

# THE LEGAL ASPECTS OF RUNNING A COMMUNITY CINEMA



## 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. Advice should always be sought from your local licensing officer at an early stage of setting up a CC or in the planning of any special event such as an outdoor screening or festival. If you are concerned about any of the issues raised in this article you should also contact the relevant authority.

## Licensing in Scotland and Northern Ireland

The Licensing Act of 2003 (LA2003) covers England and Wales. The licensing regulations are different in the Devolved Administrations of Scotland and Northern Ireland. At the time of writing this article the acts covering licensing of premises and sales of alcohol in Scotland and Northern Ireland are in a process of transition. It is likely that a similar act to LA2003 will be introduced but CCs in Scotland and Northern Ireland are strongly advised to check with their local authorities for further information.

## Overview

This article covers in broad terms the legal aspects of running a CC. The linked article on *Intellectual Property Rights* explains how to obtain the right screening licence for your CC.

Whether you have just decided what type kind of CC you want to set up or have been successfully organising screenings for some time, you need to make sure your venue complies with various rules and regulations. Don't panic! This is not as daunting as it sounds. It's simply a matter of ensuring that your hire agreement with the venue covers certain provisos, or if you plan to use your own venue that you are aware of the relevant regulations. With a clear hire agreement and some forward planning you'll be able to leap over any bureaucratic obstacles and focus on what you really care about – bringing your community together and showing great films!

As a priority, you should ensure that your venue is covered for showing films by a **premises licence**. This is obtained from your local authority. As well as granting permission for showing films, premises licences can also enable you to sell food, drink and alcohol at the venue.

Read the wording of the licence carefully for the rules on film classification. These will vary from local authority to authority – but most will indicate that films must be screened according to the British Board of Film Classification (BBFC) recommendations. Unclassified films are likely to need approval from your local authority first, but in some cases this may not be necessary. Film classification is covered in more detail in Section 5.

If for some reason the venue you want to use does not have a premises licence, a temporary event notice (TEN) can be obtained. However, for any CC operating on an on-going basis, it is highly advisable to find a stable location with a premises licence to avoid unnecessary 'red tape' complications.

Be clear on what should happen in the case of an emergency at one of your showings. It might help to draw up a basic health and safety policy and ensure it is circulated round the key people running your showings so they can act quickly and efficiently in the event of an incident. Public liability and contents insurance are strongly advisable in case anyone is injured at a showing or any equipment is lost, stolen, or damaged. Also, do your best to ensure that your CC is welcoming to all, and that it provides access to people with disabilities.

Most CCs are clubs or unincorporated organisations and are not registered as limited companies or charities. However, even if your organisation is non profit-making it may still have to register with HM Revenues and Customs for taxation purposes specifically for Corporation Tax. This is covered in more detail in Section 6.

It is almost unprecedented that a CC registers for VAT. However, if your organisation earns revenues in excess of £67,000 per year (as at 2009), it will also need to register for VAT.

## **1. Venue licensing regulations**

In the vast majority of cases CCs use commercial venues. However, it is still important to be aware of the legal requirements under which these venues operate.

### **Hiring venues**

If you are hiring a venue, find out from the venue manager whether it has a premises licence that authorises various forms of 'regulated entertainment', and specifically, whether this includes film exhibition. If it does not, you will need to liaise with the venue manager and the local authority to get this added to the existing licence. To find out how to obtain a premises licence, refer to the section below on managing and licensing your own venue.

A premises licence is sometimes referred to as an entertainment licence.

If your CC wishes to sell alcohol before or after film screenings, check with the venue manager whether the premises licence also allows for this. The venue hire fee will include any costs associated with licensing fees.

### **Temporary licensing solutions (occasional screenings)**

If the venue you have chosen does not yet have a premises licence, or the licence does not include film exhibition (and/or selling alcohol if relevant), as a temporary measure it is possible for your CC to apply to the local authority for a temporary event notice (TEN). This will enable you to hold a screening event at that premises. TENs authorise relatively small-scale ad hoc events to be held involving no more than 499 people at any one time. Events covered by a TEN may last up to 96 hours – so as well as enabling you to organise a one-off screening, it could also allow for a short film 'festival' or 'season' running up to four days.

If you apply for a TEN, you must give duplicate copies of the notice of your event to your local authority (together with the fee of £21), and to the relevant chief officer of police (and in some regions the fire brigade) at least 10 working days in advance of the event. Forms for TENs can be found on the Department of Culture Media and Sport (DCMS) website. However, bear in mind that only 12 temporary event notices are allowed per venue per year and that any one person may only apply for up to five TENs per year. Therefore, to avoid the complication of having to apply for a TEN every time you screen a film and the likelihood of having to move from venue to venue, it is strongly recommended that you find a permanent home for your organisation that already has a premises licence authorising film exhibition.

The majority of CCs screen from one or more main venues that already hold a premises licence. However, you might choose to use a temporary event notice (TEN) if you are planning a one-off showing in a different venue, perhaps for a special occasion.

### **Managing and licensing your own venue**

If your CC manages or owns the venue you will be using for screenings, your committee will be responsible for ensuring that it is correctly licensed for providing film exhibition (and for the sale of alcohol on the premises, if you wish to do so).

If you do wish to sell alcohol on the premises, the same rules will apply to you as they do to a pub, nightclub, or any other public place where alcoholic beverages are sold. Your first step will be to contact

the licensing department of your local authority and apply for a premises licence. When applying for a licence, make sure you include film as well as any other kind of regulated entertainment you think might take place at the venue in the future. If you also want your licence to authorise the sale of alcohol on the premises and/or provide 'late night refreshment' (i.e., hot food and drinks from 11pm to 5am), ensure all the relevant boxes on the form are completed.

The cost of a premises licence is the same regardless of how many regulated entertainments or activities you are applying for. Fee levels vary according to the level of the business rate for the venue, but they start at £100 and can go up to £635. Once granted, premises licences are granted in perpetuity. An annual charge for the premises licence is also payable – again, this is a variable amount (£70 to £350 per year).

When you apply for a premises licence, you will also have to pay to advertise it to your local community (e.g., by placing a notice in the local press), including a plan of the premises and a full operating schedule. The operating schedule must provide the details of the personal licence holder/designated premises supervisor if you are operating a licensed bar (see below); descriptive information about the premises; a statement of the proposed licensable activities, and details of any risks associated with the location, size, opening hours, controls on capacity, soundproofing, door supervisors, etc. Your local authority will provide you with guidelines as to what needs to be included in the advertisement.

### **Operating a licensed bar**

Some people are surprised to learn that the licence will cost no more if you wish to also sell alcohol on the premises. However, if you wish to operate a licensed bar, there are some conditions attached. You will have to nominate a personal licence holder (sometimes known as the designated premises supervisor) who will have overall responsibility for licensing the venue. This person will usually be responsible for the day-to-day running of the premises. All supplies of alcohol under a premises licence must be made by or under the authority of the personal licence holder.

The cost of a personal licence currently stands at £37. Applicants for personal licences will need to obtain an accredited qualification from an organisation such as the British Institute of Innkeeping or the Licensed Victuallers Association. This is less onerous than it sounds, but it will involve paying for a one-day course in licensing issues, followed by a multiple-choice exam (about £200). Personal licences are valid for 10 years, and holders are authorised to sell alcohol anywhere in the country at premises that have a valid premises licence. It is also worth noting that personal licence holders may apply for up to 50 temporary event notices (TENs) per year.

### **Club Premises Licence**

It is worth noting that if you are set up as a club to serve members only, you can be covered by a club premises certificate; if you operate from your own premises, other rules will apply regarding sale of alcohol, and a personal licence holder, etc., is not required.

### **Venues that do not require a premises licence**

If the venue you are using is considered to be a 'place of worship' (i.e., a church, chapel, or a hall which is mainly used for religious services), it is exempt from having to obtain a premises licence for entertainment. But note that community halls in a separate building from the actual place of worship are not covered by this exemption. Also bear in mind that if you wish to sell alcohol within the venue, you will still have to go through the process of obtaining a premises licence, designating a personal licence holder, and advertising the licence application to the local community (see above). The standard fees for licence applications will also apply.

Although all venues, apart from places of worship, must have a premises licence for showing films, some venues are exempt from having to pay a fee. These include village/parish/community halls – though this only applies if the film can be proved to be a 'community event' and is provided free of charge to the local community. Again, if the licence authorises the supply of alcohol or late-night refreshments, a fee will still be required and there will need to be a personal licence holder.

If your CC has formally declared education as part of its objectives for film screenings in its constitution, it is exempt from having to obtain a premises licence authorising its film showings if these are for educational purposes. The premises licence applies to various forms of 'regulated entertainment' including film – but exemptions do exist if the main purpose of an organisation is to provide 'information, education or instruction' and the films you are showing are fulfilling educational aims. You should contact the licensing department of your local authority to find out if this exemption will apply. However, also bear in mind that if your CC wishes to sell alcohol and/or late-night refreshments at the venue, a premises licence authorising this will still be required.

### **Outdoor screenings**

All public venues, even outdoor spaces, need a licence for film screenings. Since LA2003 was introduced, the government has been encouraging local authorities to license public places, including parks and streets, so that certain community events would not need to always obtain licences. However, this practice is not yet widespread. To find out what outdoor spaces near you are licensed, contact the licensing department of your local authority. Remember that even if a public place is licensed, you still need the permission of the licence holder to run an event there. If an outdoor venue is not yet licensed for film screenings, a temporary solution could be to obtain a TEN (see above).

### **Screenings at home**

If the venue you are using for your CC screenings is a large room in a member's home or a separate building on a member's land, you will still need to obtain a premises licence.

## **2. Policies and Procedures**

Your CC has an obligation to ensure public health safety, prevent discrimination and promote open access, and protect personal information. A broad overview of the regulation drawing out the main issues is provided in this section.

### **Health and safety considerations**

CC committees will need to consider health and safety issues – even if their non-profit status and/or small size ('small' means fewer than five employees) excludes them from the scope of current legislation (Health and Safety at Work etc. Act 1994; and Management of Health and Safety at Work 1999). It is advisable to do a risk assessment and prepare a health and safety policy that sets out the responsibilities and the procedures for ensuring the health and safety of the committee, members and the audience during your screenings.

It's sensible to adhere to the general principle that people not be put at risk.

Depending on the size of your audiences, there may be crowd control issues to consider. Before you begin showing films make sure your committee is clear on what should happen in the event of an emergency:

- How should people evacuate the building in an emergency?
- Who is responsible for first aid, and how can they be contacted?
- What, if any, training have volunteers had? What, if any, training will they need?
- How will you communicate with members of your committee in the event of an emergency?
- What procedures do you have in place for handling violence or threatening behaviour?
- Who is in charge in the event of an emergency?

Other things to consider or provide for:

- The safety of the electricity supply and any cables that could be trip hazards.
- Any equipment or machinery that could cause harm.
- Ensure that there are fire extinguishers at the venue.

- Always make sure that aisles and exits are not blocked.
- Ensure that emergency lighting is sufficient.
- Ensure that there are no fire risks when closing the venue.
- Ensure that you know where the fire alarm, first aid kit, telephone and fire exits are located.

It may be useful to appoint a health and safety officer (ideally someone with basic first-aid training) to monitor the policy and put in place health and safety procedures.

### **Disability discrimination**

*Disability Discrimination Act 1995 (DDA)* gives people with disabilities protection against discrimination in a wide range of areas, including membership of and access to societies and private clubs. More recently, the *Disability Discrimination Act 2005* improved and extended the rights provided by the DDA.

If you are operating in a licensed venue, the licence holder must ensure that the proper alterations have been carried out to ensure that people with disabilities are not disadvantaged.

Many cinemas and venues are introducing Audio Frequency Induction Loop Systems (AFILS), which enable hard-of-hearing viewers to listen to the soundtrack. Installing AFILS is not an expensive procedure (about £100 for a small hall). Alternatively, an infrared audio system enables audience members to listen to the soundtrack and also an audio description of the action, benefiting both those with hearing and visual impairments.

In the UK it is unlawful to discriminate against anyone on the grounds of sex, race, age or disability in the provision of any kind of service, facilities or goods (film showings are recognised by law as a 'service'). As with all other service providers, CCs must ensure that they do not discriminate by, firstly, refusing to provide a service; secondly, providing a lower standard of service; or thirdly, offering a service on different terms than they would to other people.

Think about ways that you can increase your accessibility, like offering large-print programme notes on request.

### **Data protection**

If your CC operates a membership scheme you will keep electronic and/or paper records of your members' personal information such as name, address, phone number, email etc. This information is protected under the Data Protection Act (DPA) of 1998. The act sets out eight basic principles to ensure that personal information is:

1. Fairly and lawfully processed
2. Processed for limited purposes
3. Adequate, relevant and not excessive
4. Accurate and up to date
5. Not kept for longer than is necessary
6. Processed in line with your rights
7. Secure
8. Not transferred to other countries without adequate protection

Data on ethnicity, disability status and/or any other sensitive personal information can be collected and published providing this is done anonymously and can't be linked back to any individual.

Be aware that information should be kept secure and confidential. You will need 'informed consent' from members/audiences *prior* to sharing their personal information with any third parties.

### **3. Insurance**

#### **Public liability insurance**

Public liability insurance will cover your CC in the event of any accident, injury or death, damage to or loss of property that may occur during a showing. Such cover can be expensive so it's worth checking to see if your venue already has it, or if the policy can be extended to include your screenings.

#### **Contents insurance**

If you are hiring a venue with projection equipment already provided, the venue management is responsible for its own contents insurance. However, if you are using your own equipment, you will need to get it insured. Contents insurance typically covers you for loss or damage to your property (or property on loan to you, e.g., equipment and films). It is wise to take out a policy that is comprehensive and includes cover against theft.

You should take out contents insurance to cover:

- equipment in your venue (e.g., projectors, sound equipment, computers)
- films while they are stored at your venue
- any other materials stored at your venue (e.g. food/drink, publicity material)

You may also want to take out cover for:

- equipment in transit to other locations
- accidental damage

It's worth noting that BFFS offers its Members and Associates a competitive insurance deal specially designed for CCs.

### **4. Partnerships**

#### **Joint events and contracts**

Some CCs carry out events in conjunction with other organisations, on behalf of other organisations, or hire out equipment and venues to one another. Joint events can be a lot of fun for all involved, and increasingly CCs are hiring out equipment to other CCs to help out.

If you are running a well-established CC, hiring out equipment can be a useful way of maximising your assets, as it allows you to derive a modest income stream from your kit when it is not otherwise in use. If you are setting up a new CC, hiring kit from another group can prove a useful way of testing the water before you commit to purchasing your own set.

Here are a few simple guidelines to help ensure a smooth process of joint activities:

Ensure a written agreement is in place, signed by all parties, which sets out:

- What everyone has agreed to do.
- Who is liable for each part of the event.
- How much each organisation owes to each other.
- The contact details of the responsible person for each organisation.

If hiring out equipment ensure that:

- You are allowed to hire the equipment.
- There is adequate insurance to cover it in transit and at the other venue.
- The borrowing organisation has personnel trained in how to use the equipment.
- It is clear who is responsible for damage or loss.
- The equipment will not be used for illegal screenings.
- The date and process for returning the equipment is clear.

- A deposit is received, where necessary.

Wherever possible, have invoices ready in advance, and settle payment at the time of the event or pick-up of equipment.

In the unlikely event that communication breaks down and a disagreement ensues, try to resolve as much as possible directly with the various organisations and make sure you have a written record of all communications. It may be possible to pass off debt collection to a factoring service through your bank. In extreme cases the police may need to be alerted. If this is the case, you should also seek legal advice.

## 5. Film classification and screening rights issues

### Film classification

In the UK, films for screening to an audience and for rental or purchase for viewing at home are certified by the British Board of Film Classification (BBFC). The current BBFC film rating categories for films shown to an audience are:

**U** – universally suitable for all

**PG** – parental guidance (some scenes may be unsuitable for young children)

**12A** – suitable for 12 years and over. No-one younger than 12 may see a 12A film unless accompanied by an adult

**15** – suitable for 15 years and over

**18** – suitable only for 18 years and over

**R18** – films to be shown only in specially licensed cinemas (or sold in licensed sex shops).

Additional certifications **Uc** and **12** apply to formats sold for home viewing.

Sometimes there are differences between the classification of a film when screened to an audience and DVDs of the same film produced for the home entertainment market. This is due to the different viewing environment (ability to rewind and rewatch) or because some of the extras provided on DVDs may have material that warrants a higher rating than the content of the film.

12A is a relatively new classification that sometimes causes some confusion – it is expected that no children under the age of 8 may be present at a 12A film, since this is the age at which the ‘PG’ classification kicks in. Responsibility for allowing under-12s to view a 12A film lies with the accompanying or supervising adult.

Bear in mind that statutory power for rating films rests with local authorities. Local authorities can effectively pass films that the BBFC rejects, ban films that the BBFC has passed, and alter classifications of films. However, local authorities are recommended by government to comply with the BBFC classifications<sup>3</sup>, so in the vast majority of cases CCs will not need to check with local authorities every time they screen a film. However, the rules on film classification differ from authority to authority, and although they will generally restrict the admission of children (i.e., under 18s) in accordance with the recommendations of the BBFC, it is essential to read the terms and conditions of the premises licence carefully.

There may also be a condition in the premises licence that applies to unclassified films. In many cases, CCs will be required to seek approval from the local authority before showing films that do not yet have a classification. However, if the premises licence contains no condition regarding unclassified films, there will be no obligation to seek approval.

Make sure your viewers are aware that a film does not have BBFC classification prior to the film screening.

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<sup>3</sup> Within LA2003 guidelines.

The procedure for showing unlicensed material is quite simple: notify your local authority licensing department 28 days in advance of the showing with brief details of the film and when and where it is to be shown. Effectively, you are requesting them to grant a specific local certificate for the film. Provide them with as much information as possible including a recommended classification.

Make sure you establish a good relationship with your local authority licensing officer and where possible obtain an advisory certification from the film distributor or the filmmaker or your programming committee. If you have built up a relationship of trust, the licensing officer is likely to defer to your (or your committee's) judgement, as in most cases you will be more expert on film. When in doubt, classify the film as an '18'.

BFFS Members and Associates have access to template letters to assist in approaching local authorities on these matters.

The rules regarding classification for CCs that show films to members and the general public also apply to those that show films to members and guests only, unless the local authority has taken a view that different operational modes of an organisation merit different rules on classification. Again, check the wording of the premises licence condition. If you think that different classification conditions should apply to your CC, it would be worth pursuing this with your local authority (refer to Section 20 (3) (b) of LA2003).

### **Rights issues**

This is covered in more detail in the article on Intellectual Property Rights and Screening Licences. A broad overview is provided below:

*Screening licences* – Film is subject to copyright licensing, so before showing a film you must obtain permission to do so from the rights holder. This is achieved by obtaining a licence. The type of licence that is right for the screenings of your CC will depend on how you operate – whether film is the main activity of your organisation – and if the specific showing is to members only or to the general public.

*Performing rights* – The MCPS-PRS Alliance collects royalties on behalf of the composers of music on film soundtracks. All venues that host CCs require a licence from the MCPS-PRS.

### **Film piracy**

Organisations such as FACT (Federation Against Copyright Theft) consider camcording of films to be film piracy. As the licence holder you must prohibit people from camcording films that are shown at your venue. You must also ensure that hired DVDs in your possession are not copied. For more information on film piracy and the role of FACT, please see the article on *Intellectual Property Rights*.

## **6. Taxation issues**

You will need to be clear on what kind of a legal entity your CC will be in the eyes of the law (e.g., a company limited by guarantee, a charity, a club or non-incorporated organisation) so that you can deal with your monetary affairs including taxation issues correctly. For example, if you have registered as a charity, there may be 'Gift Aid' implications for tax purposes.

Most CCs operate on a non-profit making basis and a small percentage of these are registered as charities. CCs often operate on a shoestring budget and generate a small end-of-year surplus. Typically this is used as needs-based reserves, e.g., for replacing technical kit. If your CC is not registered as a charity and is generating a surplus (even a small one), you may need to register with HM Revenues and Customs (HMRC) for taxation purposes.

It is accepted practice that tax officers will adopt a reasonable approach and will not seek annual returns from organisations where the corporation tax liabilities are very small. However, to be clear on your

position it's important to make contact with your local tax office to enquire whether your organisation needs to register for taxation. If the tax office does require registration, you will need to submit an annual tax return.

If your organisation is required to register with HMRC each year, you should prepare a tax return that sets out your CC's income and expenses and keep a copy. A related issue is if you sell goods on the premises other than film tickets (e.g., food, DVDs, books, etc.); these extra trading activities may put you in a higher tax band. You should also register for VAT if your turnover for the previous 12 months is over a specific amount (currently £67,000).

### **Sale of other goods and services**

This can be a good idea that adds 'flavour' to film showings. It can also generate some surplus income to defray core costs. Most CCs do not sell ancillary goods other than membership subscription and tickets on a large scale, and provided that the income from the occasional sale of goods/services is not very high, there will be no need to look into new regulatory areas.

However, if you do intend to sell food on a scale larger than the 'cake with coffee' model (i.e., if you wish to set up a booth selling ice creams, hot dogs, sweets, etc.), you will need to comply with food hygiene regulations. The main pieces of legislation to consult are the *Food Safety Act 1990*, the *General Food Law Regulation (EC) 178/2002*, and the *General Food Regulations 2004*.

If you are selling food on your premises, bear in mind that the premises should:

- be clean and maintained in good repair
- be designed and constructed to permit good hygiene practices
- have an adequate supply of drinking water
- have suitable controls in place to protect against pests
- have adequate natural and/or artificial lighting
- have sufficient natural and/or mechanical ventilation
- provide clean lavatories that do not lead directly into food rooms
- have adequate hand-washing facilities
- be provided with adequate drainage

In rooms where food is prepared, treated or processed, surfaces should be easy to clean and disinfect. Rooms should also have adequate facilities for washing food and equipment, and for storing and removing food waste.

There are no specific restrictions with regard to selling DVDs and books, but do ensure that any films sold are adhering to the BBFC classification rules. As with any retail business, you will need to research the market and decide which, if any, suppliers you wish to enter into contracts with.

If your trading activities take your revenues over certain thresholds, this will have implications in terms of taxation and VAT. Make sure that you keep detailed records of all sales and expenses for potential tax returns.

In addition, depending on the scale of your ancillary good sales, the extra income could trigger bigger business rates from the local authority.

## **Conclusion**

Navigating the legal aspects of setting up and running a CC enterprise does not have to be onerous. Just check that you have covered all bases legally – and apply a healthy dose of common sense.

If in any doubt, your local authority will be able to provide you with all the advice you need on premises

licences and classification. Contact the licensing department and explain to them where you want to show your films, how your CC is going to operate, and whether you will be selling alcohol on the premises. They will tell you how the premises licence works, what you need to do to obtain one, and the various cost implications. They will also explain their policy on film classification.

Make sure you pay attention to health and safety considerations, and take out insurance to cover your CC in the event of any accidents or emergencies at one of your showings.

Finally, it is important to ensure that your screenings are accessible to people with disabilities.

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