

Film Exhibition and Distribution
Code of Conduct
Administration Committee

Chairman's Annual Report

**August 17
2013**

Introduction

This last 12 months has been an historic one both for the exhibition and distribution industry but also for the Code of Conduct.

In the financial year just concluded, we have seen the curtain closing - with ever increasing speed – on the way films have been transmitted since the beginning of the cinema industry.

While there is still a question mark about the time when all transmission will be digital, there is no longer any doubt about its inevitability.

This major upheaval in the industry has brought with it new issues involving exhibition and distribution and it has been a test of the flexibility and resilience of the Code of Conduct to be able to respond to them.

This year your Administration Committee decided to review the Code in the light of the changes which had already been made anticipating those still to come.

Previous reviews of the Code had been conducted by experts in Code administration and standards to assess its effectiveness and to see that the proper governance issues were in place.

This year, the Committee decided that many of the alterations which needed to be made to the Code reflected the major changes brought about by digital transmission. The changes needed to the Code were more technical than wider governance issues and it was decided to conduct the review internally so that industry insight and experience could be applied.

I shall deal with how this was done and the results in some detail a little later.

The second major issue was more one of an industry wide concern about the impact digital transmission would have on classification issues.

The Classification Branch of the Federal Attorney-General's Department sought the assistance of FEDCAC in discussing proposals to improve communications with the industry across the board and providing helpful and relevant information to film goers.

From the industry's point of view one of the most important issues and one which was a consistent matter of concern was the classification of trailers.

I shall also set these discussions out in some detail.

The Code has now been in operation for 15 years and appears at the present time to be more cohesive and productive than at any time in its history. There is an evident willingness by all the members of the Administration Committee to think not only of their segment of the industry but of the whole industry and its future.

Many of the concerns which had been brought to the Committee's attention were able to be covered in the review with a satisfactory result. In a sense, the Code has come of age.

Review of the Code

Once the decision had been taken to conduct a review of the Code internally, the Committee asked Code Signatories to make submissions about matters which were concerning them and where they thought the Code might be able to help them in their business transactions.

In all we received 20 submissions covering a wide range of topics. These were all referred to an Assessment Committee which had on it representatives of the major distributors and exhibitors and also the independent distributors and exhibitors and which I chaired.

The submissions covered issues ranging from discriminatory treatment of drive-in cinemas, particularly in relation to piracy matters, the subject of 3D glasses, Virtual Print Fee matters, the predicament of cinemas in the process of shifting to digital transmission struggling to meet the projected deadlines for the end of 35 mm prints, a possible set of guidelines for the management of digital copies of films and their activation by Key Delivery Message.

The Assessment Committee met in July and August, reported progress to the Administration Committee at the Movie Convention and then again in November.

In November, we were able to call on the drafting skills of Robert Reeve who, in different roles, has drafted all of the changes we have made to the Code since its inception.

Each of the four organisations represented on the Committee considered the draft changes suggested by the Assessment Committee, deadlines were set and on March 1 the changes were unanimously adopted as part of the Code.

Once the changes to the Code are approved by the Administration Committee, the new Code comes into effect.

The amendments to the Code address the following matters raised in the industry submissions:

- an industry commitment to combat film piracy;
- co-operation to facilitate conversion to digital cinema, including continuation of current booking practices and patterns and guidelines for the ongoing supply of 35mm prints;
- prohibition of unfair discrimination against any category or class of cinemas and guidelines for supply responses to piracy concerns at cinemas;
- expansion and refinement of the requirements for intended terms of supply notification procedures;
- confidentiality of box office receipts information supplied by exhibitors;
- timely delivery of digital materials (Digital Cinema Packages and Key Delivery Messages);
- distributor policies relating to the ongoing supply of 35mm prints, delivery of digital materials and 3D glasses;
- timely installation of complying digital projection systems by exhibitors, including guidelines for addressing digital projection system non-compliance;
- refinement of the qualifications for representation on the Code Administration Committee by independent exhibitors and independent distributors and clarification of Committee voting requirements;
- inclusion of a limited glossary of terms including definitions of “cinema” (to specifically include drive-in cinemas), “complying digital projection system”, “film”, “film copy”, “supply” and “VPF”.

In addition, references in the Code to “print” have been replaced with “film copy” (to reflect the transition to digital cinemas) and there have been a number of formal drafting amendments which do not impact the substance of the Code.

The points selected above provide only a brief summary of the changes made to the Code. All Signatories should have received a clean copy of the new

Code as well as a marked up copy. The marked up copy shows in detail the new provisions superimposed over the old Code.

Both copies, the new Code and the marked up copy, are on the Code's website.

All of these changes should help in the way business is conducted.

Some of the more contentious issues, such as the 3D glasses issue remain unresolved because under the Code they cannot be. But the glasses issue is now part of the terms of trade and as such can be resolved by using the Code dispute resolution procedures.

The issue of discriminatory treatment of drive in cinemas, for instance was addressed by amending the code to prohibit discriminatory conduct against any class of cinemas, including drive-ins.

It is worth setting out just some of the provisions dealing with this matter.

5.6 Without limiting Sections 5.1, 5.2, 6, 9.1, 9.2, 9.3 and 9.4, distributors will not unfairly discriminate against any category or class of cinemas with respect to the supply of Film Copies. However, if a complex is reasonably identified by the distributor (having regard to specific reliable information) as having been the subject of significant film piracy activities, then:

5.6.1 the distributor may reasonably defer or withhold the supply of Film Copies to the complex until the exhibitor appropriately addresses the piracy risk;

5.6.2 the distributor will give prompt notice to the exhibitor of a decision made by the distributor under Section 5.6.1, including reasonable details of the reasons for the decision; and

5.6.3 if the distributor makes a decision under Section 5.6.1 to defer the supply of a Film Copy after the film has been booked for the complex, then the distributor and the exhibitor will undertake good faith negotiations with a view to reaching agreement on the amended terms of supply for the film.

Another feature of the code is the commitment by all segments of the industry to take all possible measures to prevent piracy which still remains one of the chief scourges of the industry.

Classification Issues

During the year, there have been several consultations with the Classification Branch of the Attorney-General's Department. The Classification Branch, headed by Ms Jane Fitzgerald, makes recommendations to the Federal Attorney General on policy matters relating to classification issues.

The discussions with FEDCAC arose from the report by the Australian Law Reform Commission which was appointed in 2011 to inquire into censorship and classification across the media.

The Classification Branch has indicated its wish to work with the exhibition and distribution industries with issues arising from the Commission's report, such as appropriate consumer advice.

From the industry side, Committee members and officials have made representations on the way trailers are classified. At present, trailers for forthcoming films can be shown to audiences only where the classification of the main feature is the same or higher than the film the trailer is promoting.

Both exhibition and distribution are seeking to have the arrangements for trailers modified so that the trailer is classified on its own merits and shown to audiences where the main feature is at the same level or lower as the classified trailer – irrespective of the eventual classification of the film the trailer is promoting.

Informal representations have been made to Federal, State and Territory Ministers who have responsibility for censorship and classification matters to accede to the industry's position on trailers.

A meeting of Ministers proposed for later this year is due to discuss the issue but it may be delayed because of the intervening Federal election.

On behalf of the Committee I have written to each of the State and Territory Ministers seeking their support for industry's position on trailer when the matter comes up for decision.

Discussions with the Classification Branch have been cordial and constructive. The Administration Committee has taken the view that engaging in these discussions can assist in providing industry wide input into legislation which will ultimately have an effect on the rules governing public exhibition throughout Australia.

Disputes

As Signatories can see from the report of the Code Conciliator, the number of formal disputes is almost non-existent.

There has been a significant level of activity involving the Secretariat which is the first port of call for Signatories seeking to resolve what may become difficult issues.

Under these procedures Signatories are encouraged to contact either the national sales manager or the Managing Director to put their concerns directly. They are also encouraged to put their concerns in writing so that the issues can be more clearly identified.

The Secretariat is kept in the loop and if needed can be brought into the process to reach an agreement. Several matters have been resolved this year using these procedures without any cost being involved.

The early intervention procedures which have been a feature of the Code now for many years continue to bring about the resolution of possible disputes at an early stage.

The work of the Secretariat has been greatly assisted by the CEO's of the MPDAA and ICAA, Ms Lori Flekser and Ms Adrienne Pecotic, who work in close consultation with Ms Nathalie Birt from the Secretariat when any problems with wider industry implications arise.

Conclusion

This Code is for the benefit for all members of the exhibition and distribution industry. The Administration Committee's task is to see that it meets that objective.

This year was a particularly demanding one for the Committee after deciding to undertake a review of the Code internally. The Committee met in August, in November in March and again in June.

The Assessment Committee, appointed to review each of the submissions sent by Signatories, spent many hours reading and distilling the submissions, examining whether what was being sought in the submission was possible under the Code and if so how it might be worded.

The members of the Secretariat, Nathalie Birt and Stephanie Papapavlou managed to condense long discussions to a note form which surprised all members of the Committee at their collective wisdom.

There was not one issue during the discussions, though there might have been differences of approach, where a suggested change to the code was not discussed without the betterment of all segments of the industry in mind.

An especial thanks goes from all of us to Mr Robert Reeve whose elegant drafting and clarification of the issues made the Code a document we can all readily understand. Robert has been a Committee member and has represented different segments of the industry since the Code's inception. He has drafted all of the amendments to the Code since the initial review. All of us involved in the Code owe him a great deal of gratitude.

I also wish to thank Mr David Newton, the Code Conciliator who has a special position of trust under the Code and who keeps a watchful eye over the obligations he has under its constitution.

The administration of the Code runs smoothly between, during and after meetings because of the work of Nathalie Birt and the Secretariat. Nathalie looks after the finances of the organisation, ensures that matters are properly recorded and that finances are kept under control. I thank her for that and for the support she has given to me.

Finally I wish to thank the members of the Administration Committee for the assistance they have given to me since I took on the position. This year they did me the honour of electing me Chairman for another three years and I hope to live up to their expectations.

John Dickie

Chairman.

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