

### COPYRIGHT ISSUES

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

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

- A. The owner of copyright in the moving images and sounds
- B. The owner of copyright in the script or screenplay
- C. 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 does not automatically entitle you to screen it in public.

In most cases copyright in a film lasts for 70 years from the end of the year in which the creator of the film died. This generally applies even if copyright is not owned by the creator. In some cases the copyright period lasts for 70 years from when the film was made or when it was first released.

In an email from the NFSA, the Licensing and Rights officer Nelson de Sousa:

*“Films made before 1 May 1969 are protected by copyright for 70 years from the death of the last surviving director or scriptwriter. Films made after this date are protected for 70 years from the date on which they are published. Films are published when they are offered for sale or hire (eg. released for sale or hire on DVD or video).”*

*And in an email from Roadshow:*

*“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.”*

*You will need permission to screen any film in public that is still protected by copyright. In practice this means that you will need to obtain permission for a screening. If there is no local distributor then you may need to contact the copyright owner or an international distributor who holds the rights for Australia.*

*It is also important to note that commercially purchased DVDs normally have a contractual restriction that states you must not screen the film in public. This contractual restriction is often found on the DVD cover. Once you get permission to screen the DVD, and pay a rights fee (if sought) then that restriction is lifted for that one screening.*

*The Australian Copyright Council has written the following information Sheet ‘Videos, DVDs and Film Screening in Public’ which will give you more information.*

*<http://www.copyright.org.au/information/specialinterest/film.htm> “*

## 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
<b>Cinematograph films.</b> (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
<b>Literary, dramatic and musical works.</b>	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.
<b>Sound recordings</b>		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 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 may 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 or video. Some of these are:

- A. Roadshow non-theatrical
- B. Sharmill
- C. Madman (Now handled by ACOFS)

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

Your local video store will NOT be able to grant permission to screen a video, film or DVD in public.

## PUBLIC PERFORMANCE LICENCE (PPL)

Roadshow PPL offer blanket licences to organisations like cruise ships, motels etc, which allow screening of a range of titles to their audiences. These are not applicable to film societies however.

## CHURCH VIDEO LICENCES

The Church Video Licence (CVL) is available from Christian Copyright Licensing International (CCLI), to any church or Christian Ministry organisation who wishes to publicly perform motion pictures, or part thereof, in their programs. Where a film society is specifically a Christian film society, or is an outreach ministry of a church, then CCLI would approve a CVL application for that organisation. Where a secular film society meets in a rented church hall, that society would be outside CCLI application guidelines.

The CVL grants permission to publicly perform copyrighted motion pictures and other licensed programs from any legally obtained source originally intended for personal, private, home use only, such as home videos and DVDs.

The licence covers over 370 production companies (Producers) including many major studios. (But not them all! – Ian D) For a complete list of Producers who are affiliated with the licence, please see the Church Video Licence website. You can read the full terms of the agreement there as well. [www.cvli.com.au](http://www.cvli.com.au)

Heritage now look after many films for churches that weren't under CVLI's licence scheme.

For Roadshow, Warner Brothers, Disney, Icon/Dendy, Hopscotch and Hoyts titles:

HERITAGE HM  
PO Box 1114  
Mooloolaba QLD 4557  
Phone: 07 5438 8791  
Fax: 07 5438 8792  
[www.movieschangepeople.com](http://www.movieschangepeople.com)

For Paramount, Universal and Fox titles:

CCLI  
PO Box 6644  
Baulkham Hills BC NSW 2153  
Phone: 02 9894 5386  
Fax: 02 9894 5701  
[www.cvli.com.au](http://www.cvli.com.au)

Should you wish to discuss whether the CVL would be available to your film society, you are welcome to ring their office in Sydney on 1800 635 474 from 9-5 Mon – Fri. Or email Mary Fisher [mfisher@ccli.com.au](mailto:mfisher@ccli.com.au) and website [www.ccli.com.au](http://www.ccli.com.au)

### **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](http://www.apra.com.au), but licences are generally granted to the venue owner for all screenings within that venue.

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](http://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. These types of organisations will still need an APRA venue licence.

### **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.

## **FURTHER INFORMATION**

Check out the Australian Copyright Council website for more information.

[www.copyright.org.au](http://www.copyright.org.au)

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

- A. Introduction to copyright in Australia – G10
- B. Duration of copyright – G23
- C. Videos film and DVDs: screening in public – G31
- D. Owners of copyright: how to find – G51
- E. Research or Study – G053
- F. Film and Copyright – G069
- G. Fees and royalties for use of copyright material – G74
- H. Fair Dealing – G079
- I. Fair Use Myths – G91
- J. Screening in Class – G32
- K. And many others.

## **ACOFS SCREENING RIGHTS AGREEMENTS**

ACOFS has negotiated an agreement with several DVD distributors in Australia in which film societies may seek prior agreement to screen a DVD for which that distributor has copyright, and agree to pay that distributor a fixed (affordable) fee for those rights.

Further related information is available in other FVFS information sheets and on Fact sheets produced by ACOFS and available on their website [www.acofs.org.au](http://www.acofs.org.au).

## **PRACTICAL CONSIDERATIONS**

The simplest way to be sure that a DVD you plan to screen has a distributor in Australia is to program only those DVDs which are in current release in Australia from a commercial DVD sales outlet. The producer and usually the distributor will be listed on the cover of the DVD.

To determine quickly whether a DVD is on sale in Australia it is simple to check one of the many on-line DVD sales outlets such as [www.ezydvd.com.au](http://www.ezydvd.com.au). If listed and available the distributor is normally listed also. [www.urbancinefile.com.au](http://www.urbancinefile.com.au) also lists the distributor.

Any DVD that is either too new, too unusual or too old to be listed for sale at such a sales outlet is unlikely to have an Australian distributor or rights holder, but not impossible.

## **COPYRIGHT FAQ**

**Q1: How do I know if a DVD has an Australian rights owner?**

A: If a DVD is on sale commercially in Australia (as a region 0 or 4 DVD) then someone must hold

Australian screening rights. The distributor will normally be shown on the DVD cover, or you can check on [www.classification.gov.au](http://www.classification.gov.au) to find out if it has been seen by the Australian censors and who applied for the rating. An Australian sales outlet website will generally identify the Australian distributor and hence the rights owner. For example, check [www.ezydvd.com.au](http://www.ezydvd.com.au) [www.urbancilefile.com.au](http://www.urbancilefile.com.au) will also usually identify the distributor.

**Q2: Do I need to pay screening rights for all DVDs screened regardless of whether I rent or buy the DVD?**

A: A DVD borrowed from the NTLC at the NFSA (\$22 at Sept 2014) comes with subsidised non-theatrical screening rights – no more to pay.

A DVD borrowed from a retail video outlet or from your local library includes the right to screen in a private home but not in a public venue. You will need to obtain non-theatrical screening rights from the distributor (See ACOFS Fact Sheets)

A DVD hired from a distributor such as Roadshow (\$50 - \$200 ) will include non-theatrical screening rights.

A DVD borrowed from a friend or private collection, or purchased for the occasion does not include the right to screen it in public. Non-theatrical screening rights must be obtained, in advance, from the Australian distributor and will normally be provided at the agreed going rate under the ACOFS DVD agreement.

The situation regarding rights to screen 16mm films is similar to the above in that most hired films include screening rights. The exceptions are those from private collections, the NFSA film archives and ACMI (except shorts), which all require permission to screen them in a public venue.

**Q3: Can I get screening approval from an overseas rights owner?**

A: Theoretically yes. But a rights holder in another country may not have the Australian screening rights, even if there isn't a distributor in Australia. Even if permission can be obtained from an overseas rights owner, they are not party to the ACOFS agreements and may not be aware of the film society movement in Australia and their non-theatrical and non-profitmaking status here. The screening rights fee is therefore likely to be considerably higher than that negotiated locally, and may not be viable to consider.

**Q4: Can I screen at the film society, a DVD that was hired from a DVD rental shop?**

A: Yes. The Australian copyright law states that no DVD may be screened in public unless the copyright owner has given permission. For DVDs owned by a film society, prior permission should be sought from the copyright owner (usually the Australian distributor marked on the DVD cover) and an appropriate fee paid.

While this includes DVDs borrowed from a retail DVD store, it is not recommended because there is no guarantee of the quality of such a copy nor that it will be available when you want to screen it.

**Q5. Is it possible to buy late release DVDs before they appear in the video shops? Can we for example, buy them from the USA? How do I go about this?**

A. You are right. It is possible to buy DVDs over the internet from overseas, but then it is difficult to get approval to screen them in Australia. The Australian copyright law states that you must have approval from the Australian rights holder (Non-theatrical) before you screen a DVD to a film society in a public venue.

A US film usually turns up in Australia within a year of cinema release in the USA and Australia. Foreign films screened at the Melbourne or Sydney Film Festivals will only turn up on DVD if an Australian distributor decides to buy the film and the screening rights. It will then usually turn up in the DVD stores about 18 months after the film festival.

If there is no rights holder in Australia the rights probably belong to the international distributor in the USA, Asia or Europe, depending on the country of production. As overseas distributors have not been in discussion with either the FVFS or ACOFS about screening rights – nor are they aware of the “non-theatrical” rights status of film societies in Australia, it is unlikely you will get approval from an overseas distributor at an acceptable price, if at all – assuming you can locate the rights owner.

It is often easiest to limit your society's screening selection to region 4 DVDs which guarantees there is an Australian distributor. This can be done by checking the on-line catalogues of Australian

distributors such as Ezydvd ([www.ezydvd.com.au](http://www.ezydvd.com.au)) or checking that it has been released here on [www.classification.gov.au](http://www.classification.gov.au). The Ezydvd website usually also identifies the Australian distributor, and approaching that distributor or their agent usually results in permission to screen the DVD for an acceptable fee. (Refer to the information sheets about the ACOFS DVD rights agreements on the FVFS website.) The latest information is always available on [www.acofs.org.au](http://www.acofs.org.au) in Fact sheet 3B.

Note that Roadshow is an agent for many of the smaller distributors so approaching them first usually covers 80% of all rights sought. If not, you should try Amalgamated Movies or Madman (through ACOFS). You can usually then buy the DVDs from Ezydvd, JB Hifi or similar outlets - even Kmart or Coles!

#### **Q6. What has happened to Happy Hunter on the Internet?**

A. In many of our information sheets and web pages we have recommended Happy Hunter as a place to determine where one can purchase any DVD, from which regions and at what cost. It includes the cost or transport from any country.

For a while this website disappeared from the internet only to re-emerge at [www.happyhunter.co.uk](http://www.happyhunter.co.uk). It appears to be working intermittently at [www.happyhunter.com](http://www.happyhunter.com).

Other websites do a similar service of collating information from several suppliers, namely [www.getonce.com.au/dvd.html](http://www.getonce.com.au/dvd.html) or [www.dvdpricesearch.com](http://www.dvdpricesearch.com)

#### **Q7. ACOFS Procedures don't solve everything**

I have tried to apply the procedures defined in the ACOFS DVD rights payment process but one supplier still wants me to complete a 5 page "contract" before accepting orders from my society. Is this normal? (Mar 2008)

A. Suppliers have their own procedures, which are often driven by their own financial requirements rather than by the rights process. Many require details of your society before they can set up an account and begin to deal with you. Where a company asks for directors' names and "guarantors", you should explain that the film society is incorporated (if it is) and that it is a not-for-profit organization. You will need to provide the name of a reliable contact such as secretary or treasurer. You should attempt to comply with their procedures (at least on face value) so their systems can deal with your bookings.

#### **Q8. How do I go about getting rights clearance for screening DVDs?**

- A. This is one of the most often asked questions, and for that reason we have prepared several information sheets which cover all aspects. Check out the FVFS website in particular information sheets 7 (The DVD Society), 22 (DVD rights agreements and how to obtain your DVD and get DVD screening rights).
- B. The latest information can always be found on the ACOFS website at [www.acofs.org.au](http://www.acofs.org.au) in Fact sheets 3A and 3B.

#### **Q9. Who do I approach to get approval to screen a DVD at a film society?**

A. All the updated contacts, procedures and charges are contained in Information Sheet 22 of this website and Fact sheet 3B of the ACOFS website.

#### **Q10. What if I cannot find my preferred DVD title in Australia?**

##### **A CHALLENGE FOR YOU**

ACOFS has agreed that if there is a DVD that is not available in Australia but is worthy of distribution here, they will consider negotiating for the Australian rights and distributing that DVD themselves, or requesting that NFSA obtain the DVD and the rights. So, if you have seen a good film overseas, at a film festival or recall one from your past, and would like to be able to screen the DVD at your film society please let the FVFS secretary know and we will notify ACOFS of your interest.

Incidentally, if you do find a DVD in the NFSA restricted catalogue that you would like to screen at your film society contact the FVFS or NFSA. They did agree to remove the restrictions wherever

possible and with luck some may already be unrestricted but not yet catalogued as such.

**Q11. Are the older movies on DVD out of copyright?**

A. Not necessarily. Check out paragraphs above and below for answers or further references.

**Q12. Can I screen it if the screening rights have expired?**

A. In many cases the Australian distributors' screening rights for DVDs of older movies may have expired. Unfortunately this does not mean that you can screen it for free, but it does mean there is no-one to give you permission to screen the movie, and the copyright law says that no permission = no screening! When copyright expires or lapses it simply means that the distributor here no longer has current rights to the DVD in Australia. The DVD is not free of copyright until the film is in the public domain, which may be as much as 70 years after the death of the director.

**Q13. Can FVFS put together a database of all DVDs and their rights owners?**

A. The rights ownership situation changes day to day.

New DVD titles are available daily and there is no way of knowing which will be sought by film societies.

Rights generally expire after a few years and may be taken up by other distributors, but more likely, not at all.

Rights owned by one distributor are often taken over by other distributors.

The main distributors, Roadshow, Amalgamated Movies and Madman account for over 90% of the recent titles sought by film societies and they are very helpful in finding the current rights holders. They seem to hold their own databases.

The DVD cover and some on-line sales outlets (eg ezydvd) will name the Australian distributor, and ACOFS Fact Sheet 3B attempts to keep up-to-date with which distributor is now handling DVDs from the many production companies

**OTHER OPTIONS**

If there are any DVDs of important films for which you cannot find the screening rights please let us know so that we may follow it up and perhaps explore other options.

Contact [admin@fvfs.org.au](mailto:admin@fvfs.org.au)

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