

Background

From time to time, Screenrights will receive multiple claims to a single royalty. Most of these claims arise out of confusion over the particular right for which Screenrights collects royalties, or even out of confusion over programs with identical or substantially similar titles. In these cases, multiple claims can be settled easily by a written or verbal explanation to the parties making the multiple claim.

Traditionally, Screenrights has placed the onus in resolving multiple claims on the parties themselves. Screenrights will contact the parties, ask them to resolve the multiple claim and advise it of the correct claimant. The multiple claim must be resolved within six years of the royalties being collected. This is the statutory deadline by which all royalties collected in a distribution period must be distributed. Royalties not paid by this statutory deadline (30 June in the year in question) are rolled over into the next distribution period and the royalties in question are lost to all of the claimants.

Policy To Resolve Multiple Claims

When two or more parties assert a claim to royalties (a "Multiple Claim") the Multiple Claim will be notified to the Member Services Executive who will appoint one person to deal with the Multiple Claim ("the Case Manager").

Stage One

1. The Case Manager will contact all parties and encourage them to contact each other with a view to resolving the Multiple Claim. The Case Manager will supply all parties with relevant information, such as information about the programs in dispute, and information about rights ownership under Australian law. In the first instance, parties will be encouraged to resolve the dispute between themselves before Screenrights will have any further involvement.
2. If a Multiple Claim is resolved between the parties, they must inform Screenrights of the result and the fact that they agree with the outcome in writing. The royalties will then be paid to the stated copyright holder.
3. If the royalties in question are greater than \$1,500 and if the Multiple Claim is not resolved within a reasonable time, Screenrights in its sole discretion may suggest that the Multiple Claim goes to either Stage Two (Mediation) or directly to Stage Three (Expert Adjudication).

Stage Two

4. If Stage One is unsuccessful, the Case Manager will request that Screenrights' Corporate Counsel (or another officer of Screenrights trained in dispute resolution) contacts the parties and offers to assist them to resolve the Multiple Claim.

This will take place in the event that any of the following occur:

- (a) One or all claimants indicate that they do not wish to contact each other; or
 - (b) The six year deadline for distribution of the royalties in question will fall due in six months or less; or
 - (c) The parties have been in contact but no progress has been made in resolving the dispute for a period of three months from the date that the Case Manager made initial contact with all parties; or
 - (d) Screenrights is of the reasonable belief that a different approach is required.
5. At this point, Screenrights will offer to set up a meeting between the parties where Screenrights will act as a facilitator, or if the parties prefer, Screenrights will offer to set up a process of mediation between the parties using an independent mediator ("the Mediator") appointed by an independent organisation. The full cost of the Mediator must be paid by the parties in equal shares. The Mediator must have no conflict of interest. If a strong objection is raised to the appointment of a particular Mediator, Screenrights or the claimants may exercise the right to have an alternative mediator appointed.
 6. The mediation (whether conducted by Screenrights or a Mediator) will take place at a date and time which is convenient to the parties to the Multiple Claim, Screenrights and the Mediator. This and any other requirements of the mediation will be agreed at a preliminary conference at which the parties will be required to sign an agreement to enter into mediation and in the case of the independent mediation, to pay the costs of the Mediator in advance. The members must bear their own legal and other associated costs of the mediation.
 7. The mediation will be conducted on a without prejudice basis. At any time during the mediation either party may elect to withdraw from the mediation. If the mediation is carried to a conclusion, all parties will be bound by the outcome of the mediation.

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Stage Three

8. In the event that mediation does not result in an agreed outcome or the parties indicate that they do not wish to participate in the mediation process, Screenrights may recommend that the parties resort to an Expert Adjudication, subject to paragraph 9 below. For this purpose an Expert Adjudicator will be appointed by an independent organisation selected for this purpose by Screenrights.
9. If the royalties in dispute are less than \$1,500 the Chief Executive of Screenrights will make a determination on the multiple claim, based on a written application supplied by the parties for this purpose. The written application must not exceed five pages plus any supporting documentation. If either of the parties do not supply a written application, the Chief Executive will make a determination based on such material available to him that is relevant to the dispute. Screenrights will pay the royalties in dispute in accordance with the determination within 7 working days of the date of such notification.
10. Where the royalties in dispute are in the aggregate greater than \$1,500 and the Multiple Claim concerns a class of parties who are in dispute with a common agent or representative for the same reason (eg a dispute as to the agency itself), Screenrights in its sole discretion may recommend that the parties adopt an Expert Adjudication to resolve the Multiple Claim.
11. The Expert Adjudicator must have no conflict of interest. If a strong objection is raised to the appointment of a particular Expert Adjudicator Screenrights or either of the parties may exercise the right to have an alternative adjudicator appointed. The Expert Adjudication will be conducted on a confidential and without prejudice basis however, if the matter subsequently comes before the courts, the court may request evidence of the Expert Adjudication.
12. The Expert Adjudicator will provide an opinion on the Multiple Claim using all available material. Screenrights will be entitled to rely on the decision of the Expert Adjudicator to pay the royalties that are the subject of the Multiple Claim.
13. The decision of the Expert Adjudicator will be communicated to the parties. Screenrights will pay the royalties in dispute in accordance with the Expert Adjudicator's determination after seven working days of the date of notification of such decision.
14. Screenrights acknowledges that distance may be a factor and will also assist with internet dispute resolution or telephone conferencing where necessary. If a party wishes to be represented by a lawyer or some other representative at an Expert Adjudication, the cost of the representation will be borne by the party.
15. (1) Prior to the commencement of the Expert Adjudication, an estimate of the cost of the Expert Adjudication will be provided to the parties to the multiple claim by Screenrights. Screenrights will pay up to \$1,500 to cover the cost of the Expert Adjudication. Any costs in excess of \$1,500 will be deducted from the royalties in dispute.

(2) The parties to the Multiple Claim must pay their legal and associated costs incurred in relation to the Expert Adjudication.
16. Screenrights will at all stages of the process seek the agreement of the parties to the Multiple Claim. However, if agreement is not reached after discussion with any party not in agreement, Screenrights will have the right to determine a Multiple Claim in accordance with this policy.
17. Where the costs of the Expert Adjudication will exceed the total amount of the Multiple Claim, the Chief Executive of Screenrights will have the discretion to determine how the dispute will be handled.
18. In the interests of transparency and case history, Screenrights will make the decision of the Expert Adjudicator available via its website, subject to a member's request to remove details that may be considered commercial in confidence.

If you would like any details about the process, please contact Screenrights' Chief Executive, Simon Lake on (02) 9904 0133 or by email at simon@screen.org.

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