

ACOFS - The Australian Council of Film Societies

Film Society Handbook

Chapter 7: COPYRIGHT LAW

[June 2011]

Copyright law in Australia is contained in the Copyright Act 1968 and in decisions of the courts. It includes protection of the moving images and sounds in a film or video. Copyright protection is automatic. There is no need for the “author” to register for protection.

To screen a film or video “in public” you generally need permission from

- The owner of copyright in the moving images and sounds
- The owner of copyright in the script or screenplay
- The owner of copyright in the music on the soundtrack

For the purposes of copyright law, screening a film or video “in public” means any screening outside the home, whether in a church hall, social club, pub, café, private school, council hall or cinema.

The fact that you own a film or video or pay rental for it, does not automatically entitle you to screen it in public.

In most cases copyright lasts for 50 years from the end of the year in which the creator of the material died. This generally applies even if copyright is not owned by the creator. In some cases the copyright period lasts for 50 years from when the material was made or when it was first published.

DURATION OF COPYRIGHT

This requirement relates to cinematograph films, except where a government owns or would have owned copyright.

The following table is an excerpt from Australian Copyright Council Information Sheet G023v14.

Type of material	Factors affecting duration	Copyright expired if	Otherwise, duration is
Cinematograph films. (Sound recordings accompanying films made before 1 May 1969 are separately protected, as are underlying works such as screenplays and music for all films)	Made before 1 May 1969 and regarded as “dramatic work”	Creator/s of film as dramatic work died before 1 January 1955.	Life of either creator of dramatic work or “author” of images (whichever is longer) + 70 years.
	Made before 1 May 1969 and not regarded as “dramatic work”.	Made before 1 January 1955.	Life of “Author” of images within the footage + 70 years.
	Made on or after 1 May 1969	None.	Year first published + 70 years
Literary, dramatic and musical works.	Made public during creators life.	Creator died before 1 Jan 1955.	Life of creator + 70 years.
	Not made public during creators life.	Made public before 1 Jan 1955.	Year made public + 70 years.
Sound recordings		Made before 1 Jan 1955	Year first published + 70 years.

For explanation or additional information see the ACC Information sheet quoted above.

FAIR DEALING

Fair dealing describes the extent to which an item may be copied for study or research without the copyright being infringed. There appear to be no circumstances in which a film society could claim “fair dealing” if a film is screened in its entirety, even if the film is studied or discussed after screening.

Further explanation is available in the ACC information sheet G079.

GETTING PERMISSION TO SCREEN

There is no single organisation that can give you permission to screen a video, film or DVD in public. In practice, you will need to approach the supplier or distributor of that material in Australia who can give you prior permission, on behalf of the copyright owners, to screen the film, DVD or video. Some of these distributors are:

- Roadshow non-theatrical
- Amalgamated movies
- Madman
- Sharmill

The name of a DVD distributor is normally shown on the DVD cover or in the credits.

If you hire a film from a distributor or library, their hire fee will generally include permission to screen it in public and include a screening rights fee. The fee charged

generally depends on whether it is a “non-theatrical” screening (to members only) or individual tickets are sold for admission. In the latter case, it may be charged at a “flat rate” or “commercial rate” depending on the situation (eg whether a non-profit group or commercial operation).

Borrowing a DVD to screen can be more complex. Your local video store will generally NOT be able to grant permission to screen a video, film or DVD in public, nor will they be able to supply the material to do so, even if permission to screen it is obtained from the copyright owner. Where the DVD is borrowed from a distributor or copyright owner, the loan fee will generally include a screening rights fee and permission to screen the DVD in public. Again the fee charged may depend on the circumstances as described above for film. DVDs borrowed from the NTLC (Non-Theatrical Lending Collection) at the NFSA (National Film and Sound Archives in Canberra) include permission and a fee to screen the DVD in a non-theatrical situation. DVDs borrowed from ACMI (in Victoria) may not even have this permission as most were purchased with private home viewing in mind only. Where you wish to screen a DVD in a situation not covered by the rights, or if you are not sure, ask the distributor or library lending you the DVD. If you already own the DVD you are not permitted to screen it in public without permission of the rights owner. A process for obtaining this permission is covered below under “ACOFs Screening Rights Agreements”.

SEPARATE PERMISSION FOR MUSIC AND RECORDINGS ON THE SOUNDTRACK: APRA and PPCA

The venue in which the DVD, film or video is to be screened may already be covered by licences from APRA and PPCA. If not, contact APRA and PPCA.

Generally, you need permission for the public performance and playing of music and sound recordings within the soundtrack of the film as well as permission for the screening of the film itself. Permission for the “public performance” of the musical work on a film is administered by the Australasian Performing Rights Association (APRA), www.apra.com.au. Your venue operator is likely to have such a licence already.

Permission for the public playing of the separate sound recording in the soundtrack to the film is licensed by the Phonographic Performance Company of Australia (PPCA). www.pcca.com.au. However, as a result of a special exemption in the Copyright Act, non-profit clubs and societies set up for charitable purposes (which includes member film societies) will not need a licence from PPCA, provided any funds raised from screenings are not used for any purposes other than the organisation’s purposes.

CONSEQUENCES OF UNAUTHORISED SCREENINGS

Screening a film or video in public without permission will usually be an infringement of copyright.

A copyright owner who becomes aware of an infringement may take legal action, generally up to 6 years after the infringement has occurred. They may seek orders from a court including orders for financial compensation which may be far in excess of that which may have been negotiated if permission had been sought beforehand.

A person who infringes copyright for commercial purposes may also be charged with criminal offences.

The distributor of a DVD or film for which copyright has been infringed may also withdraw that item from the non-theatrical libraries and refuse any further permission for screenings by any film society or non-profit organisations.

FURTHER INFORMATION

Check out the Australian Copyright Council website for more information.

www.copyright.org.au

They have many information sheets available for free download (limit one copy of each) on such topics as:

- Introduction to copyright in Australia – G10
- Duration of copyright – G23
- Videos film and DVDs: screening in public – G31
- Owners of copyright: how to find – G51
- Research or Study – G053
- Film and Copyright – G069
- Fees and royalties for use of copyright material – G74
- Fair Dealing – G079
- Fair Use Myths – G91
- And many others.

ACOFs SCREENING RIGHTS AGREEMENTS

To cater for the situation where a film society purchases a DVD or borrows it from a member, ACOFS, assisted by the state Federations, has developed a mechanism for locating the rights holder of that DVD and paying an agreed and fair price for the non-theatrical screening rights directly to the rights owners or their agents. The agreements apply for film societies that are current members of a state Federation screening in a non-theatrical situation.

DVDs and VHS tapes borrowed from ACMI are generally permitted to be screened in a private home only and if it is desired to screen in a “non-theatrical” situation in a public venue, contact should be made first with ACMI and if supported, then to the rights owner in accordance with the ACOFS procedures. However, ACMI have agreed to purchase “non-theatrical” rights with future DVDs and as rights for existing DVDs are renewed they will include “non-theatrical” where feasible. So if ACMI has a DVD you wish to screen, ask if it comes with “non-theatrical” rights for film society screenings.

It is not permitted to borrow a DVD from one of the retail DVD/Video outlets to be screened in a non-theatrical situation such as at a film society, as the rights they have for their DVDs specifically exclude this.

Many societies prefer to purchase their DVDs from Australian retail sales outlets (local or over the internet) to ensure the DVD is available when wanted, it is guaranteed unscratched, it can be previewed before screening to the society, and the trailer (if any) can be used as promotion at the society. After the screening the DVD can be put into a society “library” for members to borrow at their convenience.

As at December 2009, three formal agreements have been signed, with Roadshow, Amalgamated Movies and Madman and between them they cover the majority of DVDs distributed in Australia.

Many of the smaller distributors are aware of the DVD rights scheme and will follow the same procedures although there is no formal agreement with them.

For a list of co-operating distributors and current contacts please contact your state Federation.

FORMAL AGREEMENTS:-

Roadshow:

Annisa Zainal, 02 9552 8685, annisa_zainal@roadshow.com.au (note the underscore in the name!)

www.roadshowentertainment.com.au Agents for Becker, Buena Vista, Dendy, Hopscotch, Newvision, Paramount, Potential, Sharmill, 20th Century Fox, Magna, MGM, Palace, Universal, UIP, Warner, Walt Disney, United Artists, Rialto, Footprint, Miramax, Icon, Village Roadshow, Roadshow Entertainment, Dreamworks, Pixar, Hoyts, and others.

Amalgamated Movies:

According to Steven Snell, Amalgamated Movies are “no longer signatories to the ACOFS agreement” (October 2010) Approach them for a quote.

Steven Snell, 07 47871086

stevens@amalgamatedmovies.com

See www.amalgamatedmovies.com Agents for Sony and Columbia Tristar.

Madman:

Matthew Stephenson, matthews@madman.com.au

Initially Paul Tonta, 03 9417 0977, pault@madman.com.au

Agents for AV Channel and some Umbrella titles. Ask for a catalogue by email.

See www.madman.com.au

INFORMAL AGREEMENTS

Many other DVD distributors are aware of the ACOFS rights agreement and prepared to follow the same procedures although not being formal signatories to the agreement.

For the latest list of participating distributors see “Getting your DVD rights” on the main pages of this website.

THE PROCESS

There are essentially 3 components, or steps to the process.

1. Once the film society has decided on their desired DVD program for the coming year they should approach the likely distributors and request approval for screening their DVDs under the ACOFS agreement. Email is a convenient way to do this. It is worth checking their on-line catalogues first although these are often not always up to

date. Also, many distributors handle DVDs for other rights holders and these DVDs may not appear in their catalogue.

2. Once the DVDs have been approved by the relevant distributors and “locked in” to a screening schedule by the film society, the distributors should be advised of the confirmed screening dates for their DVDs.

3. The distributors will raise invoices to cover the screening rights at the agreed rate and submit them to the society. Some distributors submit all invoices at the start of the year, others as the year progresses. Some distributors request payment within 30 days of screening, while others are happy with up to 90 days.

To participate in this agreement the film society must be a current financial member of a state Federation (and hence ACOFS) and operate within the guidelines laid down by that Federation for film societies. Specifically, the film society must operate as a not-for-profit organisation and conduct the screenings as a non-theatrical event (ie members only).

The agreement does not exclude the possibility of separate agreements made directly between film societies and the rights holders.

One important implication of this procedure is that if a DVD is not available for sale in a retail outlet in Australia, or has not been released in Region 4, then it is unlikely that there will be an Australian distributor for that DVD and permission to screen may be impossible to obtain. The law states that without prior agreement to screen a DVD it is illegal to do so and should not be screened.

Also, many distributors allow their screening rights to elapse after only a few years which means that they can no longer grant you permission to screen that title. In these cases it is rare that the rights will have been picked up by any other distributor in Australia so permission to screen the DVD may not be possible.

If you know of a film title that is not available on DVD in Australia or does not have a distributor here and you would screen it if it were available, the NFSA may be willing to take it on. Contact John Turner at ACOFS johnturner10@bigpond.com with your suggestion and he will pass the request on to the NFSA.

Note that a distributor, even if they have the non-theatrical rights for a DVD in Australia, is not obliged to agree to your screening of the DVD. They may have some commercial or promotional reason for delaying agreement until later.

PRACTICAL CONSIDERATIONS

There are some practical considerations that flow from the above process.

- If the DVD is not available for sale in Australia then it is unlikely that anyone will have the screening rights and permission to screen will be impossible to obtain in Australia.
- The fastest way to determine whether a DVD is on sale in Australia is to check the larger internet sales outlets (ezydvd , happy hunter, dvdplaza, etc) to see if it is available here. In many cases if it is listed the distributor will be

identified, and then it is a simple matter to approach that distributor for permission as described above.

- It follows that you will be unlikely to get permission to screen a DVD until the DVD has been released in Australia, even if you purchase it from overseas.
- You will not be able to hire a DVD from a retail rental shop and expect to pay the screening rights separately, as the DVDs so supplied strictly prohibit this.
- It may be difficult to obtain screening rights for older DVDs even though they may still be on sale in Australia if those rights have expired and not been taken up by any other Australian distributor.
- Only if your film society is a financial member of a state Federation are you eligible to use the ACOFS DVD rights agreement.
- If you screen in a private home you do not need permission from the rights owner to screen a DVD or film that you own.
- If you screen in a public venue you will need permission from the rights owner of the film or DVD to screen it to your members. Not being able to locate a rights owner or if the rights have expired, is not a reason for screening without permission.
- Screening to members only is a “non-theatrical” screening and is generally available at a cheaper rate than for a commercial screening.
- If you charge anyone for admission to the screening (as distinct from membership) then this is no longer a “Non-theatrical” screening and you will need to negotiate charges with the rights holder/distributor. This applies also for films and DVDs from the NTLC (Non-Theatrical Lending Collection) at the NFSA (National Film and Sound Archives)
- If the film or DVD is from the NTLC at NFSA, then the borrowing charge includes the cost of the screening rights. (As at Dec 2009 this is \$9.90 for a DVD and \$27.50 for a 16mm film)
- If you do not already own the DVD it is suggested that you ensure you can get screening rights approval before purchasing the DVD.
Check the following websites for availability in Australia and details of the distributor.
www.ezydvd.com.au will identify if the DVD is available through Ezydvd and who the distributor is.
www.urbancinefile.com.au will give a review of the DVD and list the distributor.
www.getonce.com.au will identify possible sources.
www.happyhunter.com will list all known web sites in the world selling the DVD, and identify the region of the DVDs available and price of the DVD (delivered to your door).
- If there is no region 4 DVD available on Happyhunter and it does not appear in the other websites listed then it is unlikely you will find a distributor in Australia. Even if you can purchase the DVD from overseas there may be no distributor in Australia to give you the required permission to screen it here.
- If there is no rights holder in Australia, whether never taken up or expired, then the Australian screening rights are probably held by the original international distributor or production company. Approaching them for approval to screen is possible but not recommended as they usually quote over \$300 per screening.

- If you come across a DVD distributor who is not aware of the “ACOFS DVD rights agreement” they will often co-operate. If not, notify your state Federation secretary.