



Code of Conduct for Film Distribution and Exhibition

Notice of Dispute

Under the Code of Conduct for Film Distribution and Exhibition ("Code"), the exhibitor below gives notice of dispute under section 16.1.1 of the Code.

(copy of the Code is available at www.filmcode.info/FilmCode2013.pdf)

The objectives of this Code are:

- to provide a framework for fair and equitable dealing between all distributors and exhibitors;
- to provide a timely, non-legalistic, cost-effective and commercially orientated means of avoiding and settling disputes;
- to reduce the likelihood of litigation between parties to the Code; and
- to record the commitment of distributors and exhibitors to combat film piracy

Exhibitor

Company or Business name : _____

Location(s) : _____

Director (or equivalent) : _____

Telephone : _____ email : _____

Is your organization a signatory to the Code? Yes / No

Are your Cinema(s) entitled to a Virtual Print Fee (VPF)? Yes / No

Distributor

Company or Business name: _____

Director (or equivalent) : _____

Telephone : _____ email : _____

Is your organization a signatory to the Code? Yes / No

Parties are required to respond **in writing within 2 business** days of the date of receipt of this notice. Both Exhibitor and Distributor are required by the Code to make every effort to resolve the dispute fairly and in good faith within 4 business days of the date of receipt of this notice. It is also a requirement of the Australian Consumer Law (ACL) to resolve a dispute fairly and in good faith, and to abide by an Industry Code (wither you are a signatory or not). If this matter is still not resolved within 4 business days then it may be referred to the Code Conciliator for conciliation, be formalized as a complaint made to the ACCC, and/or the complaining party may take legal action under ACL (eg. state based small claim tribunal).

Background and Issues in Dispute (Exhibitor Section)

Name of the film(s): _____

Please check one:

- Non-supply of film(s)
- Late supply of film(s)
- Unfair terms of film(s)
- Other _____

Summary: _____

Identify which point(s) of the Code and/or ACL may have been breached (ticket 1 or more):

- Distributor failed to provide "terms of supply" (section 8.3)
- Distributor has failed to demonstrate to which criteria in Sections 5.1 and 5.2 the bases of refusing or delaying supply (s8.1)
- Distributor is not acting on a 'Fair and equitable basis' (s4.2)
 - Not abiding by legitimate commercial objectives (eg. supply cost does not exceed revenue) (s4.2.1)
 - 'Minimum Guarantee' is unfair (eg. not representative of the Distributor's cost) (s4.2.1)
 - Session 'Policy' is unfair (eg. demanding over 33% of available sessions, too many weeks, etc.) (s4.2.3)
 - Percentage 'Terms' are unfair (eg. believed to be or above the 'terms of supply', etc.) (s4.2.3)
 - Distributor supply is inconsistent with other similar Exhibitors receiving supply (s4.2.6)
 - Not negotiating reasonably (s4.2.7)
 - Distributor is refusing supply of a 'Wide Release' film (eg. advertising material states 'In Cinemas Boxing Day', yet distributor is refusing to provide the complainant's venue permission to sell tickets from that date) (s4.2.8)
 - Distributor is not acting in 'Good Faith' (s4.2.8)
- Distributor is geographically supplying one exhibitor while excluding complainant's venue(s) (s5.1.3)
- Distributor is unfairly discriminating against the complainant's venue(s) based on category or class of cinema (s5.5)
- Distributor is not acknowledging the unique role that regional and country cinemas play in supporting communities, and their conduct is disadvantaging people living in regional and country areas (s6.4)
- 'Terms of Supply' represent the 'recommended retail price and conditions' for a film to exhibitors, and must include (s8.3):
 - Booking deadline
 - Week by week percentage terms
 - Session policies
 - Minimum Guarantee

Distributor breaching s8.3, by not providing any or all of the required information prevents an Exhibitor from booking a film under s6.5 (which allows for a booking without requiring negotiation) and allows a Distributor to demand harsher conditions than available to other Exhibitors. Failing to provide 'Terms of Supply' is a clear breach of Australian Consumer Law (Part 2-2—Unconscionable conduct 22.1.f)

- Distributor representation for 'Refusing' or 'Late Supply' is false, misleading, or deceptive conduct (eg. falsely accusing the exhibitor of piracy) (ACL – Unconscionable Conduct)
- The percentage 'Terms' are unfair (eg. are or believed to be or above the 'terms of supply', etc.)
- Other

Response to Dispute (Distributor Section)

Grounds on which Distributor is;

Please check one:

- Not providing supply of film(s)
- Making late supply of film(s)
- Substantiating the 'Terms of Supply' required for a film(s)
- Other _____

Summary: _____

Identify which point(s) of the Code and/or ACL the Distributor is allowed to take such action (ticket 1 or more):

- Cost of supply of an additional Exhibitor exceeds the return in revenue (s5.1.1 & s5.2)
- Exhibitor has an overdue account, and the account needs to be brought up to date before supply (s5.1.2)
- The film(s) is not playing nationally. The film is not release in that geographical area. (s5.1.3)
- The condition of the cinema is not acceptable (equipment is not DCI, condition of the auditorium, etc) (s5.1.4)
- The distributor has provided (based on reliable information) the cinema information that the site has been identified as the source of significant film piracy activities, and the distributor is waiting on the exhibitor to appropriately address the risk (s5.6)
- Other

Details: _____

Are further documents provided to substantiate claim?

Yes / No

Identify attachments ; _____

Distributor's Director or equivalent

Date

Background reading material;

- ACCC Report (1998) - Developments in the cinema distribution and exhibition industry
<https://www.accc.gov.au/system/files/The%20Cinema%20Industry.pdf>
- ACCC Professor Fels announces 'The Code'
<https://www.accc.gov.au/media-release/film-distribution-and-exhibition-code-of-conduct>
- Code of Conduct for Film Distribution and Exhibition
www.filmcode.info/FilmCode2013.pdf
- Australian Consumer Law (ACL) Part 2-2—Unconscionable conduct
https://www.legislation.gov.au/Details/C2017C00375/Html/Volume_3#_Toc499717716

Purpose of Form;

Many smaller exhibitors, regional, and country exhibitors are supplied far later than bigger exhibitors. As the later an exhibitor has a film, the lower the market demand for the film. Some exhibitors receive holiday films after the holiday period, deeply impacting on the ability for that exhibitor to service their local community, and commercially remain open. This is akin to a retail shop receiving Easter Eggs after Easter Sunday. The retailer can still sell the chocolate eggs, but demand, the price that can be charged, and likelihood of remaining profitable is heavily impacted.

This form is to streamline the 'Notice of Dispute' process for Exhibitors and Distributors. It is hoped that simplifying the process will gain earlier access to films, and allow communities to be better served.