

SUBMISSION IN SUPPORT OF INDEPENDENT CINEMA AUSTRALIA'S APPLICATION FOR AUTHORISATION OF INFORMATION SHARING AND COLLECTIVE BARGAINING

My name is Denis Parkes. I am about to retire and for 24 years I have owned and operated *The Picture Show Man Cinema*, a twin screen cinema in Merimbula in regional New South Wales. I am also a Board member and past President of Independent Cinemas Australia.

I write in support of ICA's application for authorisation and to describe what it is like for a small business regional cinema operator based on my own experience over many years and also based on my experience speaking with other small business independent exhibitors.

Public Benefits

Independent cinemas are an important and valued service in regional communities.

The commercial viability of my cinema requires access on fair terms to product from a wide range of distributors. I need to maximise occupancy from patrons in my catchment area by not only showing the most popular film titles, but also a spread of titles appealing to different demographics every week of the year.

Due to the prevailing requirements of film licence agreements it is a challenge to meet the content needs of my local community with only two screens. I am rarely if ever able to negotiate the price of the films I book because the price is not negotiable. So every week I engage in the exhaustive and time consuming practice of negotiating the policy and season of films on offer, to the extent I am able, so I can book the best films for my patrons in the most commercially viable way possible. 'Policy' refers to the number of screenings or 'sessions' a day or a week that an exhibitor is contracted to schedule for the film and the timing of those screenings e.g. one day and one evening per day. 'Season' is the number of days or weeks that the film is contracted to be offered at the cinema e.g. 4 week season after which the exhibitor needs distributor consent to continue offering the film.

Distributors at the recent ACCC hearing stated they negotiate fair and flexible policy with no transaction costs.

Regarding transaction costs, in my experience film booking is a very fast paced labour intensive exercise where the volume of new releases I need to assess now averages more than one title a day. I must work very hard to attempt to stay on top of what is on offer and to negotiate policy that is appropriate to a twin cinema. I usually do this myself but also consult with lawyers, accountants and experts on difficult issues when needed.

Regarding flexibility, in my experience the policy first offered (if any) by a distributor may be reasonable for a large metro multiplex e.g. 5 sessions a day, but is not commercially viable for a twin screen site. The most popular titles are regularly offered to me on a 'take it or leave it basis' and that was certainly the case for recent films in the STAR WARS franchise and for LION irrespective of the relative size of the distributors offering those films.

Nevertheless I attempt to negotiate all films and engage in this time consuming experience every week on every title developing good relationships with distributors despite our sometimes robust conversations and sometimes obtaining more appropriate licence agreements for my business.

Distributors look at my business only from the perspective of the performance of their film, not my other contractual commitments or my business imperative to offer a wide range of titles to meet the needs of my local community. Not everyone in a country town wishes to see even one let alone 5 sessions of a particular film. For small towns the population has exhausted their appetite for even the most popular films within a week, yet exhibitors can be contractually bound to play the title on high rotation for three or four weeks. Even one ticket sold to an otherwise empty session delivers incremental revenue to a distributor but does not pay my costs of opening, staffing and running that session. Fortunately most distributors do not insist on holding me to a contractual season if the films audience has collapsed.

I often have to drop films that are performing well due to the policy requirements of other titles I have contractually committed to book. I abide by those bookings but have to spend considerable time explaining that to the competing sales agents who ring weekly and sometimes forcefully to persuade me that I must do otherwise based on the box office performance of their film. The conversations can be frustrating for both sides when the film appears to have the highest box office at my site – but achieved that distinction across multiple sessions, where my perceived best performing title is the one that delivered the most box office across the fewest sessions, or the film that is not about to be superseded by a fresh title in the same genre starting that week which will siphon off that audience.

Very often the restrictive session policies prevent me from offering space to new titles I would like to book from small independent distributors or innovative alternate content providers.

Collective negotiation and information sharing could help identify gaps in the schedule or new scheduling practices and assist these distributors gain access to our screens more efficiently and bring more diverse content to regional audiences.

The distributors at the hearing appeared to contend that collective negotiation would not deliver benefits to them however the only job of their sales team is to sell their film. For me (as with all SME exhibitors) film booking is not my only job. In addition to the weekly demands of film booking under pressure and with inadequate information I also have to run and to market my cinema business. Many distributors no longer market their films in regional areas so I have to market the specific films to bring in the patrons. I have to negotiate with Coke, the landlord, the popcorn suppliers, manage staff, serve customers, clean and maintain the building, the equipment and do the finances.

Collective negotiation of even some aspects of some bookings would deliver considerable efficiencies to my business and increase the time I have to devote to improving the cinema service for the patrons.

In addition to the price, release date and required minimum season, the commercial viability of a film at my cinema is affected by the running time, the classification and the session requirements.

If a film is long it is more expensive to my business as it limits the time I have available to play multiple sessions of the film, and the space to fit in screenings of other films.

If the film is a restricted classification it is more expensive to my business as the number of patrons who will be attracted to that film, or who are permitted to attend is more limited.

Despite this information being fundamental to my business decision in selecting the film, and required to be supplied according to the Industry Code of Conduct, it is routinely not supplied by the distributor in time to make an informed booking decision, or attempt to negotiate policy.

The analysis of what to book and what policy is workable is time consuming and complex despite my long experience in the industry. The capacity to share information and expertise about the terms, policy and mix of films on offer would benefit many independent exhibitors who have neither the time nor the experience to negotiate the programming needs of their business.

It would also shed light on whether film licence agreements on offer are fair and equitable creating a level playing field on which better performing sites could negotiate appropriate film licence terms and policy, while poorer performing sites might better understand how to improve the box office take at their cinemas and their capacity to qualify for better offers.

All these policies are public the minute they are advertised, so I just don't understand why distributors believe they would suffer material detriment if ICA members such as myself are permitted to discuss terms and policy with each other. The only possible detriment to them is that exhibitors might more readily ask why they have been offered certain terms, or may have sufficient time and information to raise a query under the Code if the terms offered were not equitable.

The existence of the Code has helped exhibitors like myself understand that it is OK to try and negotiate film licence agreements and it has encouraged distributors to at least speak with independent exhibitors. Unfortunately it has not resulted in distributors negotiating on price or on what they perceive as 'must have' titles. The speed at which film booking must take place and the delay in securing necessary information means that an appeal under the Code is not practical. Exhibitors will not waste time and money appealing an issue that is in the past, especially if it risks their good working relationship with a distributor or at worst some form of retribution.

Information sharing however will increase transparency so exhibitors such as myself can assess what is fair and equitable under the Code and better understand how to improve our cinema service to local patrons, our offers to distributors and our box office performance when measured against comparable sites.

I am happy to speak further with the ACCC about my experience if that would be helpful.

Yours Faithfully,

Denis Parkes