



**Australian Screen Directors
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Australian Competition & Consumer Commission (ACCC)
Attn: Susie Black
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Re: AA1000474-1 ASDACS Application - SPA Submission

Dear Ms Zele,

The Australian Screen Directors Authorship Collecting Society (ASDACS) writes in response to the submission made on behalf of Screen Producers Australia (SPA) dated 7 May 2020.

We note that, while SPA does not object to the ACCC granting ASDACS the right to act collectively in relation to retransmission rights, they have raised concern around the amendment of the ASDACS constitution to include the Statutory Entitlement assignment as a condition of membership, with the view that this would remove a directors ability to negotiate directly with producers. SPA has also proposed that directors be able to “opt out” from assignment of the Statutory Right to ASDACS on a case-by-case basis.

ASDACS does not support the constitutional amendment proposed by SPA as part of the ACCC granting ASDACS’s application for authorisation. Among other things, such a change would not remove the current inefficiencies that the authorisation seeks to address, as further set out below.

Rationale for rejecting SPA’s proposal

As noted in the ASDACS application (at paragraph 3.18), in the majority of cases (and contrary to the position put by SPA), our experience is that directors lack bargaining power. More often than not, they are pressured to assign their Statutory Entitlement to a producer with no additional compensation. We have affirmed (at paragraph 5.4) that this is the case when directors are contracting with well-resourced production companies [REDACTED], but our experience is that this is also the case when directors contract with smaller production companies.

It was only through collective bargaining (and not individual negotiations) that the ADG was able to preserve the Statutory Entitlement for directors in relation to scripted television drama and comedy telemovies, mini-series and series – and in this context, the ACCC should note that the 50/50 split referred to in SPA’s submission exactly reflects the statutory position under section 98 of the Act: see ‘Background’. This is because, under the Act, directors and producers are considered (for the purposes of retransmission rights) joint owners of copyright in a cinematographic film.

In other words, the negotiated outcome between ADG and SPA not only exactly preserves the Statutory Entitlement to directors, but also indicates that SPA regards directors retaining the Statutory Entitlement as inherently fair and reasonable.

Were authorisation granted, the effect of the agreement between SPA and ADG would remain untouched and unchanged, as would any previous agreements directors may have made in relation to the Statutory Entitlement. However, 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 Statutory Entitlement to be effectively and efficiently administered on its members' behalf.

Effect if the ACCC were to accept SPA's proposal

As outlined (at paragraph 4.3), if an ASDACS member were entitled to remain a member while either managing some or all rights themselves or having assigned all or some of their Statutory Entitlements to the various producers of films they have directed, ASDACS would have to continue with the current resource-intensive system under which the matter is frequently a matter of dispute with producers and Screenrights. Whether or not ASDACS is entitled to be paid the Statutory Entitlement by Screenrights would (outside any industry agreement) continue to have to be assessed on a contract-by-contract basis.

As a result, directors, producers, Screenrights and ASDACS would not gain the benefit of the clarity and efficiencies the ASDACS proposal seeks to achieve.

ASDACS remains of the view that its proposed "opt out" process is appropriate, particularly as it reflects the processes already approved by the ACCC as part of the various authorisations of the Australasian Performing Right Association Ltd ("APRA"): see, for example, authorisation AA1000433. Under the APRA opt-out process, members may only opt out by removing their entire repertoire of works from APRA for a particular use.

As a much smaller organisation than APRA, and in light of the comparatively greater administrative complexity and costs, ASDACS' view is that it is appropriate that should a member not want ASDACS to own the Statutory Entitlement for the benefit of that member, then the member should resign from ASDACS (in which case the Statutory Entitlement would be re-assigned to that member). A director could then join another (international) collecting society for the purposes of international royalty collection as, under CISAC rules, membership of a collecting society is not restricted by nationality or by the territory in which a work was produced.

As outlined in paragraph 10.1 of our application, the Proposed Conduct will not lessen competition in any meaningful way but is aimed at upholding the Statutory Entitlement of directors in accordance with the legislative intention, with the benefit of creating greater efficiencies in administering the retransmission rights scheme for all parties and in a way that an important sector of the industry has agreed is appropriate and fair.

Please let me know if we can be of further assistance, or if you have any further questions in relation to our application.

Yours sincerely,



Deb Jackson
Executive Director
ASDACS