

Annual Report 2011 - 2012

**Film Exhibition and Distribution
Code of Conduct
Administration Committee**

Chairman's Report

Introduction

The Code has now been operating for 14 years. It has become an integral part of the way the film and exhibition industries conduct business with each other.

It has also provided the framework where major issues associated with digital transmission issues can be discussed and worked through for the benefit of the whole industry.

The digital revolution is perhaps the most fundamental change the industry has experienced since film was projected onto the screen.

There have been enormous developments in the improvement in the quality and variations of the film being projected – colour, 3D, wide screens, digital sound for instance. But the digital revolution means that film is no longer the basic medium for transferring to movie content onto the screen.

For those engaged in this fundamental change decisions have had to be made which involve major investment in the new technology from both the larger and smaller operators.

It is generally recognised in the industry that by the end of 2013, certainly by the end of 2014, there will no longer be prints of film and digital technology will replace prints entirely.

Both distributors and exhibitors are engaged in trying to maximize the benefits to the industry that this new technology will bring. On the other hand, there will obviously be fallout which will disappoint some of the traditional players in the industry.

Code of Conduct

The Code of Conduct itself provides that there should be periodic renewal so that it remains relevant and responsive to changes in the industry and consequent changes in the way business is done.

It is now five years since the last changes to the code took place. These changes followed an extensive review of the code by Mr Neill Buck. Mr Buck consulted widely through the industry, examined the code in the light of best practice of voluntary codes and recommended 24 changes which in his view would improve the working of the code.

The suggested changes were examined by a sub-committee of the Administration Committee. That committee fine tuned some of the recommendations but recommended to the main committee that the suggested changes should be implemented.

The Administration Committee agreed and these changes were incorporated into the code in 2007.

For this review, the Administration Committee considered a different approach. The view was that many of the governance issues included in the code and governing the way in which it was administered had been comprehensively covered by Mr Buck in his 2006 review.

What was needed this time was a review which looked at the issues brought on by the new technology. The Committee decided to ask signatories about difficulties they were experiencing with the new technology and consider how the code might be structured to deal with these issues.

All signatories were invited to make submissions to the Secretariat “about aspects of the code which they consider to be outdated, ineffective or failing to provide the business framework to allow the industry to operate efficiently and fairly.”

The closing date for submissions was June 15. Seven submissions were received.

Issues raised in the submissions included:-

- the supply of prints to drive in theatres,
- the provision of glasses for 3D movies,
- the sharing of box office information,
- digital transmission and digital cinema operational issues,
- terms of trade,
- the provision of commercial terms from distributors to exhibitors, and
- representation on the Administration Committee.

These submissions have been referred to the sub-committee, comprised of one representative each of the four major groups on the main Committee, for assessment in July.

The plan is for the sub-committee to consider the issues raised, determine which of the issues can be incorporated into the code and make appropriate recommendations to the Administration Committee for consideration.

Film Classification

During the financial year 2011-2012, the Attorney-General of the Commonwealth, Mr Robert McClelland QC gave a reference to the Australian Law Reform Commission for a review of the classification system in Australia.

The Commission was to take into account among other things

- the needs of the community in this evolving technological environment
- the need to improve classification information available to the community and enhance public understanding of the content that is regulated and
- the desirability of a strong content and distribution industry in Australia, and minimising the regulatory burden.

It was clear from the terms of reference and issues papers the Commission published during the inquiry that classification of films was to remain the benchmark for all classified material.

In its final report, the ALRC identified eight guiding principles which should apply to a new classification scheme:

1. Australians should be able to read, hear, see and participate in media of their choice;
2. communications and media services available to Australians should broadly reflect community standards, while recognising a diversity of views, cultures and ideas in the community;
3. children should be protected from material likely to harm or disturb them;
4. consumers should be provided with information about media content in a timely and clear manner, and with a responsive and effective means of addressing their concerns, including through complaints;
5. the classification regulatory framework needs to be responsive to technological change and adaptive to new technologies, platforms and services;
6. the classification regulatory framework should not impede competition and innovation, and not disadvantage Australian media content and service providers in international markets;
7. classification regulation should be kept to the minimum needed to achieve a clear public purpose; and
8. classification regulation should be focused upon content rather than platform or means of delivery.

In its summary of what the proposed changes might mean to the distribution and exhibition industries as well as other media, the ALRC said that if the recommendations were accepted by the Government, it would mean the establishment of a National Classification Scheme, run and funded by the Commonwealth which would

- apply consistent rules to content that are sufficiently flexible to be adaptive to technological change;
- place a regulatory focus on restricting access to adult content, helping to promote cyber-safety and protect children from inappropriate content across media platforms;

- retain the Classification Board as an independent classification decision maker with an essential role in setting benchmarks;
- promote industry co-regulation, encouraging greater industry content classification, with government regulation more directly focused on content of higher community concern;
- provide for pragmatic regulatory oversight, to meet community expectations and safeguard community standards;
- reduce the overall regulatory burden on media content industries while ensuring that content obligations are focused on what Australians most expect to be classified; and
- harmonise classification laws across Australia, for the benefit of consumers and content providers.

The recommendations which will have most impact to the distribution and exhibition industries deal with industry being given more scope for self classification and the consequent saving of classification fees.

Another is the proposed abolition of the Classification Review Board as an independent body.

What is proposed is a review panel composed of members of the Classification Board not involved in the original decision.

The Report has been given to the Government but there has not yet been an official response.

Financial matters

In general terms, the Administration has been able to keep the subscription fees for all of the groups contributing to the financial upkeep of the code to a minimum. I would like to acknowledge the members of the Administration Committee who have made available their premises to hold meetings.

This has meant considerable savings to the expenses incurred by the Committee.

Reappointment of Code Conciliator and Secretariat

One of the recommendations contained in the report compiled by Mr Neill Buck in 2006 was that the Administration Committee should review the performance of the Chairman, the Code Conciliator and the Secretariat each three years.

To ensure continuity, the consideration should not take place in the same financial year but should be in consecutive years.

At its annual meeting at the Movie Convention last August, the Committee unanimously re-endorsed Mr David Newton as the Code Conciliator and The Accord Group, represented by Ms Nathalie Birt as the Secretariat for the next three years.

Mark Sarfaty

During the year, the Committee lost one of its most active members, Mark Sarfaty who died suddenly in October last year.

The Committee carried the following motion of condolence.

“This Committee records its appreciation of the work of Mark Sarfaty, a member of the Code of Conduct Administration Committee for the last seven years who died unexpectedly last month.

Mark served on the Committee initially as a representative of independent distributors and later representing independent exhibitors in his capacity as chief executive officer of the Independent Cinemas Association of Australia.

The Committee recognises his work and the contribution to the cinema industry in Australia for many years and the dedication and tenacity he brought to his various roles.

The Committee expresses its sadness at his untimely death and sends its condolences and appreciation of his work to his **family.**”

Conclusion

One of the reasons for the success of the Code is that the level of disputes remains very low. Code signatories now know that the Secretariat is only a phone call away if a potential dispute looms on the horizon.

The early intervention procedures have meant in practice that the overwhelming numbers of potential disputes are sorted out in the initial stages without them having to go to the final step of conciliation.

This will be set out more fully in the Report of the Code Conciliator and the Secretariat

This is a tribute to the deft and constructive approach taken by the Secretariat and the respect for the code procedures by all parties.

It has been my experience that this constructive and cordial approach to the work of the Code, not only by the Secretariat but by all the members of the Administration Committee has been fundamental in bringing about the high

regard the code is held by the signatories to it. I thank all members of the Committee for the assistance they have given me.

I also thank Nathalie Birt and the members of the Secretariat and the Conciliator, David Newton, for their support and assistance during the last year.

John Dickie

Chairman

1 August 2012