



**Australian Screen Directors
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Australian Competition & Consumer Commission (ACCC)
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Re: AA1000474-1 ASDACS Application – ASDACS Response to SPA Oral Submission

ASDACS submits as follows in relation to the Record of Oral Submission from the Screen Producers Australia (SPA) dated 31 July 2020:

Commissioned films

- Under the authorisation sought by ASDACS, ASDACS will only acquire from directors those copyrights that directors own or come to own. The authorisation will therefore have no effect (either direct or indirect) on commissioned films (subject only to any unlikely assignment of copyright in such films to the director).
- ASDACS only registers and will only continue to register non-commissioned films for retransmission royalties with Screenrights.
- In practice, of the 2,223 claims that have been subject to a claim with Screenrights, whether or not a film was a commissioned film has only been raised some 2 or 3 times by another party during my time at ASDACS (some five and a half years). Each time, the issue was quickly resolved by referring to the contractual arrangements for the title.
- There are currently no dispute claims with Screenrights that relate to whether or not a film is a commissioned film, and ASDACS does not believe this will significantly change were it granted the authorisation it seeks.
- Overall, the majority of competing claims with Screenrights relate to the lack of clarity around the retention of retransmission rights and the percentage share between directors and producers.

Greater Transaction cost to Screenrights and Producer

- Screenrights sets presumptions based on standard industrial agreements and the Australian copyright / contract law. Any disputes in regard to whether or not a film is commissioned would be determined by Screenrights but having regard to the number of disputes to date in relation to whether or not a film has been commissioned, the administrative burden in relation to any such disputes would not be close to the current administrative burden on ASDACS, Screenrights and producers.
- ASDACS would register for works post-implementation of the membership assignment, based on standard industrial agreements (ADG / SPA standard Drama Agreement) and on the basis of the presumptions set in the Copyright Act. This will provide clarity to both members and industry around the directors' retention of retransmission rights and percentage share, reducing disputes and associated transaction costs.

- Directors currently deal with both ASDACS and their agents (if applicable), with all parties working in the best interest of their members / clients. ASDACS also works directly with directors' agents, advising on domestic and international secondary rights for directors. There have been no issues or disputes raised from the members or their associated agents to date around this working relationship.

Reduced Market Flexibility

To reiterate:

- In practice, directors lack bargaining power and are pressured to assign their rights to a producer with no additional compensation; regardless of the size of the production company.
- The membership assignment proposed if authorisation is granted will not affect a producer's ability to continue to claim Educational (and Government) copying royalties with Screenrights or any retransmission royalties for commissioned films.
- ASDACS' function is to administer retransmission rights on behalf of directors, ensuring their entitlements are received. This function would remain unchanged following authorisation.

Membership – opt out

To reiterate:

- A membership opt out would result in ASDACS continuing to bear the current heavy administrative burden of claiming works on a case-by-case basis, losing the benefit of the membership assignment.
- Should directors wish to resign from ASDACS, they would have the option of joining an international collecting society in order to receive their international secondary revenue.

Yours Sincerely,



Deb Jackson
Executive Director
ASDACS