



1st July, 2017

Mr. Darrell Channing

Director

Adjudication Branch

Australian Competition & Consumer Commission

23 Marcus Clarke Street

Canberra ACT 2601

Dear Mr. Channing,

Re: INDEPENDENT CINEMAS AUSTRALIA (ICA) APPLICATION A91587

We're writing this letter on behalf of Transmission Films Pty Ltd, a private independently-owned film distribution company operating in Sydney, Australia. Transmission exploits all rights to approximately 15-20 theatrical features films per year, including the rights to many Australian films plus the output of our sister company See-Saw Films (producers of such films as THE KING'S SPEECH and LION.) Transmission can be considered a 'boutique' distributor – our films tend to release on fewer than 50 screens, and we rely very heavily on independent cinemas in order for us to make our films available to the public.

Transmission generally has an excellent relationship with the independent cinema community in Australia, sharing many of its values and challenges. One of those challenges is sustaining a private business at a time when our business models are in transition and multi-national players are entering the market, particularly those operating in the Subscription Video On Demand (SVOD) space (e.g. Netflix, Amazon, Stan). We share these challenges equally with exhibitors, with whom our fortunes are very much intertwined. While there is occasionally a frisson between distribution and exhibition – expected on any commercial front – exhibitors and distributors both know we must work to co-exist as we are mutually reliant on each other.



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As one of the parties subject to the application by ICA, we must advise a very strong objection to their arguments for collective bargaining. Our main rationales are as follows:

- 1) The formation of a negotiating 'block' of independent screens, with the ability to negotiate via a single body or representative, will create overnight a major 'player' representing approximately 28% of national cinema box office. Transmission represents on average between 1.5%-2.5% of box office, with independent cinemas making up a higher proportion of that box office (somewhere between 45%-60% on the majority of releases). This creates a heavily weighted negotiation against independent suppliers like Transmission and the members of A.I.D.A.
- 2) Transmission is one of few independent distributors that are Australian-owned and not part of a multi-national group. As the independent business becomes increasingly globalized, exhibitors rely on the remaining independents to supply a diversity of content that the multi-territory operators tend not to supply. The impact of an independent cinema monopoly will further erode the sustainability of the independent film model.
- 3) In our view the system isn't 'broken' – it works. The Code of Conduct mechanism is a successful means to conflict resolution, and there is no evidence supplied that it isn't currently working for both sides of the industry. We recently released LION, the fifth highest grossing Australian film of all time, and didn't require the need to resort to the Code for a single resolution. In fact Transmission has never had an issue proceed to the Code for mediation. In our view, the push for collective bargaining is an over-reach by an industry trade organization intent on commercial gain rather than correcting a perceived market imbalance.
- 4) The ICA proposal suggests that speed and efficiency are a motivating factor for introducing collective bargaining. However, we feel that inserting a third party trade body between distributor and exhibitor actually creates a layer of bureaucracy likely to frustrate both sides, including many ICA members (particularly if ICA are unable to reach agreement on a title). Additionally, a minority sector of ICA (i.e. arthouse locations) are more likely to value our 'niche' style of product moreso than the other members who may operate a more mainstream or regional site. Much of our content is worth more to urban sites than regional sites and, unlike blockbuster titles, this imbalance threatens to complicate and stall a transaction with the venues that regularly screen quality/arthouse films.



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- 5) The ICA membership is broad and vast. There is no detail on how the 'information sharing' would be controlled or safeguarded. Should we choose not to participate in collective bargaining, our fear is that a culture of permitted information sharing will have been established within the industry which will change the fundamental commercial dynamic of how the market operates – officially or unofficially. Additionally, many cinemas operating in our space are also distributors; sharing information will give these distributors an unfair advantage, particularly as they are likely to be competing for the same screen space as Transmission.

- 6) If ICA member boycotts of product do occur under a collective bargaining model, it is more likely to happen on a smaller vulnerable release that isn't perceived to be critical to the profitability of cinema venues. This could potentially be devastating for smaller releases including Australian independent films and the residual impact that may have on Australian production.

Thank you for considering our comments, do please contact us if we can elaborate further.

Kind regards,

Richard Payten, Andrew Mackie
c.c. Matthew Soulos, Shannon Cook