

ACOFS Fact Sheet

Australian Council of Film Societies

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HOW TO OBTAIN YOUR DVD_s AND GET SCREENING RIGHTS

According to Australian (and international) copyright law, as detailed by the Australian Copyright Council, it is not legal to screen a DVD “in a public place” without permission from the copyright holder. “In public” includes any place where the public can meet, and includes church halls, meeting rooms, etc. If you cannot locate a rights holder then it follows that you cannot be granted permission to screen in public. Screenings in a bar or café are certainly “In public”, but can only be considered “non-theatrical” if only members can attend the screening and it is not accessible to non-members.

Copyright in a DVD or film may exist for up to 70 years. According to an email received from Roadshow:

“The suggestion that ‘copyright on most movies is extinguished after 50 years and thus, it is not bound by copyright legislation’ is wrong. The general rule is that copyright in cinematograph films made on or after 1 May 1969 subsists for **70 years after the end of the calendar year of first publication**. Films made before 1 May 1969 are often still protected by copyright as a ‘dramatic work’ for the duration of the author’s life plus 70 years (if the author of the work died after 1 January 1955). Many classic films fall within this category as their authors (eg directors) died after 1 January 1955 and are therefore still protected by copyright. For example a film such as CASABLANCA which was first released in 1942 was directed by Michael Curtiz who died in 1962, hence we consider that the copyright in this film as a dramatic work will still subsist until 2032.”

Most film societies hold “non-theatrical” screenings. That is a screening that is conducted for the benefit of their members, and where there is no entry by individual admission fee. The minimum period of a film society membership must be at least 3 months (usually 3 consecutive screenings). Any advertising material will promote the society itself, and may make mention of film titles, but should focus on membership.

If you borrow a DVD from the SLC (Screen Lending Collection) – previously called the NTLC - at the NFSA (National Film & Sound Archive) it can only be for a non-theatrical screening and the borrowing fee will include an amount for the screening rights.

DVDs and VHS tapes can no longer be borrowed from ACMI.

To cater for the situation where a film society purchases a DVD or borrows it from a member, ACOFS has a procedure in place 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 and which is in turn, a member of ACOFS.

Although it is permitted to hire a DVD from a library or retail video store for a screening (as long as the rights are still sought and paid for according to the ACOFS agreement) many societies prefer to purchase their DVDs from 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.

Formal rights agreements exist with Roadshow, Amalgamated and Madman, and between them they cover the majority of DVDs distributed in Australia. ACOFS also has an agreement with Park Circus in the UK for DVDs which don't have rights available 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.

Remember that this agreement applies only where the society is a member of a state film federation that is a member of ACOFS, screens non-theatrically and provides the DVD. Remember to get permission BEFORE you screen or you may find yourself paying commercial rates of as much as \$300 per screening.

In some cases the distributor may be able to rent you the DVD for an extra charge, but that is not part of the "ACOFS DVD rights agreement".

This agreement applies only to film societies that are members of State Federations who are in turn, members of ACOFS. These State Federations are:-

- Federation of Victorian Film Societies inc.
- WA Federation of Film Societies,
- Tasmanian Federation of Film Societies,
- Federation of Queensland Film Societies,
- NSW Federation of Film Societies.
- SA Federation of Film Societies.

In return for this benefit available to member film societies, ACOFS will promote the DVD titles available from the distributors and ensure the message regarding the appropriate screening of DVDs in public is circulated to, and understood by all member societies. We use the ACOFS Bulletin for this purpose, in addition to providing you with the latest news.

The contacts of all co-operating DVD distributors is contained in Fact Sheet 3-B.

THE PROCESS

There are essentially 3 steps to the process of obtaining DVD screening rights.

1. Once the film society has decided on their desired DVD program for the coming year they should approach the likely distributors (See ACOFS Fact Sheet 3B) 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 or may include titles on behalf of other distributors. If a distributor you speak to is unaware of the "ACOFS agreement" let ACOFS know at dvdrights@acofs.org.au or send them a copy of ACOFS Fact Sheet 3-C.

2. If you don't know who distributes a particular DVD, check the DVD cover, look up the title on the censor classification index www.classification.gov.au then select "Find a classification". Note that the technology listed in that list is how the film was submitted to the board. The assumption being made here, is that if the film title has been submitted on any technology, then it is highly likely that the company listed also hold all the rights for all technologies.

If the title is not listed there, try searching using the original name of the film (if any) or the director's name. Both can be found at IMDb.com .

Only when the DVD screenings have been approved by the relevant distributors for screening on a specified date can they be considered as "locked in" by the film society. It is

recommended that you don't promote any film title until "locked in". And if you screen it more than once you need approval for each screening.

3. The distributors will raise invoices to cover the screening rights at the agreed rate (See Fact Sheet 3B), 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 of Film Societies (and through them, ACOFS) and operate within the guidelines laid down by that Federation. Specifically, the Film Society must operate as a not-for-profit organisation and conduct the screening as a non-theatrical event (ie no individual paid admission). All member Federations and their Film Societies are listed on www.acofs.org.au/members/ .

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 very difficult or expensive to obtain in Australia. The Australian copyright law states that without prior agreement to screen a DVD it is illegal to do so and it should not be screened.

If there is no-one in Australia able to approve the screening rights, another possibility is to approach Park Circus in the UK for the rights. Details are in Fact Sheet 3B.

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, ACOFS or the NFSA may be willing to take it on. Contact ACOFS, dvdrights@acofs.org.au with your suggestion.

Note that the 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.

The film society asking for DVD rights may be requested by the distributor for a copy of their current membership certification with an ACOFS registered Federation, which proves current eligibility to use this rights agreement. So keep your registration certificate handy.

A list of co-operating DVD distributors and their prices is in Fact Sheet 3B.

For further information email dvdrights@acofs.org.au or check out the other Fact Sheets on the ACOFS website, especially Fact Sheet 3B, which is constantly being updated as new DVD distributor contact details come to our attention.

Attachment

SUMMARY AND SPECIAL POINTS TO NOTE:

- If your film society is a financial member of an ACOFS-registered State Federation you are eligible to use the ACOFS DVD rights agreement when you screen non-theatrically.
- If you screen in a private home to personal friends you do not need permission from the rights owner to screen a DVD or film that you own. (unless open to the public).
- 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.
- Film society screenings to members only are "non-theatrical" screenings and rights are generally available under the agreement at a cheaper rate than for commercial screenings.
- If you screen in a café or bar you must be able to segregate the screening from the general public, allowing members only to attend the screening.
- The agreement does not generally apply for outdoor screenings because it is usually impossible to limit the audience to members only.
- 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 also applies for films and DVDs from the SLC (Screen Lending Collection) at the NFSA (National Film and Sound Archives)
- Film Festivals do not meet the requirements for a "non-theatrical" screening as they allow access to individual screenings, hence they cannot make use of the agreement.
- If the film or DVD is from the SLC at NFSA, then the borrowing charge includes the cost of the screening rights. (From 1 July 2015, \$22 for a DVD and \$60 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.jbhifi.com.au is a reliable potential source. www.classification.gov.au will identify the company that sought the censorship rating and who is likely to be the rights holder of the film in all technologies in Australia. Note that the technology on which the film was submitted does not mean that is the only technology they have. It is likely they would have the DVDs rights also.
- If there is no region 4 DVD available 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.
- Park Circus in the UK may be able to approve rights if they not available in Australia.
- Check the ACOFS Fact Sheet 3B "DVD distributor contacts" for details of who to contact to request the screening rights and their prices. Between them they cover almost all DVDs distributed in Australia.
- If you come across a DVD distributor who is not aware of the "ACOFS DVD rights agreement" contact ACOFS or send the distributor Fact Sheet 3C, and let us know.
- If there is a DVD you feel should be made available to film societies but is not currently available commercially in Australia or there is no rights holder here, contact ACOFS – dvdrights@acofs.org.au
- The DVD rights agreement includes DVD, BluRay and 4K Ultra discs, but excludes DCP, 35mm and 16mm films.
- The ACOFS DVD rights agreement applies only where you supply the DVD yourself.
- If you screen a DVD twice, then you need permission for each screening and pay twice.

