

13 July 2020

Australian Competition & Consumer Commission (ACCC)
Attn: Steven Lee
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Email: Steven.Lee@acc.gov.au
cc: Susie.Black@acc.gov.au, georgia.zele@acc.gov.au

Re: ACCC Draft Determination: Authorisation Number AA 1000474

Dear Steven,

We refer to the submission dated 3 July 2020 from Screen Producers Australia (**SPA**).

ASDACS responds as follows:

SPA states that there is a disagreement between it and ASDACS in relation to the interpretation of clause 98(3) of the Copyright Act concerning a “commissioned film”.

With respect, ASDACS contends that this issue is a red herring, is simply not relevant to the Proposed Conduct, and should not act to deter the ACCC from finalising the Draft Determination in its current form.

As ASDACS specifically noted in its application (at paragraph 3.6), both commissioned films and films on which directors work as employees rather than contractors were excluded from the scope of the “Statutory Entitlement” (as that term is understood in ASDACS’ application) or the “Relevant Rights” (as that term is used by the ACCC in its Draft Determination). Such films are therefore also necessarily excluded from the scope of the Proposed Conduct.

ASDACS further notes in any case that the Proposed Conduct can only apply to situations where a director would own the Relevant Rights under section 98, and that nothing in the proposed conduct could ever affect third-party arrangements such as between a television station and a producer or production company in respect of a commissioned film under which a director would not, *prima facie*, own an of the Relevant Rights under section 98 of the Copyright Act.

ASDACS further notes that, in respect of commissioned films, the entitlement of directors to income distributed by Screenrights in respect of income collected from retransmission of broadcasts would remain a matter of contract between the parties – including under relevant industry agreements such as the *ADG Directors Television Agreement (Scripted) 2020*, currently being negotiated between SPA and the Australian Directors Guild.

With all due respect to SPA, it is therefore also incorrect for SPA to conclude that ASDACS' application to the ACCC is an attempt to circumvent any industry agreements relating to commissioned films.

ASDACS consequently submits that there is nothing in SPA's further submission that should cause the ACCC to withdraw (or reconsider) the Draft Determination.

Please let me know if any additional information is required to clarify either the above or how the above relates either to ASDACS' application or to the Proposed Conduct.

Your sincerely,



Deb Jackson
Executive Director
ASDACS