

Code Conciliator's Annual Report

1 July 2016 – 30 June 2017

New Conciliator

The Film Exhibition and Distribution Code has been successfully resolving disputes between distributors and exhibitors for more than 19 years. For the first 18 years the Code Conciliator was Mr David Newton, a Sydney based mediator with an impressive local and international reputation for dispute resolution excellence. I am proud to be following in his footsteps and will do all I can to ensure the continued efficient and effective resolution of film exhibition and distribution disputes.

The success of this voluntary industry Code was possible, over the past nearly two decades, through the commitment and leadership of the FEDCAC Chairman, Mr John Dickie. I wish him every success in his future endeavours and look forward to working with the new Chair, Ms Katherine Sainty.

I would like to thank Ms Cecily Zhu, FEDCAC Secretariat for her valued support during my transition into the role of the Conciliator and for her ongoing work with the signatories of the Code. Most disputes are resolved at the early intervention stage, managed by Ms Zhu.

Please note that Nina Harding was appointed as Acting Code Conciliator (and later Code Conciliator) in October 2016. This report covers several months when the role was filled by Mr David Newton (1 July – 12 October 2016) prior to his demise.

Number of Disputes

Four new enquiries were received by the Code Secretariat between 1 July 2016 and 30 June 2017, one fewer than the previous year. A total of 223 dispute enquiries have been received since the establishment of the Code in 1998.

Of the four new enquiries, one was resolved following a formal Conciliation, two did not proceed further than the enquiry stage and another dispute enquiry is as yet unresolved.

Nature of Complaints

Four dispute enquiries were made to the Code Secretariat. One dispute enquiry was escalated to the Code Conciliator.

Summary of enquiries:

1. A complaint about a distributor approaching customers directly about group bookings and selling tickets on the basis of a higher share of the ticket price than was initially agreed with the exhibitor.
2. An enquiry about a distributor supplying a film to an exhibitor after the general release date due to concerns about piracy.
3. An enquiry about distributors supplying films to an exhibitor much later than the exhibitor's competitors.
4. A complaint that related to Terms of Supply. This dispute was escalated to the Conciliator. The parties had undertaken significant negotiations before contacting the Code Secretariat for assistance. The exhibitor's industry association provided robust support to their member throughout the process. When the parties were unable to resolve the dispute through direct negotiations the Code Secretariat was contacted. The Secretariat provided dispute resolution advice and encouraged a commitment to the principles of the Code. The Managing Director of the Distributor was involved in the discussions, however a resolution was still not possible. The exhibitor issued a Notice of Dispute under clause 16.1.5 of the Code, requesting conciliation and a Conciliation was undertaken in December 2016. All parties participated in good faith and although an agreement was not reached at the Conciliation, an agreement was made during subsequent discussions between the parties and the Conciliator.

Operation of the Code

The Code, which was created in 1998, at the instigation of the Australian Competition and Consumer Commission, was designed to provide a framework for fair and equitable dealings between exhibitors and distributors.

The relatively low number of disputes that reach the Secretariat suggest that the parties are effectively negotiating commercial outcomes directly with one another.

The Secretariat has an important function, particularly with complex disputes, in supporting and encouraging the parties to continue to negotiate in a fair and equitable manner. Only a very small number of disputes, 10 since 1998, have been escalated to the Conciliator. Of the disputes escalated to the Code Conciliator, 90% have reached agreement at this stage.

I wish to thank the Code Administration Committee and the outgoing Chairman, Mr John Dickie, for their support of the Code and the functions of the Code Conciliator.

Nina Harding
Film Exhibition and Distribution Code Conciliator
Nina Harding Mediation Services Pty Ltd
E office@ninaharding.com
W ninaharding.com