

EXPERT OPINION (NON-BINDING): Nutshell & Agreement

This Pathway constitutes a non-binding evaluation made for the participants jointly, by a person or persons with expertise in the areas that are outstanding between the participants as outlined in a terms of reference document. In this document the singular expert can also include multiple experts and the singular is used to keep the language simple.

About the Expert and Expert Opinion

The Expert is a person with specialist knowledge of the subject matter of the dispute, who can use that expertise to provide the parties with an opinion. This can be provided as part of another process (negotiation/mediation) or as a stand-alone option.

Who is involved?

All the stakeholders who need to be bound by a decision in order to solve the issue. The process for an Expert opinion is decided by the expert and will vary depending on the subject matter. Participants can represent themselves or bring a friend, lawyer, or other support person. The Expert will provide them with a report that sets out his/her opinion. For music creators, an expert view may be available as part of a mediation (and/or mapping).

What does resolution look like?

A non-binding process provides the participants with a proposal. The participants will need to use this to negotiate / agree on a path forward. If the issue is resolved as a result of the evaluation then this can be documented in an appropriate format.

What if it's not resolved?

If it is not resolved, the Resolution Facilitator can assist in exploring alternative ways of resolving the issues. The participants can decide on whether the expert opinion forms part of any further step.



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Expert Opinion - Agreement

It is important that everyone knows what to expect. This will allow participants to adequately prepare, to know their rights and maximise the chances of everyone feeling satisfied with the process.

The agreement sets out the legal rights in plain English - these are important to understand. The Resolution Facilitator is also available to explain the process and the terms of the agreement



EXPERT OPINION (NON-BINDING): Agreement

Between: Name:

Address:

Name:

Address:

(collectively the “Participants”)

And

Name:

Address:

Name:

Address:

(collectively the “Experts”)

And

Name:

Address:

(the “Resolution Facilitator”)



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Background:

- A. The Resolution Facilitator has referred the Dispute to the Experts for consideration and to provide a non-binding opinion on the Dispute.
- B. The Experts and the Participants enter into this agreement to formalise the Expert Opinion.

Definitions

Adviser means a legal adviser or support person for a Participant as listed in the Annexure.

Dispute is the issue between the Participants as described in the Annexure.

The Expert View

1. The “**Expert Opinion**” comprises all steps taken to hear and provide an opinion on the Dispute by the Experts, whether prior or subsequent to the execution of this agreement

Appointment and functions of the Experts

2. With the Participants’ consent, the Resolution Facilitator appoints the Experts, and the Experts accept the appointment, to hear and provide an opinion on the Dispute in accordance with the terms of this agreement.
3. The Experts confirm that they have no interest in the Dispute, nor any prior dealings with any of the Participants in relation to the Dispute other than as disclosed.
4. If in the course of the process any of the Experts become aware of any circumstances that might reasonably be considered to affect that Expert’s capacity to act impartially, that Expert will, to the extent that the Expert may properly do so, immediately inform the Participants of those circumstances.
5. If, after consultation with the Participants or Advisers, the Expert forms the view that s/he will be unable to assist the Participants s/he may terminate the



appointment by giving written notice to the Participants of that termination.

Co-operation, Costs and Expert's Fees

6. The Participants agree to participate in the Expert Opinion process and each Participant and Adviser will do all things reasonably necessary for the proper, expeditious and cost-effective conduct of the Expert Opinion and will use their best endeavours to comply with reasonable requests made by the Experts. This includes but is not limited to the filing of information and the attendance at any meetings by phone or by video-conferencing and the Experts consider necessary.
7. Each Participant will meet its own costs of and in connection with the Expert Opinion process.
8. Irrespective of the Expert Opinion, the Experts' fees and disbursements will be paid as specified in the Annexure.

Insurance

9. The Experts will ensure they have any insurance and any professional accreditation required to give the opinion.

Conduct of the Expert Opinion

10. The Expert Opinion, including all preliminary steps, shall be conducted in such manner as the Experts consider appropriate, and the Experts may suggest:
 - (i) the exchange of written outlines of the views of the Participants on the issues raised by the Dispute;
 - (ii) the exchange of information or reports;
 - (iii) the holding of face to face meetings.

The Report

11. The Experts' Opinions on the issues in Dispute will be in writing, signed and dated by the Experts and will contain a statement of reasons for the opinion in such a form as the Experts consider appropriate.



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Confidentiality

12. Material that is confidential will be marked as confidential by the Participant for whom it is confidential.
13. The Resolution Facilitator, Participants, Advisers and the Experts will not, unless required by law to do so, disclose to any person not involved in the Expert Opinion process nor use, any confidential information furnished during the Expert Opinion process unless:
 - (i) such disclosure is to obtain professional advice, or
 - (ii) is to a person who has been named and all of the other Participants have consented, and
 - (iii) the person to whom the disclosure is made is advised that the confidential information is confidential.

Release

14. Each Participant releases and indemnifies the Experts and the Resolution Facilitator in relation to any loss, damage or liability that the Experts or the Resolution Facilitator suffers or incurs, or would, but for this release and indemnity, suffer or incur, as a consequence of any act or omission done in good faith in connection with the Expert Opinion process.
15. The Experts will not be liable to the Participants for any act or omission by the Experts in the performance or purported performance of the Experts' obligations under this agreement unless the act or omission is fraudulent.
16. No statements or comments, whether written or oral, made or used by the Participants or the Advisers or the Experts within the Expert Opinion can be relied on to found or maintain any action for defamation, libel, slander or any related complaints, and this document may be pleaded as a bar to any such action.



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Signed:

(Participant)

Name:

Date:

Signed:

(Participant)

Name:

Date:

Signed:

(Expert)

Name:

Date:

Signed:

(Expert)

Name:

Date:

Signed:

(Resolution Facilitator)

Name:

Date:



ANNEXURE

1. Advisers:

Adviser of [Insert Participant name]:

Adviser of [Insert Participant name]:

2. The Dispute:

(please provide a short description) [EG: ownership of “dog eat Dog”]

3. Experts’ Fees and Disbursements:

Experts’ fees:

Estimated disbursements:

Paid by: (note proportion of payment by each participant)

4. The Resolution Facilitator:

Name: Shirli Kirschner

Address: PO Box Paddington NSW 2021



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Current as at 14 July 2020

DATE	COMMENT	
July 2020	Shirli amend	
3 December 2019	Sarah Nicholson reviewed	
9 January 2020	Reviewed and amended by Chris Johnson (APRA Legal)	
26 November 2020	Reviewed by Sarah Nicholson (following amendments by Shirli Kirschner to update for 2 experts)	

