this engagement. These negotiations would generally include, but are not limited to, arranging and participating in conference calls, meetings and communications, exchanging written outlines of their claim with supporting evidence, and responding to another member's written outlines (with a view to clarifying and narrowing legal issues).
- 3.18 If a member fails to engage in the negotiations before 5pm AEST/AEDT on the 60th day after the Phase 3 Notice is sent by Screenrights: a member may inform Screenrights, in writing, that another member has failed to engage by outlining the nature of that failure. Screenrights will then send the member alleged to have failed to engage a **Non-Engagement Notice** which will direct the member to provide evidence of their engagement in the negotiations.
- 3.19 If a member fails to satisfactorily respond to a Non-Engagement Notice before 5pm AEST/AEDT on the 30th day after the Non-Engagement Notice is sent by Screenrights: the member's registration will be deemed withdrawn and amended or deleted by Screenrights accordingly. The determination of whether a member has satisfactorily responded to a Non-Engagement Notice will be in Screenrights' absolute discretion.
- 3.20 If the members fail to reach an agreement within the Negotiation Period and a member intends to commence legal proceedings, arbitration or mediation (LAM) to resolve the Competing Claim with the other member(s): at the conclusion of the Negotiation Period, a member must notify Screenrights of their intention to commence legal proceedings, arbitration or mediation to resolve the Competing Claim with the other member(s) (**LAM Intention Notice**).
- 3.21 If no member provides Screenrights with a LAM Intention Notice before the end of the Negotiation Period: any available royalties, the subject of the Competing Claim, will, upon expiry of the relevant CCF Year, will be forfeited and reallocated into the new Distribution Period.
- 3.22 If, following amendments or withdrawals of registrations by one or more members during the Negotiation Period (including as a result of any agreement between the members, or as a result of deemed withdrawals or amendments) there is no longer any Competing Claim: Screenrights will consider the

Competing Claim resolved and distribute royalties in accordance with the updated registrations.

**Phase 4 - Legal proceedings, arbitration or mediation (LAM)**

- 3.23 A member that sends Screenrights an LAM Intention Notice must, before 5pm AEST/AEDT on the 60th day after the end of the Negotiation Period, provide Screenrights with evidence that LAM have been initiated and that each other member involved in the competing claim has been informed of that initiation.
- 3.24 If no evidence of LAM having been initiated is provided to Screenrights within the 60 day timeframe: then each member's registration will be deemed withdrawn and amended or deleted by Screenrights accordingly. Any available royalties, the subject of the Competing Claim, will, upon expiry of the relevant CCF Year, be forfeited and reallocated into the new Distribution Period.
- 3.25 If a member provides evidence of LAM having been initiated to Screenrights:
- (a) Screenrights will suspend the ARP process pending the outcome of the LAM;
  - (b) Screenrights may suspend the payment of any royalties the subject of the Competing Claim, however any suspended royalties will only be held for the period permitted by Screenrights' Constitution and Distribution Policy, after which the suspended royalties will be forfeited and no longer allocated to the Competing Claim; and
  - (c) upon receipt of evidence of an agreement between the relevant members or a determination of their rights (such as a Court order or arbitral determination), Screenrights will modify the registrations for the title and distribute royalties in accordance with any agreement or determination.
- 3.26 Members participating in this Competing Claims Resolutions Procedure, including the ARP and the ERP, unconditionally release Screenrights from all claims they may have against Screenrights, its directors, officers or employees arising from or relating to that participation or the procedure including, without limitation, any decision made by Screenrights in relation to the member's rights or entitlements.

**Timeframes and notification**

- 3.27 No extensions of time are available. The relevant timeframes are summarised [here](#).

**Warranty Verification**

- 3.28 From time to time Screenrights may request documentation to verify a member's warranties (in accordance with Screenrights' Membership Agreement).

**Resolutions by Agreement**

- 3.29 Members may resolve a Competing Claim at any time by reaching agreement:
- (a) as to the copyright owner of the title (determining entitlement to CCF Royalties (defined below) and future royalties) (**Final Resolution**); or
  - (b) only in relation to currently available royalties from the CCF Year or a final year of a Distribution Period (without resolving the underlying copyright ownership of the title) (**Temporary Resolution**). For example, a member may agree to waive their entitlement to currently available royalties but without waiving their claim to copyright ownership or future royalties.

3.30 Members must promptly notify Screenrights of their agreement by:

- (a) **For Final Resolutions:** making relevant changes to their registrations via MyScreenrights; or
- (b) **For Temporary Resolutions:** completing the relevant form [here](#).

3.31 Screenrights will distribute royalties in reliance upon members' notifications given in accordance with 25.2 (a) and (b) above and any registrations that are amended or updated as a result of the ERP or ARP.

3.32 The commencement of either the ERP or ARP does not limit any entitlement members may have to apply to a Court or, if members have agreed to do so, seek to have the dispute resolved by external mediation or arbitration (these services are not provided by Screenrights).

**Resolution by Court or Arbitration Process**

3.33 In the event a member refers a Competing Claim to a Court or to arbitration or mediation:

- (a) the member agrees to promptly inform Screenrights of the referral;
- (b) Screenrights may suspend or terminate the ARP or ERP;
- (c) Screenrights may suspend the payment of any royalties the subject of the Competing Claim (any suspended royalties will only be held for the period permitted by its Constitution and Distribution Policy after which the suspended royalties will be forfeited and no longer allocated to the Competing Claim); and
- (d) each member agrees to promptly inform Screenrights of the outcome of the referral.

3.34 Screenrights will act consistently with a determination by a Court or arbitral award in relation to a member's copyright interest (or the members' agreement as notified by the members pursuant to [3.29](#) above).

3.35 Screenrights is entitled to rely on a communication from a member that provides evidence of an agreement between members or evidence of a determination of the rights of members (such as a Court order or arbitration determination) in relation to a Competing Claim and to act consistently with that communication to amend its records and distribute royalties.

**Policy Updates**

3.36 This document may be updated by Screenrights from time to time and any updates will be recorded in the table at the conclusion of this document.

**Status**

VERSION	DATE	DESCRIPTION
1.0	1 July 2023	Competing Claims Resolution Procedure published.
1.1	24 July 2023	Update to paragraph numbering.