

## Background

In December 2005, the *Copyright Act* in Australia was changed to give directors (other than those working on commissioned films or as employees) a **retransmission right** under the Film Directors Rights Act 2005. This is a right to receive (alongside producers) a share of the money paid by pay TV services to Screenrights for retransmission of free to air broadcasts.

## Assigning rights

Under the Act, retransmission rights can be **assigned** (that is, transferred) to someone else – such as a producer, broadcaster or distributor – and directors have frequently signed agreements that have resulted in them assigning their retransmission rights. As a result, ASDACS has over the years spent a great deal of time assessing Screenrights claims to ascertain when directors have assigned the right and when they have retained it.

## ACCC Authorisation

The **Australian Competition and Consumer Commission (ACCC)** has now authorised ASDACS to change its constitution to enable ASDACS to receive an assignment of retransmission rights from members (something that otherwise might be illegal because it is anti-competitive), and the ASDACS Constitution was amended on 29 October 2020 to reflect this authorisation.

Assigning relevant copyrights to a collecting society is how APRA – whose members are composers, songwriters, lyricists and their estates – protects its members' rights. APRA also goes through a similar authorisation process with the ACCC.

## \*NEW\* Membership assignment

Assigning your retransmission rights will now become a condition of ASDACS membership. To start receiving its benefits, we ask that you **sign and return the “Assignment of Copyright” form** as soon as possible. You can also submit the form online via the ASDACS membership portal [www.asdacs.com.au](http://www.asdacs.com.au) (a form will pop up on sign in). This will enable ASDACS to register your work with Screenrights with a greater degree of certainty that you and your estate will get the director's share of retransmission payments from Screenrights.

## Past work

The new membership conditions require an assignment from members of retransmission rights in both future and past work **but will only have any effect in relation to past work if you retained those rights**. If you haven't assigned your retransmission rights in past work, you may still be eligible for retransmission payments, but only if your agreement with the producer provided for this.

## Special note for New Zealand and International members

While **New Zealand** copyright law does not have a retransmission scheme applicable to audio visual directors such as set out in the Australian Copyright Act, New Zealand members of ASDACS will (subject to any agreement to the contrary) **still be entitled to retransmission payments** if their work is rebroadcast in Australia.

Similarly, while **international** copyright law varies from territory to territory, **international members will also be entitled to retransmission rights**.

New Zealand, and, international members are therefore also required, as a condition of continuing membership of ASDACS, to **assign their retransmission rights to ASDACS** so as to enable more efficient collection of any payments from Screenrights.

## Resignation from ASDACS

If you would prefer to administer your own retransmission right, you can resign from ASDACS by giving **3 months'** notice in writing. Please note that ASDACS will then be required to stop registering your work internationally. A **12-month** waiting period applies to directors that resign and wish to reapply for ASDACS membership.

## Termination of membership

Signing the accompanying “Assignment of Copyright” form has now become a condition of membership. Therefore (subject to the Board’s discretion), your ASDACS’ membership may be **terminated** if the form is not returned and / or there is no response from you within a reasonable time frame (as it may be determined you’re no longer eligible for ASDACS membership in accordance with ASDACS constitution). We would be grateful if you could please sign and return the form as soon as possible. This will ensure you start to receive the intended benefits of the new membership conditions.

## Clauses in director contracts; registering your work with ASDACS

ASDACS recommends that directors ensure that one or other of the **retransmission rights clauses** below is included in all director contracts and that you **continue to register film, TV and documentary work** you have directed with ASDACS, using the usual “credit form” or through our online membership portal at [www.asdacs.com.au](http://www.asdacs.com.au).

## Director agreement: Recommended retransmission clauses

The optimal clause for directors to include in their contracts with producers is as follows:

*The Director is entitled to (and to the extent necessary, the Producer assigns to the Director and agrees to obtain in favour of the Director an assignment from any third party):*

- (a) *50% of the retransmission rights in the Film as a “cinematograph film” under Part VC of the Copyright Act 1968 (Cth) or similar provisions under Australian or other law (**Retransmission Rights**);*
- (b) *50% of all payments from Retransmission Rights distributed by any collecting society authorised to distribute such payments (currently, Screenrights); and*
- (c) *all other payments resulting from “secondary rights” (including, without limitation, for private copying and statutory or voluntary licences) granted to directors of cinematograph films either now or in the future under Australian or other law or that result from any collective bargaining agreement, and that are generally administered by or through a collecting society charged with the collection and distribution of such payments (including through Screenrights and ASDACS, the Australian Screen Directors Authorship Collecting Society Limited).*

*The Producer warrants that:*

- (a) *it will make no claim on payments from Retransmission Rights or other “secondary rights” that is inconsistent with the rights of the Director under this clause;*
- (b) *to the best of its knowledge, no other person is entitled to more than 50% of the payments from Retransmission Rights; and*
- (c) *it will not grant rights to any third party that are inconsistent with this clause.*

Alternatively, the least you should negotiate in your contract is as follows:

*To the extent that this agreement assigns to the producer or any third party any copyright that, but for this or any other agreement, would be owned by the producer or a third party, such assignment is subject to the prior rights of the Australian Screen Directors Authorship Collecting Society (ASDACS).*

**Please note in each case that words such as “agreement”, “producer” and “director” may need to be amended to reflect any defined terms in the rest of the contract.**

## ASDACS’ Notification to producers and other contracting parties

To assist members during the contracting process, ASDACS has compiled a notification that can be provided to producers (and any other relevant contracting parties) advising them of the new ASDACS membership assignment (available at [www.asdacs.com.au](http://www.asdacs.com.au) or by request from the ASDACS office). If you require any further assistance, please contact ASDACS, your Lawyer or your Agent.

## Contact

For more information, please contact ASDACS by emailing [asdacs@asdacs.com.au](mailto:asdacs@asdacs.com.au) or calling +61 2 9555 7042.