

# INTELLECTUAL PROPERTY RIGHTS AND SCREENING LICENCES



## Disclaimer

This article is for general advice only and no legal advice is implied. While every reasonable effort has been made to ensure the accuracy of its content BFFS cannot be held responsible for any errors or omissions. The article provides a general overview of screening licences and intellectual property rights. The licensing agreements issued by individual film distributors will vary. CCs are advised to carefully read the terms and conditions of each hire agreement.

## Overview

This article covers intellectual property rights, explains why they exist and how you can obtain the correct screening licence for your CC. There are other legal aspects to operating a CC, so to ensure you have the complete picture you should also read the article on *Legal Aspects*.

*Intellectual Property Rights* refers to the ownership of rights attached to creative works. The creative work of an individual or organisation is protected by copyright; films are no different. So, when you show a film you must always obtain a licence giving you the right to screen while acknowledging the owner/s of the copyright.

Securing a licence to show a film that has been recently released is straightforward, but it can become a complex process if it is not immediately clear who owns the screening rights. This is true for many older films, whose screening rights have been bought and sold several times since they were first made. However, by following the advice in this article and through determined effort, licences can be obtained for the majority of films you will wish to show.

Film licences are usually managed by film distributors, who effectively act as agents for the rights owners. These will be your first contact to obtain a screening licence. If there is no UK distribution for a film, you can approach the rights holder direct (usually the production company for a 'big' production or the producer for an independent film).

## Music

Intellectual property rights refer to all creative works this includes music as well as film and the prevention of copyright theft.

Music rights and film rights are separate issues. Music rights, known as 'performing rights', need to be licensed if recorded music from any source is played to an audience. Music on a film soundtrack along with any other music that is played to an audience at the venue needs to be covered by a Performing Rights Society (PRS) licence. If you hire a venue, check your hire agreement to see if this is covered. If you manage and licence your own venue, you will need to get licensed.

## Piracy prevention

Film piracy, or 'copyright theft', is a growing problem in this country – so another consideration for your CC will be the prevention of any illegal recording of films during screenings.

## Copyright and licensing

### What is copyright?

When you hire a film for your screening the fee includes some copyright royalties. This ensures that the multiple team of collaborative artists and technicians who work together to produce films are recognised for their work.

The legislation governing copyright in the UK is the *Copyright, Design and Patents Act (CDPA) (1988)*. This is the main piece of legislation dealing with all forms of intellectual property including copyright, designs, patents and trademarks.

Copyright gives the owner of any creative work (films, books, music, etc.) the right to control how other people may use it. Copyright exists primarily to prevent creative works from being copied, adapted, distributed, transmitted, rented or performed to the public without permission from the owner. In the case of multi-collaborative projects such as films, the original rights holders are usually the production company (for major commercial films) or the principal director and producer (for smaller independent films).

The duration of time that a creative work is protected by copyright varies from country to country, and also depends on what type of work it is. In the UK, film copyright lasts for 70 years after the death of the last surviving principal director, screenwriter, or anyone deemed to be 'author' of the work.

### **Licensing Films**

All films are licensed before they are shown to an audience. A screening licence gives the organisation that has obtained it temporary permission to screen the film. Although the copyright to a film is actually held by the producers, screening licences are usually managed by the film's distributor. The distributor deals with the 'exploitation' (i.e., effective management) and licensing arrangements for films in cinemas.

A film may have more than one distributor responsible for exploiting it on different platforms. As well as having a theatrical distributor that is responsible for getting films into commercial and independent cinemas, a film may also have a 'non-theatrical distributor', responsible for licensing films for other screening purposes, for example, screenings by CCs, airlines, ships, prisons, oil rigs, hotels, pubs and schools. In addition, the film may have a distributor that handles the home entertainment sales and rental market. To obtain a licence to screen a film a CC will usually contact the non-theatrical distributor.

### **What type of screening licence?**

There are currently two main types of licence available. Which licence you obtain will depend on how your organisation operates and what sort of screening you are putting on.

### **Is the primary function or main activity of your organisation to show films?**

If the answer is yes, you will be expected by most distributors to hire films on a title-by-title basis (sometimes called a 'single-title licence').

If film screening is an *incidental* activity (e.g., your organisation is a care home, school, bar, etc.) you will be expected by most distributors to obtain an 'umbrella' (or blanket) licence. The latter will cover you for a set period of time – usually a year – for as many screenings as you carry out, provided all the films are handled by that distributor. The cost of an umbrella licence will depend on the size of your venue and number of shows you put on.

### **If your primary function is to show films, is the screening for:**

#### **Your members only with no charge per film show?**

Sometimes referred to as a 'closed' screening, 'members only' is considered to be a non-commercial screening, and you will pay a flat hire rate for the licence. This type of licence does not allow tickets to be paid for in advance or on the door, nor does it permit any advertising of the film screening outside of your membership. This licence is obtained on a title-by-title basis.

### **The public and/or members to buy tickets on the door or prior to the screening?**

Sometimes referred to as an 'open' screening, this also is a commercial screening, but the licence allows you to advertise widely, and payment terms will be a percentage of your 'box office'. This licence is also obtained on a title-by-title basis.

Note: It is possible for your organisation to have a combination of screenings, so you need to pay careful attention for each event as to your intention and thus which type of licence is the correct one for that one.

Whether umbrella and title-by-title, the type of licence that is right for you depends on whether film screening is the main function or activity of your organisation and if your organisation is operating on a 'closed' or 'open' basis.

### **Annual screening 'umbrella' licences**

An umbrella licence entitles certain organisations to screen unlimited films to non-paying audiences throughout the year, using DVDs/home videos purchased from any legitimate outlet, including films from major Hollywood and independent studios. Eligible organisations include educational establishments, nurseries, places of worship, retail outlets, after-school clubs and youth centres, pubs and bars, holiday resorts, care homes and hospitals as well as community and transport groups. For these organisations, film screenings are occasional and are incidental to the main programme of activities provided.

A CC that is part of an educational establishment is exempt from needing a licence provided the screening is part of a recognised curriculum. However, if the screening by this group is on a 'social' basis, is not part of the educational curriculum and is incidental to the main activities of the group an umbrella licence will be required for the venue. And again, if there is a charge for entry or the general public is admitted, a title-by-title commercial licence is required for the screening.

Note that umbrella licences are issued to a venue and not for each film, as is the case with a title-by-title screening licence. This means that if your organisation plans to screen films in more than one venue, each venue will require a separate umbrella licence.

Examples of commonly used umbrella licences are the Public Video Screening Licence (PVSL) from Filmbank, or the Umbrella Licence from the Motion Picture Licensing Company (MPLC). The cost of an umbrella licence depends on the anticipated size of the average weekly 'footfall', that is, the number of viewers.

### **Title-by-title licences**

Title-by-title licences provided by non-theatrical distributors can be used by organisations whose main function or activity is to screen films. There are two types of licence available: non-commercial and commercial.

#### *Non-commercial licences:*

A non-commercial licence can be obtained for a 'closed' screening, i.e., to members only. You may not advertise film screenings to the general public and operate a pay-at-door scheme.

In order to do this, contact the film's non-theatrical distributor and book the film for rental. You can find more information on how to identify the distributors for a film in Programming. The rental agreement will effectively provide you with a licence to screen the film and will normally involve a fixed cost depending on the number of screenings and the expected size of the audiences. The typical cost for film hire is £80-£120 (for DVD rental)<sup>2</sup>, although this may vary according to the film distributor and the film itself.

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<sup>2</sup>The figures and price brackets given in this chapter are correct at time of publication.

#### *Commercial licences:*

If screenings are open to the general public as well as to members, you should rent films on a commercial basis. This allows you to advertise film screenings freely to your members and to the general public and to operate a pay-at-door scheme.

The cost for commercial film hire is usually calculated according to a minimum guaranteed amount (again, usually £80-£120 for DVD rental) or a percentage of the gross box office takings (normally about 35%), whichever is the greater.

To rent a film for screening you should contact the film's non-theatrical distributor, although with small distributors you may find that commercial screenings are handled by the theatrical section. As is the case with a non-commercial screening, the rental agreement acts as a licence for screening the film.

After you have screened a film you will usually be required to fill in a 'returns' form (which provides feedback to the distributor on the number of tickets sold, ticket prices, number of screenings, etc.) so that an accurate invoice can be issued.

#### *A programme of mixed screenings:*

'Closed' and 'open' screenings are not mutually exclusive. A CC may decide to programme screenings that are for members only as well as screenings that are open to the general public. The important point is to be clear with the distributor how you intend to screen the film when you make your booking.

#### *Identifying rights holders and securing rights:*

Once you have established how you wish to screen a film the next step is to identify and contact the rights holder for the film you wish to screen. As stated earlier, this is likely to be the film's non-theatrical distributor.

Most feature films that are available in Britain for non-theatrical exhibition are generally handled by Filmbank Distributors, the British Film Institute (BFI) or the Motion Picture Licensing Company (MPLC), though there are other options. Smaller independent film distributors are often happy to enter into direct-hire agreements with CCs. In addition, BFFS operates the National Block Booking Scheme, which allows CCs to book films from a select catalogue. For more information, see *Programming*.

If you are unable to obtain the rights to screen a film through the usual booking channels, it may be possible to get one-off screening rights by contacting the original rights holders: typically the main production company for bigger titles, or the directors/producers themselves for smaller titles, or the distribution company in the country of origin. This is often a difficult task but may be required for films without a UK distributor.

#### *Booking Agents:*

If you are new to booking and plan to screen a film on a 35mm print rather than DVD, you may find that using a booking agent makes the process easier. This organisation or individual will contact the distributor and make the booking on your behalf. Since they are known to the distributor, the chances of you being entrusted with a valuable 35mm print will be increased. A booking agent will charge a fee in addition to the cost of the licence/hire fee. You can also use a booking agent for DVD bookings, but most CCs prefer to book films directly. For more information, see *Programming*.

#### *Bonds and References:*

Some film distributors will expect your organisation to provide a security 'bond' ranging from £100-£250. Others will request you provide references from recognised bodies to show you are a bona fide, established organisation that is 'good for the money'. Some licensing issues to bear in mind:

- Typically the licence agreement is for the feature only and does not allow you to screen trailers, special features or DVD extras.

- Some non-commercial licences by default do not allow screenings to audiences of over 200 – but these can normally be negotiated with the distributor.
- A film may be available for non-theatrical exhibition on one format (e.g., DVD) but not on another (e.g., 35mm print).
- Different companies may own the rights to a film on different formats.
- Some films may not have any screening rights available in the UK.
- Not all distributors have the same conditions of licensing, so it is vital that you read and follow the Terms and Conditions of each hire agreement contract.

Occasionally a film may be available to purchase for home viewing on DVD format but rights are not available for your non-theatrical screening. Or a film may only be available on a single format, and if you want to screen the film on a format different to the one that you have rights for (e.g., DVD instead of VHS), you must request permission from the distributor who manages the licensing for this film.

#### *Quality and Supply:*

Most title-by-title licence agreements stipulate that the distributor will send you a physical copy of the film (this may be a 'vanilla' DVD) and this is the copy you screen from. You should always check the film before you screen it so if there are any problems with what has been supplied, you can resolve them in advance.

If you can obtain a licence to screen a DVD in the 'early window', i.e., after the film's initial cinema release but before it is available to the home entertainment market, you should be aware that to reduce the risk of piracy the DVD supplied may be imprinted with studio logos, be in an incorrect aspect ratio, or may even be inferior in playing quality to those DVDs available later for the home entertainment market.

## **Advertising and piracy**

### **Advertising restrictions - more detail**

If your CC screens films on a non-commercial basis, the distributor may place restrictions on advertising. Typically, such film screenings cannot be advertised directly to the general public, although the screening organisation itself can be. In practice this means that advertising in public places of the film title, screening date and time, and venue is not allowed. Information on film screenings can be put on your organisation's public website providing the full information is only accessible to members.

Other advertising possibilities include:

- Screening information when it is provided by request only.
- Screening information that is reported factually (i.e., as part of a local newspaper report, but not as a paid-for or free advertisement).
- Marketing your films as 'secret screenings' – only revealing the choice of film on the night to your audience.

Organisations that screen films on a commercial basis are able to advertise widely.

All film advertising should include the film's classification. See *Legal Aspects*.

### **Using images in advertising**

The use of images in your advertising is also subject to copyright law. In particular, images downloaded from the Internet, copied from magazines or from film stills are not legally allowed to be used in your advertising. In practice, film companies will allow 'fair use'. This means you can use publicity images to advertise the film they are taken from. These images can be obtained direct from the publicity departments of film distributors, from the authorised film website (look for the press section) or from ImageNet. You are

not allowed to use such images in other ways, for example, on merchandise such as T-shirts, or to advertise your organisation.

### **Performing rights**

A performing rights licence permits the playing of music included in the film's soundtrack to an audience as well as any additional music you may play as part of a film show or event – for example, any music played before the film starts or during an intermission. This licence is issued annually to the venue and not on a per-film basis.

All film screenings should take place in PRS-licensed venues. Whether this is the responsibility of your CC or the venue owner will determine the terms and conditions of your hire agreement. For example, if you are using a multipurpose venue, it is likely already to be covered and the cost of the PRS licence may be included in the hire charge.

The venue will also need a premises licence (issued by the local authority) that includes screening film; refer to the *Legal Aspects* article for more information on this.

### **How to get licensed**

This is only applicable to CCs that manage and license their own venues or where this is not included in the hire agreement with the venue.

The MCPS-PRS Alliance (Performing Rights Society for Music) collects royalties on behalf of the composers of music on film soundtracks and on any recorded music played to an audience.

The MCPS section collects royalties on behalf of musicians and composers directly from filmmakers for any music included in the soundtrack. The PRS section licenses venues where music is played to an audience.

Different procedures and tariffs will apply according to the number of screenings that take place and whether your CC charges on the door. As the size and operation of CCs vary greatly, it is a good idea to phone MCPS-PRS and discuss your particular needs. The licence arrangements and costs will vary, including separate tariffs for universities and colleges. However, the following information is a rough guide:

Tariff C applies to cinemas or venues that show films more than three days per week (for more than four months in a year). This tariff covers the following forms of music played at venues:

- Film soundtracks (including advertisements)
- Intermission, play-in and play-out music
- Music in the foyer
- Up to three variety entertainments (e.g., extra short films) before, during or after a film

The royalty charge for Tariff C is either 1% of actual receipts from admissions, or a monetary rate per actual admission, currently 4.54 pence (2009). The cinema/venue must decide on the basis of the charge in advance and inform PRS no later than 31 January each year. A discount of 6% can also be obtained by providing returns and paying PRS by 31 January each year. Where the annual number of admissions per cinema/venue is fewer than 60,000, discounts will also apply.

'Tariff J' applies to smaller clubs with membership schemes. Generally, the standard cost of a licence per screening is £3.90 for up to 100 people. If the audience is greater than 100, an extra charge of 97 pence per 25 persons will apply. Higher charges will apply if the licence has not been pre-arranged with PRS.

It is not necessary to buy a separate licence before each performance. You are advised to contact the PRS with an estimate of the number of screenings you expect to hold in the year to come and the anticipated

audience sizes. You will be given the choice of paying a lump sum up front, or in instalments throughout the year. If you opt for instalments, these will incur a 10% surcharge. At the end of each year you will need to fill in a returns form providing details of the number of screenings and audience sizes. If your estimate fell short, you will have to pay any surplus amount due. Similarly if your estimate was over-optimistic, PRS will offset any money owed to you by adjusting the amount you need to pay for the following year's licence.

Bear in mind that unlike Tariff C, a separate licence will be needed if you wish to play background music before the film or during the intermission. Licence costs will vary again, depending on the size of the venue – but as a guide, a standard royalty for a small venue seating about 100 people will cost about £180 per year.

Depending on how you operate your CC, the licensing department at PRS will be able to provide advice and arrange a tailor-made licence package for you.

### **Film piracy and FACT**

Film piracy is an increasing problem in the UK. Frequently, as soon as a film is released it is only days before counterfeit DVDs are available to buy on the streets, and illegal copies are circulating on the Internet. Organisations such as the Federation Against Copy-right Theft (FACT) are working to try to stop the camcording of films in cinemas and illegal DVD copying and downloads. FACT works closely with the police, Trading Standards, HM Revenue & Customs, the Serious and Organised Crime Agency and the Department for Work and Pensions to stop film piracy in this country.

Although camcording is not yet recognised as a criminal offence in the UK, it is a significant problem for the UK film sector, with increasing evidence that the UK is becoming a key source of illegal copies. You must prohibit anyone from camcording films shown by your organisation and ensure that DVDs in your hired possession are kept from being copied. Film piracy encourages viewers to stay at home and watch poor quality film – whilst the CC movement aims to bring the community together to watch high-quality cinema. As a CC, it is important to do your part in stamping out film piracy in order to preserve the tradition of UK film exhibition.

### **Conclusion**

Intellectual property is not the minefield you might expect. Being clear on what type of CC you are operating will determine what type of screening licence(s) you will need. In some cases this may mean discussing your licensing needs with the relevant licensing bodies before you start showing films.

Regarding film, if you are still not sure whether it's a non-commercial licence, a commercial licence or an umbrella licence that you should be applying for, BFFS can provide further advice. As for music rights, the Performing Rights Society (PRS) can advise on how to obtain the correct annual licences and the various methods of payment that are on offer.

Don't forget: if you screen to members only on a non-commercial basis, you may not advertise screenings outside your membership, but you can advertise your organisation itself to attract new members.

Finally, you can help fight film piracy in the UK by preventing any camcording of films on your premises. Across the UK CCs successfully screen a vast array of old, new, obscure and overseas titles. Obtaining the right screening licence can require some determination and hard work but putting in the time and effort to ensure screenings are legal and that the creators suitably benefit, is to the direct benefit of the CC sector and the film industry as a whole.

**PROVOKED?**

**ENGAGED?**

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