

**FILM EXHIBITION AND DISTRIBUTION CODE
ADMINISTRATION COMMITTEE**

CHAIRMAN'S REPORT

JULY 2016

The Code of Conduct has now been operational for 18 years.

Through adaptation and renewal over that time, it is now able to deal speedily and effectively with complaints between distributor and exhibitor mostly at the initial stages.

This year the question arose whether the Code was able to deal with disputes among distributors. After some debate in the administration the matter was resolved without the Committee having to make a decision.

The matter did however raise a larger question about the capacity of FEDCAC to deal with matters within the industry but outside of the original jurisdiction the Code was meant to deal with.

As the Code has evolved, it has taken on board some issues which were not contemplated when the Code began. The original purpose was to provide a framework for doing business in a fair and efficient way and to provide a procedure for settling disputes within that framework.

As the Code grappled with these issues in the early stages of its implementation, it became clear that some of the provisions which dealt with these two main aims needed to be spelt out and in some cases modified considerably.

The most urgent of these was the formal plan spelt out in the Code dealing with the settlement of disputes. The formality of the procedures and the lengthy timelines proved to be impracticable as some of the disputes needed to be resolved quickly or the solution would become irrelevant.

The modification of the Code to include the early resolution procedures allowed disputes to be dealt with not only quickly but also with much less of the paperwork and the formality.

The other issue of "fair and equitable" in dealing between parties to the Code remained unresolved for many years during the Code's development and tended to be resolved on a subjective rather than an objective viewpoint.

In one of the major revisions of the Code, Neill Buck tackled the issue head on and spelt out the principle for inclusion in the Code based on what was included in the Trade Practices Act.

In the last few years, the Australian Government has been bringing issues to FEDCAC on the basis that it represents parties from all sections of the exhibition and distribution industry. These issues have centred on classification proposals and more recently the trailer tagging system.

They have also included discussions on the approach government should take towards regulation or deregulation of various segments of the entertainment and social media.

While there is nothing specific in the Code to cover this arrangement, it seems to me that this is a development which parties to the Code should welcome. It does not preclude any of the parties to the Code from making their own representations to Government on any of these issues but it allows the policy makers to assess industry concerns and proposals to be taken into account.

As all governments are coming to grips with the almost limitless content of material available in cyberspace and how they should respond to it, FEDCAC should nurture the approaches made by the policy makers to have an input at a very early stage.

Until last year, interventions by the Australian Government have been divided between the Attorney-General's Department and the Department of Communications.

These responsibilities have now been consolidated under the Department of Communications which means that decisions taken are likely to have industry-wide application.

The Government view is that decisions by the Classification Board provide the base from which all other decisions about content are made. Any changes to the criteria which the Board uses to assess material will be initially recommended by the Classification Branch which now reports to the head of the Communications Department and then on to the Minister. And from the Federal Minister to consultation with the relevant State and Territory Ministers.

The regard in which FEDCAC is held by at least officials involved in developing policy in relation to classification matters, including the trailers issue, is that it could represent the industry in a self-regulating role.

While it may not come to pass and the actual proposal may not be accepted, it does give some positive indication of the respect in which the Code of Practice is held.

The next revision of the Code is not far away.

It would add to the capacity of the Code if the revision addressed whether it should be able to deal with disagreements or disputes between distributors or between exhibitors if requested.

It would also be prudent if the Code through the Administration Committee be given the authority to take part in discussions with Government on proposed legislation which could have an effect on the way the parties to FEDCAC conduct their business.

Terms of Trade

In the last two years, a sub-committee has examined whether the “terms of trade” within the meaning of clause 9 of the Code could be simplified so that exhibitors are better able to understand the conditions which apply when they sign up to exhibit a film.

In its subsequent reports the subcommittee has indicated that the coordination of the “terms” into a single document is proving very difficult. Part of the problem appears to be that there is no agreed upon definition of what constitutes the “terms of trade”.

Contracts from distributors spell out the conditions for hire are not always in the same document and could lead to some confusion when exhibitors are considering the implications involved in agreeing with the terms.

Although there are many difficulties and complexities to be sorted out in its preparation, a draft best practice document would be a great improvement on what the practice appears to be at the moment.

The sub-committee will be reporting on progress at meetings during the year.

Classification

The Committee has met on several occasions with representatives of the Australian Government's Classification Branch. The responsibilities for classification matters were transferred after the changes of Prime Ministers last year from the Attorney-General's Department to the Minister for Communications.

Importantly, changes affecting trailers which were due to come into effect in January this year were postponed until February next year after representations to the new Minister so that the issue could be considered further.

Members from the MPDAA and ICAA have taken the lead role in discussions to resolve the technical issues in relation to the creation and distribution of the tags.

It is hoped that the tagging system should be trialled before the end of the year.

There also seemed to be a breakthrough on the issue of commensurate trailing with the Classification Branch suggesting "cluster trailers."

The cluster trailers concept may finally bring the search for the best solution to a closure acceptable to all of the major parties. The groups of classifications where the cluster solution would apply would have to be carefully worked out.

The PG classification will perhaps be the key to the eventual solution. With many of the films made in the United States attracting a PG -13 classification, the PG in Australia straddles the content between PG and M.

Arranging the clusters to accommodate this large range of material, especially if the criteria for non-cinematic film is taken into account, will be a major task.

Clusters for trailers may not be the perfect solution from the film industry perspective but it would be a considerable improvement on the present situation.

Administration

The administration of the secretariat function of the Code has been provided by The Accord Group.

Mrs Hong-An King provided the secretariat services during 2015 and handed over to Ms Cecily Zhu for 2016. Ms Zhu will continue to provide the services for the meetings and the secretariat services between meetings.

The Accord Group will be providing a report to the July 2016 meeting outlining the financial situation over the last financial year.

Mrs King and Ms Zhu have provided me with all possible assistance with matters relating to the administration of the Code.

As has the Code Conciliator, Mr David Newton. Mr Newton has given me great support during this last year as he has while I have been in the chair. I thank him and the secretariat most sincerely.

The Committee

New members have joined the Committee and some of the longer serving members have resigned.

While it is not the normal practice to single out members of the Committee, it would be remiss of me if I did not pay particular thanks to Rob Slaviero who has been associated with the Administration Committee in one role or another since FEDCAC began.

He has always been constructive, relaxed, and able to take the heat out of any situation and fun to have around. We all owe him for his contribution.

All Committee members have deep respect for the Code and the place it now has in the industry make-up. My observation is that the Code has a coherent role in bringing about an outlook for what is best for all parts of the industry.

I thank all members of the Committee for the support they have given me during last year. Meetings have been constructive and informative with the best interests of the whole industry the target.

I hope that the Code will continue to be a cohesive force in the industry.

John Dickie

Chairman

July 23, 2016