

**REPORT OF THE CHAIRMAN OF THE
FILM EXHIBITION AND DISTRIBUTION
CODE ADMINISTRATION COMMITTEE**

Introduction

This is the Report of the Administration Committee for 1999-2000, the first full year of operation of the Film Exhibition and Distribution Code.

The Code was adopted by representatives of the film exhibition and distribution industries in August 1998 and came into operation in October that year.

The industry Code was the result of an inquiry into the practices of film exhibition and distribution in Australia by the Australian Competition and Consumer Commission.

The Code sets out the parameters of how business should be done within the film exhibition and distribution industry. It has its own disputes resolution procedures and its own Code Conciliator to help resolve disputes which may arise within the industry.

A more detailed history of the origin of the Code was set out in the Annual Report last year. A key document was the Report compiled by Commissioner Ross Jones of the Australian Competition and Consumer after a lengthy examination of the business practices within the industry.

Outlook

In its first full year of operation, the Code has established itself as setting the standard for business transactions within the industry. While differing segments of the industry may not always agree about its effectiveness, it provides the benchmarks for conduct.

This is most evident in dispute resolution where the overall fairness provisions of the Code are the main criteria for settlement.

Apart from the dispute resolution area, the Code has provided the boundaries for negotiations and flexibility of arrangements which did not exist before its introduction.

This year the Code provided the framework for a meeting between the MPDAA and the independent exhibitors, the first time such a meeting has occurred.

Such meetings should not be measured by binding agreements or who won or who lost. But it is an indication the different segments in the industry can meet and speak frankly about problems they are experiencing under the provisions, and in this case, under the sponsorship of the Code Committee.

That meeting itself established a framework for future individual meetings between individual exhibitors and individual distributors, between groups of exhibitors and a distributor or an association and a single distributor.

There was, for example, an acknowledgment by distributors that some of the regional and remote cinemas were doing it tough and that allowances should be made for them.

There were also suggestions about how more flexible arrangements could be made through negotiation.

It was the kind of consultation, carried out under the Committee's auspices, that the Code foresees and which the Committee encourages to help the industry function more efficiently and more harmoniously.

The Code's success in the end will be determined by the number of people in the industry who use its provisions and take advantage of the framework it establishes.

There is no magic fix which will suddenly appear to take its place.

Code membership

The Committee has made strenuous efforts to increase the Signatories to the Code. The Committee believes that the larger the number of Signatories, the more comprehensive is the Code's cover in the industry. The membership of the Code is approaching 200 out of a possible 300 or more industry players.

All of the major distributors and exhibitors are signatories as are the independent distributors and the main organisations representing independent exhibitors.

After each of its meetings, the Committee has issued an Information Bulletin which is distributed to all members of the industry by the ACCC. A segment of each Bulletin urges members of the industry who have not yet become members of the Code to become Signatories.

There has also been a questionnaire circulated to all members of the industry asking them what may be troubling them about membership of the Code. This resulted in several additional Signatories.

In addition, the Committee held one of its meetings at the Australian Movie Convention on the Gold Coast, opening up the meeting to delegates to the Convention who either were Signatories or who were eligible to become Code members.

Because of time and space constraints, this attempt to allow Code signatories to discuss matters and to ask questions of Committee members had limited success.

The Committee plans to repeat the exercise at the 2000 Convention taking note of the shortcomings experienced last year.

Committee Membership

During the year, the Committee lost the services of two of its foundation members, Mr Richard Sheffield from Universal Pictures and Mr George Livery from Village Cinemas. Mr Sheffield who represented independent distributors has not yet been replaced on the Committee. Mr Livery's place has been taken by the newly appointed manager of Village Cinemas Australia, Mr Robert Macolino.

The Committee places on record its appreciation of the work of Richard and George during the initial phase of the Committee and the constructive suggestions they made to put the administration of the Code on a sound footing.

Dispute Resolution

The number of disputes coming to the notice of the Code Conciliator was considerably fewer than the number last year. There are several reasons why this may have happened.

It has been the experience of the Code Conciliator that very few of the disputes proceed to conciliation. There are a considerable number of disputes which are settled soon after the issue of the official Notice of Dispute forms. There are also disputes which are settled following telephone discussions with the Conciliator without the issue of the Notice of Disputes.

Further, the Committee in the course of determining its Budget for 1999-2000 considered the costs of obtaining preliminary advice on disputes from the Code Conciliator. The Committee decided that there would be a greater reliance on the principle of "user pays" for those using the dispute resolution procedures of the Code.

The Committee set out its decision in Information Bulletin 4 Of 1999.

The dispute resolution procedures of the Code were created so that there would be an independent person who could mediate in disputes which arose between Signatories. If a matter went to conciliation, the cost would be borne equally by both the parties.

What has happened during the year, and perhaps it is a reflection that this is the first year of the Code's operation, is that Signatories have been seeking advice from the Conciliator on solving possible disputes and the matters have been resolved before proceeding to the formal conciliation process.

One of the results of this is that there is considerable time being spent on the preliminary stages of potential disputes without any contribution to the costs by the parties seeking the advice.

Committee members made it clear that telephone advice given by the Code Conciliator about disputes, should be costed on the same basis as the formal conciliation process.

Signatories will be able to obtain general information and advice about the Code from the Secretariat. However, advice from the Secretariat pertaining to a specific dispute will attract an initial fee of \$50.

Following this decision, the number of disputes coming to the notice of the Conciliator dropped significantly.

The Committee revisited the decision to clarify its intention at the meeting in March this year.

In his report to the Committee, the Code Conciliator noted the sharp drop in the number of inquiries which had been made since the last meeting of the Committee which endorsed the "user-pays" regime for the mediating of disputes within the Code.

The Committee wishes to encourage all Signatories to the Code to feel free to make use of the services the Secretariat can provide about the working of the Code. Code Signatories should feel free to make inquiries about the Code's operation, how to use the Code, elementary advice of what actions need to be taken and where necessary obtaining the appropriate forms without any charges being imposed at all.

The Secretariat will continue to provide all of these services free of charge. The user pays application will take effect only if the preliminary stages have been exhausted and a formal dispute looms.

As a result of the clarification there was increased interest in the dispute resolution procedures by Signatories.

The Code Conciliator, Mr David Newton, has prepared a report of the matters which have come before him or come to his attention during the year. That report is part of the Annual Report.

Finance

The Committee meeting in September 1999 confronted some fundamental questions about the funding of the Committee's operations.

When it was established, the four groups who make up the Committee kicked in equal amounts to make up the annual budget. The basic flaw in the arrangement was that the third member of the independent

exhibitors segment was to be elected from the membership of the independent exhibitors.

The Committee considered it unfair that a single member of the Committee, elected by the membership, should then have to find an equal subscription. The other eleven members then contributed the majority of that fee.

Since that meeting, one of the independent distributors has resigned from the Committee as his distribution role has been taken over by one of the members of the MPDAA.

The representation and the fee contribution will be one of the matters listed for consideration when the Committee meets.

The budget papers and the financial transactions undertaken by the Committee and the administration are set out elsewhere in this Report.

ACCC Review

When the voluntary Code of Conduct was being established by the industry under the watchful eye of the ACCC, one of the built in factor was that the operation of the code should be looked at after it had been in operation for 12 months.

That review was carried out during the last months of 1999 by Mr Joel Schirmer and Mr Ross Jones from the ACCC. Mr Schirmer attended the meeting of the Administration Committee in September. In the course of the review, he spoke with Committee members and signatories from the various segments of the industry.

The Commission considered the Report and issued its review document early in January this year. A copy of it has been included this Annual Report.

In summary, while the Review generally commended the initial year of operation of the Code, it flagged areas which further work was needed.

Briefly, the findings and recommendations of the review were:

Review findings

The distributors and major exhibitors are largely happy with the Code. There are few disputes being raised, suggesting that the Code has helped to alleviate the number of disputes

The Code was established in response to independent exhibitor concerns and many independent exhibitors still feel that the Code has not improved their situation. They appear to lack confidence in the Code. However, there are examples where the Code has improved communication

and has assisted business relations. The Code has encouraged a change in distributor behaviour. Some distributors are now more willing to provide flexible film hire terms and policies to assist independent exhibitors. However the ACCC is concerned that country cinemas are paying first release prices for films well after the national release of those films.

Recommendations

The review makes the following recommendations:

- ◆ The move to a “user-pays” principle for specific advice from the Code Secretariat and Conciliator should be monitored.
- ◆ The Code Administration Committee should be informed about the type of disputes raised and promote discussion of this information and other industry concerns.
- ◆ The Committee should conduct a regular survey to monitor industry concerns.
- ◆ The Committee should promote flexibility in policies; ensure hire terms are advised before screening commences; resolve the issue of country sites paying first release prices for films receives well after national release; and consider expanding the Code to cover IMAX films

Following consideration of the review by the Committee, I wrote to Professor Fels from the ACCC. indicating that the Committee would consider seriously the recommendations which had been made and the steps the Committee had already taken to implement some of the recommendations.

Specifically the Committee had clarified its earlier position in relation to the “user pays” inquiries directed to the secretariat. It had also addressed the recommendation dealing with terms and release dates particularly as it affected independent screen operators.

Independently of the ACCC review recommendations, the Committee considered a substantial number of complaints from signatories claiming that because of the location and size of the cinema they were not being treated fairly by the major distributors.

The Committee decided that it would sponsor a meeting between the MPDAA and the independent cinema representatives on the committee to attempt to resolve some of the issues.

MPDAA/Independent Exhibitors Meeting

There has been some reference to this meeting earlier in the Committee's Report. However, the importance of the meeting and its relevance to the effective operation of the Code need to be reported.

It arose because of correspondence being directed to the Secretariat and the Chairman claiming that the provisions of the Code were ineffectual because they were not addressing unfair and unreasonable distribution policies.

The main complaints came from independent operators who felt that the distribution policies of the major companies were directed towards the major exhibitors and did not take sufficient account of the difficulties and the limitations being experienced by small, regional and community based cinemas.

As it was considered this to be a systemic rather than an individual complaint, the matter was discussed by the Committee at its February meeting. At that meeting, another 38 letters of complaint were tabled covering much the same issues. The main, but not the sole, issues in contention were the length of the policies, the number of daily screenings expected by the policy and the length of time it took to receive a print of the more successful films.

The Committee decided that there should be a meeting between the Motion Picture Distributors Association of Australia and representatives of the independent exhibitors to attempt to resolve the more important of the issues.

As it was a matter which fell under the Code, the Committee decided that it would arrange the meeting, that it would be chaired by the Committee Chairman and that the Code Conciliator would be actively involved in the preliminary stages and at the meeting itself.

Both the Chairman and the Code Conciliator met with both groups before the meeting which took place on June 14.

The discussions at the meeting were cordial and constructive. Extracts from the information bulletin issued after the meeting indicate what happened:

The distributors said they would be happy to discuss any problems independent operators were experiencing either with individual operators or with a more general delegation from COAA or a group of operators.

Each distributor indicated that he was prepared to discuss in detail the policies affecting each operator.

The emphasis in these discussions would be the flexibility envisaged under the Code of Conduct.

The distributors said they understood the problems that regional cinemas were experiencing, and the special place these cinemas occupy in country and remote communities.

In discussions with these operators, factors such as the potential size of the audience, the number of screens, competition and choice available to the community in the region would be carefully considered.

Mr Boardman from the ACCC told the meeting that the voluntary Code should be given every chance to operate effectively. He said there seemed to be a fear factor or an unwillingness to rely on the code by some segments of the exhibition industry.

The Code had been designed with built-in dispute resolution procedures. He said the distributors had informed the meeting that they would be taking the flexibility message back to their companies and would be filtering the message down through staff who made bookings and otherwise arranged for the supply of film.

They had also said that if a problem arose, then it should be taken further up the chain of command, if need be to the managing director. If all else failed, there were formal dispute mechanisms contained in the Code which should be used.

Mr Boardman said the ACCC had advised people in the industry who sent in written complaints or made complaints over the telephone that a self regulatory Code was in place and should be used. The high resolution rate of disputes under the Code indicated that the Code was being used with considerable success. It was now up to the Signatories and the other parties to use the provisions to deal with remaining problems.

The meeting was an important test for the Code.

It was the first time that such a meeting had taken place. It was an indication that groups within the industry take the provisions of the Code seriously and are prepared to meet within the Code's framework to try to sort out internal industry problems.

The meeting may not have resulted in specific arrangements but it opened lines of communication and possible distribution arrangements which had not been clear before the meeting.

Administration

The Code Administration Committee is supported by the Secretariat supplied by The Accord Group.

The Secretariat plays a very important role in the operation of the Code. It is the first port of call for inquirers, Signatories or otherwise, about the operation of the Code.

It provides the papers and back up for any of the dispute resolution procedures under the Code.

Finally it provides the support for the meetings of the Committee and the administrative requirements to keep these on track.

During the year the Committee lost the services of Ms Nicky Ferguson who had been with The Accord Group since the early days of the Committee.

On behalf of the Committee I thank her for the valuable contribution she made to the work of the Code and particularly to the Signatories who rang in with inquiries.

Her position has been filled by Ms Nathalie Birt who has attended one of the Committee meetings and has done the organisation for the proposed meeting at the Movie Convention. The Committee has welcomed Nathalie and looks forward to a long and friendly association with her.

Code Conciliator

One of the more fortunate decisions taken at the outset of the Code of Conduct was the appointment of Mr David Newton as the Code Conciliator.

Mr Newton is one of Australia's leading practitioners and instructors in the mediation process and is now in demand from several countries overseas.

He brought to the Film Code wide experience especially in voluntary codes of conduct. His wise counsel has been a major factor in the success of the Code so far.

On behalf of the Committee I thank him for the excellent work he has done and look forward to his continuing association with the Code.

John Dickie
Chairman
31 July 2000