

# Record of oral submission to the Australian Competition and Consumer Commission (ACCC)

## Australian Screen Directors Authorship Collecting Society application for authorisation AA1000474

**Submission:** Australian Screen Directors Authorship Collecting Society (ASDACS)

**Date of submission:** 31 July 2020

## Oral submissions

### *Interpretation of the Copyright Act*

- In ASDACS' view, the sections of the *Copyright Act 1968* (the **Copyright Act**) that are relevant to the proposed conduct are clear. The maker of a film cannot be the same as the commissioner of the film and the majority of films made in Australia are not commissioned films.
- While the Australian Directors' Guild (**ADG**) and Screen Producers Australia (**SPA**) may have differing interpretations of what constitutes a commissioned film under the Copyright Act, ASDACS does not consider that this has an impact on the proposed conduct or the application for authorisation. The relevant rights in the proposed conduct are defined by reference to the entitlements of directors under the Copyright Act. ASDACS notes that, in practice, whether a particular film was commissioned or not is rarely the subject of a dispute.

### *Benefits of authorisation*

- Authorisation is sought to provide clarity in a practical sense. ASDACS has a role in ensuring that directors receive their share of retransmission remuneration. ASDACS considers that the proposed conduct would become an accepted industry norm over time and provide clarity as an extension of the 50/50 agreement reached between the ADG and SPA, which reflects the statutory entitlements of directors under the Copyright Act.
- The proposed conduct would produce transaction cost savings for all parties involved.
  - ASDACS would adopt a singular position, which would become an industry standard of a 50 per cent share of the film portion of retransmission rights for directors. Given this, it would not be necessary for production companies to negotiate with ASDACS and this would remove an element of the negotiations between directors and producers.
  - ASDACS would be able to reduce transaction costs by frontloading its administrative burden. When registering a film with ASDACS, a director would be required to confirm whether the film is commissioned, and would be provided information to aid in this assessment. ASDACS could then make a blanket claim on behalf of its members to Screenrights without the need to review each film on a case-by-case basis.
  - Screenrights would be able to minimise its administrative costs by relying on the presumptions arising from this industry norm.
  - All parties would benefit from the increased certainty and reduction in disputes due

to the increased clarity regarding the share of retransmission remuneration.

*Assignment of rights as a condition of membership*

- ASDACS considers that the mandatory nature of the directors' assignment to it of the relevant rights is an essential part of the proposed conduct. Without this, ASDACS would be required to keep reviewing each film on a case-by-case basis to determine entitlement to retransmission remuneration.
- Within the industry, directors seek to maintain good relationships with producers and would rarely raise a dispute with producers over retransmission royalties. In this sense, directors lack bargaining power in negotiations with Producers. Mandatory assignment of the relevant rights would allow ASDACS to represent the interests of a director without the director having to take up the issue with a producer. Producers may pay directors a fee in return for services, but do not usually pay more for the assignment of the director's copyrights.
- ASDACS notes that a director would be able to resign from ASDACS and join any other international collection society so as to avoid forfeiting their foreign royalties.