



COPYRIGHT AGENCY LIMITED®

Disputed Allocations Resolution Procedure

Updated October 2011



More information

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Introduction

Copyright Agency's Disputed Allocations Resolution Procedure (DARP) has been developed to assist Copyright Agency members when a dispute arises with another member regarding a Copyright Agency allocation or payment.

The Disputed Allocations Resolution Procedure aims to assist members to resolve disputes quickly. A dedicated Copyright Agency Disputes Officer oversees all disputes between members and is available to guide members through the process.

Scope

As Copyright Agency can only make payments to members, all parties to a dispute must be Copyright Agency members.

Disputes relating to works that have been allocated less than \$2,000 can be managed under the first two stages set out below. However, if the issue has not been resolved, the allocations will continue to be held in trust until all members have confirmed that the dispute has been resolved. In such cases, members should advise Copyright Agency of the outcome of the dispute by contacting our Disputes Officer on (02) 9394 7600.

Claims for allocations to a work for which payment has already occurred are not usually referred to DARP. This is a matter between the parties.

Stage One – Initiation of Dispute

Notification of dispute

A member must advise Copyright Agency's Membership Manager in writing that entitlement to an allocation to a work(s) is in dispute. The member advising the dispute must set out the nature of the dispute. Copyright Agency will acknowledge receipt of the written notification within 48 hours. Copyright Agency will also notify all other affected Copyright Agency members to this dispute within 48 hours of receiving written notification of the dispute.

Decision by Disputes Officer

Copyright Agency's Disputes Officer may determine, on the basis of the information provided, that the dispute is frivolous or vexatious. In that case, current distribution rules and advised payment shares will apply to any affected works and allocations.

Placing monies in suspense

Once the Disputes Officer is satisfied that the matter is a genuine dispute all current and future monies allocated to the work(s) will be placed in suspense in Copyright Agency's Trust Fund until the dispute is resolved.



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Stage Two – Provision of information to members about disputed work(s)/Resolution by members

Transparency

The Disputes Officer will supply all affected members with relevant information, such as information about past distributions of the work, current allocations and relevant records of copying. Copyright Agency may request certain undertakings by both parties in respect of the provision of this information.

Resolution by members

In the first instance Copyright Agency will encourage members to resolve the dispute themselves. Copyright Agency's Disputes Officer may provide assistance to the parties including, by way of example, by providing information about Australian copyright law or by facilitating meetings or correspondence.

Member referral to an independent expert

The parties may elect to refer the dispute to an independent expert at their own cost. Copyright Agency has established a panel of solicitors and barristers expressly for this purpose, and members normally agree that any decision made by the expert is binding and they will bear the costs of that independent expert.

Advice of resolution

If the dispute is resolved by the members, Copyright Agency asks all affected members to provide written advice of the outcome. The Copyright Agency allocations will then be paid according to the written advice.

Failure to resolve dispute

If members are unable to resolve the dispute within four (4) months of first advising Copyright Agency then Copyright Agency may, at our discretion, refer the dispute to stages three or four of this procedure.

Stage Three – Mediation or Expert Determination

Copyright Agency may invite members who are parties to a dispute to participate in mediation or expert determination as a method for resolution. Copyright Agency may offer to bear the costs of the mediator/external expert, or to bear those costs to a specified maximum amount.

Restriction on legal representation

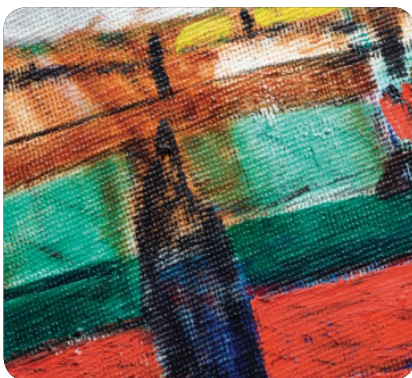
Where Copyright Agency has agreed to bear all or a part of the costs of the mediation or expert determination, the parties shall communicate with the mediator/external expert directly and may not be represented by a lawyer at any hearing or meeting with the mediator/external expert.

Evidence by statutory declarations

For this stage, Copyright Agency's Disputes Officer will require disputing members to submit one or more statutory declarations setting out all relevant information in support of their claim, and may request clarification of any matter set out in those statutory declarations. For transparency, Copyright Agency will normally provide a copy of each statutory declaration to all members party to the dispute.

Mediation

Copyright Agency may schedule mediation days throughout the year as required. All disputes will be considered on a particular day by a single mediator appointed



More information

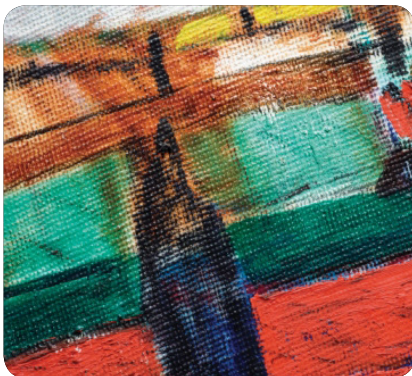
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by Copyright Agency from a panel of preferred mediators. The mediator may set the rules for appearance and presentation of submissions and evidence, including imposing a time limit for submissions

If the dispute is resolved at the mediation day, the members will be expected to record their agreement and jointly authorise the release of the Copyright Agency allocations.

Expert Determination

Copyright Agency may invite parties to a dispute to elect to have the matter resolved by an independent expert. Ideally, the independent expert shall be agreed upon by Copyright Agency and the disputing parties. If the members are unable to agree upon a suitable independent expert, Copyright Agency may refer the dispute to an expert selected by it.

Members will be expected to sign an agreement setting out the process and agreeing to be bound by the decision of the expert. Copyright Agency will advise the members of the outcome of the independent expert's determination.

Unless either party provides Copyright Agency with evidence of the commencement of legal proceedings within two (2) months of receiving notice of the determination, Copyright Agency will distribute the disputed allocations in accordance with the expert determination.

Stage Four – Board Request for Expert Determination

Disputes unresolved after 12 months may be referred by the Board for consideration by an independent expert selected by the Board. Copyright Agency will bear the costs of any expert it appoints.

Restriction on legal representation

Where Copyright Agency has agreed to bear the costs of an external expert, the parties shall communicate with the external expert directly and may not be represented by a lawyer at any hearing or meeting with the mediator/external expert.

Evidence by statutory declaration

Copyright Agency's Disputes Officer may, at his or her discretion, request each disputing member to submit a statutory declaration setting out relevant information supporting their claim. A copy of any such statutory declaration/s will be provided to each disputing member. Where the parties have already submitted statutory declarations at earlier stages, and where neither party has indicated that new and relevant information is available, the Board may elect to rely on the earlier statutory declarations.

Process

The external expert will inform members of the process and of any additional information or submissions he or she may require. The external expert will submit a written decision and reasons for that decision to the Board for consideration.

The Board may, at its discretion, adopt and implement the recommendations of the external expert.

Copyright Agency will advise the members of the Board's decision. Unless either party provides Copyright Agency with evidence of the commencement of legal proceedings within two (2) months of receiving notice of the Board's decision, Copyright Agency will distribute the disputed allocations in accordance with its decision.



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Unresolved disputes

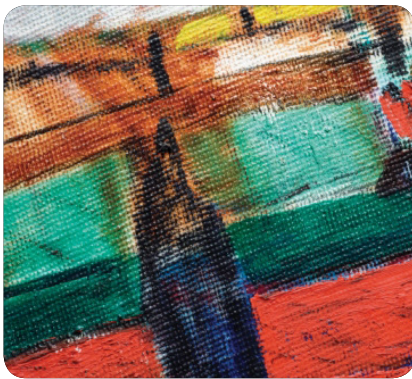
Copyright Agency's Board may at its discretion elect to roll over allocations that have been in dispute for over ten years where it is satisfied that the parties have not made a bona fide effort to resolve the dispute.

Audit

Copyright Agency will regularly undertake an internal audit of its disputes handling process in line with the Australian standards.

Standards

These Dispute Handling Guidelines are drafted to comply with the Australian standard for Dispute Handling ISO 10002:2004, MOD.



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