



Draft Determination

Application for authorisation
lodged by

Australian Screen Directors Authorship Collecting Society Ltd
in respect of

arrangements for the distribution of income arising from retransmission
of audio-visual work

Authorisation number: AA1000474

Date: 17 June 2020

Commissioners: Keogh
Rickard
Court
Ridgeway

Summary

The ACCC proposes to grant authorisation to enable the Australian Screen Directors Authorship Collecting Society Ltd (ASDACS) to make its membership conditional upon directors assigning to it all of the copyrights they own under legislation in relation to the retransmission of the films they direct (the Proposed Conduct).

Directors have a copyright ownership interest in the non-commissioned films they direct (the Relevant Rights), and they may assign the Relevant Rights, along with the entitlements to any related Retransmission Remuneration, to other parties.

When a producer engages a director to direct a film, the terms of contract will often deal with the split of Retransmission Remuneration between the producer and director (i.e. the contract may provide for the Relevant Rights, in relation to a particular film, to be assigned in whole or part by the director to the producer). Under the Proposed Conduct, the Relevant Rights of ASDACS members would be held by ASDACS and therefore could not be assigned by the director to any other party. Any producer that, as part of the terms of engagement of a director who is an ASDACS member, sought to have a share of the Retransmission Remuneration that would otherwise be allocated to the director would need to negotiate about this with ASDACS.

The ACCC considers that, by requiring its members to assign the Relevant Rights to it, ASDACS can reduce the transaction costs associated with determining ownership of the Relevant Rights and distributing Retransmission Remuneration for each film on an individual basis. Further, due to ASDACS' clear ownership of the Relevant Rights, the Proposed Conduct is likely to reduce the likelihood of disputes arising over the relatively small amounts of money involved in Retransmission Remuneration.

The ACCC also considers that the Proposed Conduct is likely to result in more effective and efficient negotiations regarding the Relevant Rights. ASDACS is likely to be better resourced and informed than individual directors in undertaking negotiations with producers about the Relevant Rights.

The ACCC considers that the Proposed Conduct is unlikely to result in significant public detriment as the terms of assignment of the Relevant Rights does not appear to be a significant source of competition between directors in seeking to be appointed by a producer to direct a film.

The ACCC proposes to grant authorisation for five years.

The ACCC invites submissions in relation to this draft determination by 3 July 2020 before making its final decision.

1. The application for authorisation

- 1.1. On 13 March 2020, the Australian Screen Directors Authorship Collecting Society Ltd (**ASDACS**) lodged application for authorisation AA1000474 with the Australian Competition and Consumer Commission (the **ACCC**). ASDACS is seeking authorisation to alter its constitution to make its membership conditional upon directors assigning to it all of the copyrights directors own under the 'Retransmission Scheme' (as set out in the *Copyright Act 1968* (Cth) (the **Copyright Act**)).
- 1.2. Authorisation is sought on behalf of current and future members of ASDACS for five years.

- 1.3. This application for authorisation AA1000474 was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.4. The ACCC can grant authorisation, which provides businesses with legal protection for arrangements that may otherwise risk breaching the law but are not harmful to competition and/or are likely to result in overall public benefits. In this instance, ASDACS' director members may be in competition with each other, for example, to obtain contracts with film producers.

ASDACS

- 1.5. ASDACS administers and distributes to directors remuneration for audio-visual productions arising from any right conferred on screen directors by legislation in any country, including the Copyright Act. ASDACS manages domestic distributions for directors of monies received from the designated collecting society in Australia (Audio-Visual Copyright Society Limited, trading as **Screenrights**). ASDACS also receives from overseas collecting societies, and distributes to its director members, royalties payable under foreign legislation for the use of films shown in other countries.
- 1.6. ASDACS does not license the use of copyrighted films on behalf of members, or collect copyright fees directly from users of copyrighted films, nor is it involved in any way in negotiations with users of copyrighted films about the level or other terms of licence fees. ASDACS simply receives and distributes to its members monies remitted by Screenrights. In this way, ASDACS differs from some other copyright collecting societies. For example, collecting societies such as the Australasian Performing Right Association Ltd (**APRA**) issue licences for businesses to use their members' works, and charges fees for these licences – in the case of APRA, a licence for the business to play musical works of its members who are composers, songwriters and music publishers.
- 1.7. ASDACS also offers support and general advice on members' rights and entitlements and provides support to industry and its members through a cultural and charitable purpose fund. ASDACS may also institute or defend legal proceedings for the purpose of enforcing relevant rights.
- 1.8. ASDACS submits that its membership base covers a significant proportion of audio-visual directors working within Australia. ASDACS advises that it is difficult to estimate the number of directors actively working in Australia. Employment in the industry is typically transient in nature, with many directors working on a freelance basis. Data compiled by Screen Australia shows that 1 129 people reported that, between 2006 and 2011, their primary occupation was as a director in film, television, stage or radio.¹ This suggests that ASDACS' current 1 172 members represents a significant cross-section of these audio-visual directors.

The Proposed Conduct

- 1.9. ASDACS seeks authorisation, on behalf of its current and future director members who are involved in directing films, documentaries, television programs, television serials or any other audio-visual production (all referred to herein as **films**), for a period of five years.

¹ Screen Australia, Employment Trends: Occupations, accessed 21 May 2020: <https://www.screenaustralia.gov.au/fact-finders/people-and-businesses/employment-trends/occupations>.

- 1.10. ASDACS is seeking authorisation to alter its constitution to provide that:
- (a) as a condition of membership, members must assign to ASDACS all future copyright, and any past or present copyrights they hold in relation to the 'Retransmission Scheme' (as set out in the Copyright Act)
 - (b) ASDACS will administer the collection and distribution of income attributable to director members under the Retransmission Scheme, and
 - (c) after a minimum period of 12 months and with a minimum of three months' notice, members may resign from ASDACS and require the reassignment of their copyrights from ASDACS
- (the **Proposed Conduct**).

2. Background

- 2.1. The entitlement that falls within the scope of the proposed assignment of rights from directors to ASDACS is comprised of the copyright ownership interest in a cinematograph film, given to directors under section 98 of the Copyright Act (the **Relevant Rights**).
- 2.2. Under the Copyright Act, directors who are engaged as employees of a producer and directors working on films that have been commissioned (as opposed to independently produced) are not given the Relevant Rights.
- 2.3. The scope of the Relevant Rights given to directors under the Copyright Act is very limited and extends "only so far as the copyright consists of the right to include the film in a retransmission of a free-to-air broadcast" (section 98(6)).

Retransmission Scheme

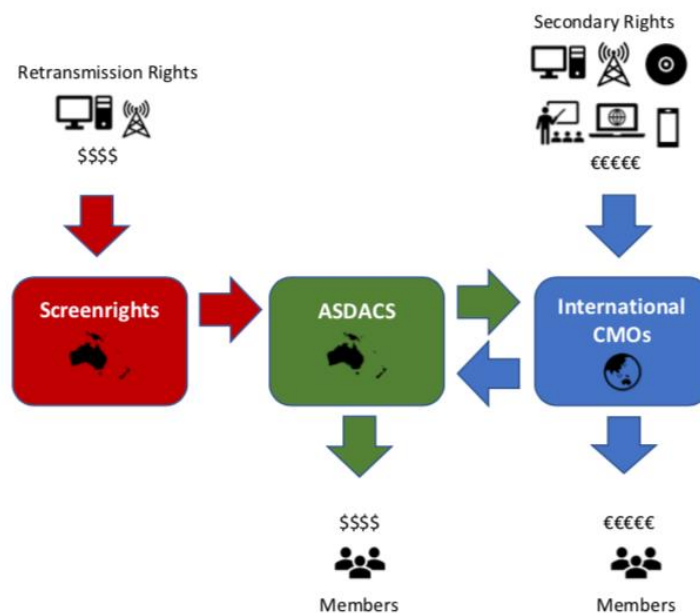
- 2.4. Copyrights in the retransmission of free-to-air broadcasts are dealt with under the Retransmission Scheme. Retransmission is the simultaneous or delayed transmission of a free-to-air broadcast, usually over a cable or satellite network. For example, Foxtel may retransmit free-to-air channels as part of its service package. However, the Retransmission Scheme does not apply to retransmissions taking place over the internet.
- 2.5. The Retransmission Scheme enables retransmitters to retransmit free-to-air broadcasts without breaching copyrights where they have given the relevant collecting society a 'remuneration notice' (that is, an undertaking to pay Retransmission Remuneration, or 'equitable remuneration', to the relevant collecting society for the underlying copyrights).
- 2.6. The Federal Government has declared Screenrights to be the relevant collecting society for the Retransmission Scheme. Screenrights is a not-for-profit membership organisation that provides rights and royalty management services to the screen industry. In the first instance, Screenrights negotiates the rates of Retransmission Remuneration with retransmitters, but where Screenrights and a retransmitter cannot agree on the rate, the Copyright Act provides for the Copyright Tribunal to determine the rate.
- 2.7. Screenrights then distributes any Retransmission Remuneration collected under the Retransmission Scheme to the owners of the Relevant Rights for films (as well as the owners of copyrights in the relevant music, scripts, recordings and artworks included in films). While section 98 of the Copyright Act expresses the Relevant Rights in terms of

directors owning, for limited purposes, a part of the copyright in the film, the Relevant Rights are essentially only the right to receive a portion of the monies collected from retransmitters and distributed to the relevant copyright owners by Screenrights under the Retransmission Scheme.

ASDACS' role in the Retransmission Scheme

- 2.8. Currently, ASDACS' director members may give their authority for ASDACS to receive on their behalf, in respect of some or all of their accredited films, Retransmission Remuneration from Screenrights. Where one or more of the directors of a film are based overseas, ASDACS may also remit Retransmission Remuneration for a film to relevant overseas societies with which ASDACS has reciprocal arrangements.²
- 2.9. Under the Proposed Conduct, ASDACS' director members must assign all Relevant Rights to ASDACS upon membership. ASDACS will then, as the owner of the Relevant Rights, receive Retransmission Remuneration from Screenrights and distribute it, in accordance with ASDACS' distribution rules, to relevant director members and overseas societies.
- 2.10. ASDACS is not involved in setting or negotiating the level of fees or equitable remuneration with retransmitters. As noted above, this role is undertaken by Screenrights. Rather, ASDACS will be receiving Retransmission Remuneration from Screenrights under the Retransmission Scheme that would have otherwise been paid directly to the director, and distributing that money to its director members, and overseas collecting societies.

Table 1 – The relationships and relevant transactions.³



² ASDACS currently has over 37 international collecting society partnership agreements primarily covering territories within Europe and South America and collects international royalties related to theatrical exhibition, non-theatrical exhibition, TV broadcasting, cable retransmission, communication, video sales and rental, on-demand online, private copying, educational and public lending rights.

³ Application for authorisation AA1000474, para 3.22.

Rationale for the Proposed Conduct

- 2.11. ASDACS submits that in practice a director's ability to collect Retransmission Remuneration is limited. Directors are more often than not presented with contracts under which they are required to assign all of the Relevant Rights to the producer engaging them to direct a film or face losing the work.
- 2.12. Under the Proposed Conduct, the Relevant Rights would be owned by ASDACS rather than the director, and therefore the director would be unable to assign the rights to the producer as part of the negotiations about the terms on which the director is engaged.
- 2.13. ASDACS submits that the rationale for the Proposed Conduct is to:
 - ensure that directors benefit from their statutory entitlements under the Retransmission Scheme through more consistently being able to receive the Retransmission Remuneration in circumstances where they may individually have little bargaining power in contract negotiations with producers, and
 - reduce the overall costs of negotiating and distributing the Retransmission Remuneration, including by reducing the resources spent by individual directors, ASDACS and producers in negotiating disputes over the relatively small amounts of money involved.

3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including relevant industry associations, independent directors, production companies and broadcasters.
- 3.3. The ACCC received three submissions from interested parties. Public submissions from ASDACS and interested parties are on the Public Register for this matter: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/australian-screen-directors-authorship-collecting-society-ltd-asdacs>.
- 3.4. In summary, interested parties generally consider the Proposed Conduct will decrease the administrative load for directors.
- 3.5. One interested party provided a submission that did not support one aspect of the Proposed Conduct. Screen Producers Australia (**SPA**, formerly, the Screen Producers' Association of Australia) submitted that the authorisation should allow directors to opt out of assigning the Relevant Rights to ASDACS without being required to resign from ASDACS. This issue is discussed in further detail below.

4. ACCC assessment

- 4.1. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. ASDACS has sought authorisation for conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 and 47 of the Act. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless

it is satisfied in all the circumstances that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (authorisation test).

4.3. To assist with the assessment of the Proposed Conduct, the ACCC considers that:

- the relevant areas of competition are likely to be in relation to competition:
 - amongst freelance directors to be appointed by producers to direct films, and
 - between ASDACS and other entities for the administration and distribution of Retransmission Remuneration, and
- the likely future without the Proposed Conduct is the status quo, in which ASDACS members would retain the Relevant Rights and negotiate with producers individually in relation to those rights, and be free to choose whether to authorise ASDACS to manage Retransmission Remuneration on their behalf in relation to some or all of their films.

Public benefits

4.4. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.⁴

4.5. The ACCC has considered the following public benefits:

- transaction cost savings in negotiating ownership of the Relevant Rights and administering and distributing Retransmission Remuneration
- more effective input into negotiations about the Relevant Rights, and
- improved bargaining power for directors.

Transaction cost savings

4.6. ASDACS submits that the Proposed Conduct will reduce the overall costs of negotiating and distributing Retransmission Remuneration. These cost savings include reducing administrative costs associated with determining ownership of the Relevant Rights and the resources spent by individual directors, ASDACS and producers in settling disputes over the relatively small amounts of money typically involved in the Retransmission Scheme.

4.7. ASDACS submits that each competing claim for the Retransmission Remuneration arising from any given film takes considerable time and resources to resolve, with claims potentially remaining in dispute for years. If the parties do not agree to resolve the claim by way of withdrawal or agreeing to a percentage share, the royalties are forfeited and go back into the broader Screenrights distribution pool. By requiring assignment of the Relevant Rights, ASDACS will have clear ownership and entitlement to the remuneration for the purposes of distribution by Screenrights.

⁴ Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

- 4.8. The ACCC considers that the Proposed Conduct is likely to result in transaction cost savings due to a reduction in the administration involved for ASDACS in processing Retransmission Remuneration payments to members as it will not need to review each contract individually to determine ownership. Where ownership of the Relevant Rights may otherwise be the subject of a dispute between producers and ASDACS' member directors, clear ownership of the Relevant Rights by ASDACS is also likely to reduce the overall likelihood of disputes arising and result in less resources being spent in determining who owns the Relevant Rights if a dispute does arise.
- 4.9. The ACCC considers that the Proposed Conduct could also result in some transaction cost savings by removing one element of the negotiations between producers and directors. Because ASDACS' members will have assigned the Relevant Rights to ASDACS upon membership, these rights will not be subject to negotiation between producers and directors in relation to individual contracts. If such negotiations are replaced by a standard form agreement over the split of these rights with the producer, this may reduce transaction costs in negotiations about the split of these rights.
- 4.10. In this respect, ASDACS notes a recently negotiated 50/50 in-principle agreement reached between SPA and the Australian Directors' Guild and states that authorisation would permit ASDACS to extend the position agreed in one major sector of the industry across to all films created by its members, thereby enabling the Relevant Rights to be effectively and efficiently administered on its members' behalf.
- 4.11. The ACCC considers that it is unclear whether, and the extent to which, the Proposed Conduct is likely to result in transaction cost savings for Screenrights in distributing Retransmission Remuneration.

More effective input into negotiations about the Relevant Rights

- 4.12. ASDACS submits that directors are largely unaware of their rights and entitlements prior to joining ASDACS. ASDACS dedicates resources specifically to making directors aware of their rights and raising awareness, including seminars, events and e-news to educate their members and directors more generally. ASDACS submits that in a number of cases, its members had negotiated what they thought was ASDACS' standard retransmission clause, but the clause had been re-worded by the production company in a way that undermined the directors' ability to retain the Relevant Rights.
- 4.13. The ACCC notes that the Relevant Rights form a relatively small proportion of the overall value of contracts negotiated between producers and directors. The ACCC considers that that Proposed Conduct may potentially result in more effective and efficient negotiations regarding the Relevant Rights. ASDACS is likely to be better resourced and informed compared to individual directors undertaking negotiations with producers in relation to the Relevant Rights. Therefore, the problem of information asymmetry in any negotiations between directors and producers (directors not being fully informed to make decisions about agreements in relation to these rights) is likely to be addressed by substituting ASDACS for directors in these negotiations.

Improved bargaining power for directors

- 4.14. ASDACS submits that the Proposed Conduct will reduce the current inequality of bargaining power in relation to the Relevant Rights between directors who generally freelance⁵ and producers who are usually large and well-resourced production companies. ASDACS submits that directors are generally unable to effectively

⁵ The Retransmission Scheme only deals with freelance directors, which does not include directors of commissioned films or films made pursuant to an employment agreement.

negotiate contracts for the films they direct to retain the Relevant Rights or receive compensation for the assignment of the Relevant Rights, and this results in directors not sharing in the ongoing financial success of their films and ultimately disincentivises directors from creating new projects.

- 4.15. SPA disputes ASDACS' claim that producers are generally large and well-resourced companies. SPA submits that the sector is predominantly made up of small businesses. In this regard, ASDACS submits that, irrespective of the size of the producers involved, freelance directors are often in relatively weak negotiating positions because, as the director was not commissioned to do the work, the producer is able to walk away from the agreement (i.e. seek out a different director). As such, directors are often presented with contracts under which they are required to assign the Relevant Rights to the producer or risk losing the contract.
- 4.16. The ACCC does not consider that changes in the relative bargaining power of parties to negotiations in and of itself constitutes a public benefit. Rather, the focus of the ACCC's assessment is on the outcome of any changes in relative bargaining power.
- 4.17. However, in any event, in this case the ACCC does not consider that the respective bargaining positions of directors and producers is likely to change as a result of the Proposed Conduct. The Proposed Conduct will prevent directors from negotiating about assignment of the Relevant Rights with producers in contract negotiations as these rights will now be held by ASDACS. However, negotiations with producers about engaging a director to direct a film will still occur on an individual basis, in the context where the director will be competing with other directors to be contracted by the producer.
- 4.18. The ACCC does consider that the Proposed Conduct is likely to result in ASDACS holding a greater proportion of Australian directors' Relevant Rights than would otherwise be the case. This will likely make ASDACS a more effective advocate in negotiations with producers about, for example, pro forma arrangements for the distribution of monies received from Screenrights pursuant to the Relevant Rights. However, these rights constitute only one, small element of negotiations between producers and directors that would otherwise still occur on an individual basis.
- 4.19. Further, as noted by ASDACS in its submission, ASDACS holding these rights would not have any material impact on producers as they can incorporate this reduced ability to negotiate to obtain the Relevant Rights into the contract price reached with directors through these one-on-one negotiations.

ACCC conclusion on public benefit

- 4.20. The ACCC considers that the Proposed Conduct is likely to result in a public benefit from transaction cost savings (primarily due to ASDACS having clear ownership of the Relevant Rights for its member directors). The ACCC also considers that the Proposed Conduct is likely to result in a public benefit in the form of ASDACS providing more effective input into negotiations in relation to the Relevant Rights.

Public detriments

- 4.21. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*⁶

4.22. The ACCC has considered the following public detriments:

- potential lessening of competition amongst freelance directors,
- loss of choice for ASDACS members to negotiate directly with producers about the Relevant Rights, and
- increased barriers to entry for the administration and distribution of Retransmission Remuneration.

Potential lessening of competition amongst freelance directors

4.23. The ACCC considers that the terms of assignment of the Relevant Rights in negotiations with producers does not appear to be a significant source of competition amongst freelance directors. The Relevant Rights constitute only one element in the broader negotiation of a contract for a film, and Retransmission Remuneration typically represents only a small amount of the value of the overall contract.

4.24. More generally, as discussed above, the bargaining power of individual directors in their negotiations with producers to be engaged to direct a film is unlikely to change as a result of the Proposed Conduct.

4.25. The ACCC therefore considers that it is unlikely that the Proposed Conduct will result in public detriment in the form of lessening of competition amongst directors to be engaged by producers to direct films.

Loss of choice for ASDACS members to negotiate directly with producers about the Relevant Rights

4.26. SPA submits that any authorisation granted to ASDACS should continue to permit commercial negotiations between individual producers and individual directors, where the parties wish to negotiate directly. SPA further submits that the authorisation would impose an onerous requirement on those directors who wish to negotiate directly with producers, as it is not a viable proposition for directors to entirely resign from ASDACS.

4.27. ASDACS submits that it is appropriate that should a member not want ASDACS to own the Relevant Rights for the benefit of that member, then the member should resign from ASDACS

4.28. ASDACS submits that if a director were entitled to remain a member while either managing all or some Relevant Rights themselves or having assigned all or some of their Relevant Rights to the various producers of films they have directed, ASDACS would have to continue with the current resource-intensive system. ASDACS submits that, as a result, directors, producers, Screenrights and ASDACS would not gain the benefit of the efficiencies and transparency that the Proposed Conduct seeks to achieve.

4.29. The ACCC considers that there may be some detriment to individual directors who wish to remain members of ASDACS, but want to retain the ability to negotiate directly with producers regarding the Relevant Rights, for all or some of their work. These directors would be required to either forgo these opportunities or lose the other

⁶ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

benefits of ASDACS membership such as access to seminars, events and educational resources. However, the ACCC considers that this is unlikely to result in a significant public detriment.

4.30. As noted above, Retransmission Remuneration typically represents only a small amount of the value of the overall contract. Further, producers and directors are able to structure other aspects of the contract to compensate for the fact that the director cannot agree to assign Retransmission Rights to the producer.

4.31. The ACCC did not receive any submissions from directors raising concerns about the proposed requirement to assign the Relevant Rights to ASDACS. The ACCC invites submissions about this issue.

Impact on competition between rights administrators

4.32. The ACCC has considered whether the Proposed Conduct may raise barriers to entry for another entity, in competition with ASDACS, to administer and distribute Retransmission Remuneration to Australian directors.

4.33. Under the Proposed Conduct, Australian directors will remain able to choose whether to:

- assign the Relevant Rights to ASDACS
- retain the Relevant Rights and administer the rights themselves or appoint another third party to do so, or
- assign the Relevant Rights to a third party other than ASDACS.

4.34. The only change as a result of the Proposed Conduct is that under the second and third of these options the director would lose the benefits of ASDACS membership. As discussed above, the ACCC does not consider that the loss of these benefits, other than in relation to the administration of the Relevant Rights, is likely to be a significant determining factor in directors deciding how their Relevant Rights are assigned and/or managed.

4.35. However, as also discussed above, the Proposed Conduct is likely to make ASDACS a more effective advocate in negotiations with producers about arrangements for the distribution of Retransmission Remuneration. This in turn is likely to attract more directors to be members of ASDACS (i.e. to assign the Relevant Rights to ASDACS). For example, ASDACS may be able to negotiate more favourable arrangements with producers about the split of the Relevant Rights than those offered to non-members. That is, this potential benefit of ASDACS membership is likely to be greater with the Proposed Conduct than without the Proposed Conduct.

4.36. However, the ACCC does not consider that barriers to entry for another organisation seeking to compete to administer the Relevant Rights are likely to be significantly increased by the Proposed Conduct. Establishment costs do not appear to be significant and the only barrier to directors appointing an alternative organisation to manage their rights is the 12 month minimum term and three month notice period that ASDACS requires.

ACCC conclusion on public detriment

4.37. The ACCC considers that the Proposed Conduct is unlikely to result in public detriments in the form of reduced competition amongst directors to be engaged by producers to direct films as the assignment of the Relevant Rights in negotiations with

producers does not appear to be a significant source of competitive tension between directors.

- 4.38. The ACCC considers it is possible the Proposed Conduct may result in some detriment to directors who wish to retain ASDACS membership but not assign all or some of the Relevant Rights to ASDACS. However, the ACCC considers that any such public detriment is likely to be limited.
- 4.39. The ACCC considers that the Proposed Conduct is unlikely to result in public detriment in the form of significantly increased barriers to entry for another entity to administer the Relevant Rights in competition with ASDACS.

Balance of public benefit and detriment

- 4.40. For the reasons outlined in this draft determination, the ACCC is satisfied that the Proposed Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

5. Draft determination

The application

- 5.1. On 13 March 2020, ASDACS lodged application AA1000474 with the ACCC, seeking authorisation under subsection 88(1) of the Act.
- 5.2. ASDACS seeks authorisation for the Proposed Conduct as described at paragraph 1.10. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

- 5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.
- 5.4. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 5.5. Accordingly, the ACCC proposes to grant authorisation.

Conduct which the ACCC proposes to authorise

- 5.6. The ACCC proposes to grant authorisation AA1000474 to enable ASDACS to alter its constitution to require the assignment of its members' copyrights to it for the purpose of distributing remuneration arising from the retransmission of films as described in paragraph 1.10 and defined as the Proposed Conduct. The authorisation is to apply to future parties as new members of ASDACS.
- 5.7. The Proposed Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 and 47 of the Act.

- 5.8. The ACCC proposes to grant authorisation AA1000474 for five years.
- 5.9. The proposed authorisation is in respect of the arrangement as it stands at the time authorisation is granted. Any changes to the arrangement during the term of the proposed authorisation would not be covered by the proposed authorisation.
- 5.10. This draft determination is made on 17 June 2020.

6. Next steps

- 6.1. The ACCC now invites submissions in response to this draft determination. In addition, consistent with section 90A of the Act, ASDACS or an interested party may request that the ACCC hold a conference to discuss the draft determination.