

Note: This policy does not cover matters of the quantum of equitable remuneration payable by a licensee.

Background

The establishment of appropriate alternative dispute resolution procedure is a requirement under paragraph 3 (c) (viii) of the *Code of Conduct for Copyright Collecting Societies*.

From time to time, disputes may arise between Screenrights and its licensees. Screenrights recognises the right of licensees to apply to the Copyright Tribunal for the resolution of disputes that involve rates of remuneration, and also in respect of the sampling systems used to monitor copying by licensees.

Screenrights recognises that it is also open for licensees to bring an action in either the Federal or Supreme Court should they wish to do so. Screenrights has established the following mediation procedure in order to resolve disputes with licensees. The mediation process will be cost effective and faster for both parties than resorting to litigation. Screenrights is committed to this process and undertakes to provide the necessary resources so that the process is an efficient and effective means by which disputes can be resolved.

The mediation procedure is available only to Screenrights licensees, not prospective licensees. Disputes in relation to or in connection with any negotiations between Screenrights and a prospective licensee are strictly excluded from these mediation procedures. Mediation is not available to resolve disputes on any matters of the quantum of equitable remuneration payable by a licensee.

The mediation procedure may be invoked where there is a dispute over the terms of an existing licence agreement; for example with regard to the manner in which licensees are invoiced, or the provisions in respect of enrolment details to be provided by licensees. Such disputes may arise out of confusion over the terms of the agreement between Screenrights and the licensee.

Mediation sessions will be chaired by an independent expert ("the Mediator") with skills and experience in mediation techniques. This Mediator will be selected by an independent body and paid for by Screenrights. Mediation will take place at a venue and time suitable to all parties: Screenrights, the licensee and the Mediator.

The aim of the mediation will be to facilitate negotiations between the parties. The Mediator will remain independent at all times. The mediation will be conducted on a without prejudice basis.

At any time during the mediation either party may elect to withdraw from the process.

If several licensees have similar substantive issues with Screenrights, Screenrights may suggest that the disputes be mediated together, however licensees are not obliged to accept mediation on this basis.

If neither party opts to withdraw from the process and the mediation is carried to a conclusion, Screenrights undertakes that the outcome of the mediation will be binding on it and an agreement will be entered into between the parties reflecting the decision reached, resulting from the mediation.

Mediation of Disputes Between Screenrights and its Licensees

1. If a dispute, question, difference, issue or matter arising under, out of, or in connection with a licence agreement arises, Screenrights may suggest that the dispute be referred to mediation. This should only occur if it seems unlikely that the dispute can be resolved by further discussion on the matter in dispute between a licensee and Screenrights. Licensees may request that the dispute be determined by mediation and, subject to any other agreement between the parties, Screenrights must agree to the mediation. Licensees may be required to have the dispute referred to mediation under the terms of their current agreement with Screenrights. Mediation is not available to resolve disputes on any matters of the quantum of equitable remuneration payable by a licensee.
2. Once it has been agreed by both parties that the dispute should be referred to mediation, the matter will be referred to Screenrights' ADR liaison officer. The liaison officer will take a detailed note of the matters in dispute, and will contact the licensee to make arrangements for the mediation within 21 days of Screenrights being informed of the dispute. Screenrights current ADR liaison officer is the Corporate Counsel, who can be contacted at Screenrights or on email at gillian@screen.org
3. An independent organisation appointed by Screenrights will be used to select an independent chair with skills and expertise in mediation techniques ("the Mediator") to facilitate mediation. The Mediator must have no conflict of interest. If a strong objection is raised to the appointment of a particular Mediator Screenrights or the licensee may exercise the right to have an alternative mediator appointed.
4. The mediation will take place at a date and time which is convenient to the Licensee, Screenrights and the Mediator. This will be agreed at a preliminary conference at which the parties will be required to sign an agreement to enter into mediation.
5. At least seven days before the date which has been set down for the mediation, either party may elect to provide to the Mediator written statements, or any other documents that they feel are relevant to their arguments. Copies of any written statements or other supporting documents must be supplied to the other party at least seven days before the date that has been set down for the mediation.
6. At the mediation, the Mediator will act as an independent facilitator of the negotiations between the parties. The Mediator will provide guidance to the parties on how negotiations may proceed and may make decisions with regard to the progress of the mediation itself, but only with the consent of both parties.
7. Parties may elect to be represented at the mediation. Each party will be liable for their own costs if they choose to use a representative.
8. At any time during the mediation either party may elect to withdraw from the mediation and refer the dispute to the Copyright Tribunal or the relevant Court, whichever is appropriate.
9. As far as the law allows, the mediation will be conducted on a confidential and without prejudice basis. However, if the matter subsequently comes before the Courts, the Court may exercise its authority to request evidence of the mediation.
10. Screenrights will pay for the services of the Mediator. The licensee must pay its own legal and associated costs incurred in relation to the mediation.

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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