

**FILM EXHIBITION AND DISTRIBUTION CODE
ADMINISTRATION COMMITTEE**

CHAIRMAN'S REPORT

August 2015

Terms of Trade

The Film Code of Conduct, enveloping the exhibition and distribution arms of the industry, has now been in operation for 16 years.

One of the requirements of the code when it came into operation was that it should keep pace with industry developments and that it should be renewed and where necessary revived so that it remained a living document. Different reviews have been carried out over that period, some by the ACCC in the initial years of the code, others by independent code experts like Neil Buck and some by the Code Administration Committee itself.

Since its inception the code has wrestled with the practical application of some of the loftier principles set out in the code. For a long while, it proved to be difficult to nail down what was meant by “fair and equitable dealing” between distributors and exhibitors.

But in one of the reviews carried out by Neil Buck, a formula – borrowed to some extent from the Trade Practices Act itself – allowed the concept to be set out in language which signatories were able to understand and in most cases identify with.

The last revision of the code dealt with the more practical aspects of the digital revolution and how the code might be altered to keep up with the technology and still maintain the cooperative spirit which was the code’s essence.

During the last financial year, the Administration Committee has been engaged in clarifying and enhancing what is meant by the Terms of Trade. The problem was unveiled when the Code Conciliator, Mr David Newton, advised that he had not been furnished with the Terms of Trade by a number of distributors as was required under the code.

Mr Newton said that under the latest revision of the code, he was not required to approve the contents of each distributor’s terms of trade but he would need to be able to refer to the document if a dispute arose between that distributor and an exhibitor. However the documents were still required under the provisions of the code.

He also told the Committee that it was his impression that the terms of trade did not set out as much information as had been done previously.

In order to assist both the distributors and exhibitors, the Committee attempted to draft a document which would clarify what information was needed by an exhibitor and what the distributor was expected to supply. The deeper the Committee attempted to try to resolve the problem, the more difficult it became to cover all situations in the one document.

At one stage it was agreed that Ms Flekser, representing the MPDAA , Ms Pecotic representing ICAA and myself should attempt to produce a document which would set out all of the information required to be disclosed under the code and which was acceptable to all parties and then to seek the input of the Code Conciliator.

But as more information was required, particularly involving the input of independent distributors, an investigating committee of Ms Flekser, Ms Pecotic and Ms Sue Cohen from AIDA was established. It is hoped will be able to report to the meeting of the Administration Committee planned to coincide with the Movie Convention in October.

It is apparent from interim reports from the investigating committee there is no common document among the distributors which provides the information exhibitors require to allow them to make a business decision. The information may be available but set out in different documents.

The investigating committee hopes to be able to provide an informed guide to assist exhibitors where the information can be found and for this document to be referred to the Conciliator for his input.

The terms of trade are among the fundamentally important foundations of the code and the Committee regards their clarification and facility of operation as one of its major concerns.

Classification Issues

The Administration Committee has been involved with the Classification Branch of the Federal Attorney-General's Department about changes which are being made or foreshadowed to the classification system.

Representations to the Government through the Branch have resulted in the adjustment to the fees previously charges for the 2D and 3D classification of the film. In future there will be only one classification charge.

FEDCAC was also advised that the government had reconsidered its decision to merge the Classification Review Board with a super appeals tribunal.

Representations were made to the government that because of the very tight timelines surrounding appeals from the Classification Board and the release of a film that the flexibility and expertise of the present system made the Review Board a more appropriate tribunal to consider appeals.

There are several key representations which are being made to the Government in relation to classification matters. A longstanding matter which has been put to successive governments relates to the separate classification of trailers.

Trailers are classified at the moment on the basis of the classification of the film which they promote. This severely restricts the showing of trailers to films which are at or below the classification of the film presently being shown.

The proposal put to the government is that trailers should be classified independently so that they can be shown to appropriate audiences irrespective of the eventual classification of the film they are promoting.

These and other matters are due to be discussed with industry representatives, including FEDCAC, and officers of the Classification Branch to assess progress.

Alternate Content

The Committee received a complaint from a signatory about restrictions placed on independent exhibitors by an overseas distributor of alternate content.

The Committee has made several attempts to resolve this situation with none of the attempts being met with a response. The Committee will consider how to take the matter forward at its July meeting.

Administration

The Accord Group continues to provide the ongoing administration of the code and all of its requirements as it has since the code's inception.

One of the code's great successes has been the capacity to intervene at an early stage when disputes arise. This allows matters which if left unattended could result in proceeding to conciliation to be dealt with at an early stage.

In practically all the matters where the disputes have come to the secretariat, they have been settled before being taken any further.

The Code Conciliator, Mr David Newton, is on hand to provide assistance with advice should it be needed. He has also provided timely and relevant advice on how the code is progressing and if the Committee is properly addressing the relevant provisions.

He has been particularly helpful in the Committee's consideration of the terms of trade discussions and his input into the eventual resolution will be heavily relied upon.

The Secretariat has been ably looked after by Mrs Hong-An King who supervises budgetary and account matters and who is on hand to deal with signatories making contact with matters of concern.

Mr King also provides a detailed breakdown of the inquiries she received in the administration of the code which provides helpful information to committee members about what aspects of the code may be troubling signatories.

Both she and David Newton have provided invaluable assistance to me in the preparation and arrangements for meeting and any follow up matters arising from the meetings and I thank them both.

The Committee

Finally I would like thank the members of the Committee.

The Committee comprises representatives from the major exhibitors, the major distributors, independent distributors and independent exhibitors. The independent chairman is appointed by the unanimous vote of the members of the Committee

Four new members have joined this year, Jason Hernandez from Entertainment One representing AIDA, Jo Bladen from Disney from MPDAA, Scott Seddon, Chairman of ICAA and Michelle Gater from Hoyts and on behalf of the existing members. I welcome them.

I suppose all chairmen are optimistic but I am continually impressed by the contributions made at Committee meetings. The discussions are sometime robust but in the end are all directed to the success of the film exhibition and distribution industries.

Representatives when putting their view are also aware of what the impact might be on another section of the industry. There is an atmosphere of sharing information, of cooperation wherever possible and a general desire to get things done.

Particularly for that and for the help they have given me at all times, I thank them.

John Dickie

John Dickie

Chairman

20 August, 2015

