

SUPPLEMENTARY RESPONSE TO PUBLIC SUBMISSIONS MADE BY INTERESTED PARTIES ON INDEPENDENT CINEMA AUSTRALIA'S APPLICATION (A91587) FOR AUTHORISATION – 31 AUGUST 2017

1. INTRODUCTION

Independent Cinemas Australia (ICA) provides further information concerning the public benefits of the grant of authorisation and the likely impact of authorisation on smaller independent distributors.

2. PUBLIC BENEFITS

Several interested parties questioned the public benefit of the grant of authorisation to ICA and its members. Our submissions to date have focused on the efficiency and effectiveness gains to be made for the independent operators of cinemas through transaction cost savings and input to contracts. As further explained below we submit that those benefits will flow through to consumers.

The authorised activities will support a more healthy and sustainable independent cinema sector. The most important consequent benefit to the community is the value of continued access to a cinema, choice of films available when attending the cinema and an overall improved experience at the cinema.

This is especially important in regional and remote areas where social engagement and public entertainment options are limited, but, at the same time local cinema businesses have become less viable due to increasing costs such as staff, power, overheads and falling audiences due to competition for leisure time from a range of factors including online content.

Digital disruption, including anticipated changes to the theatrical release windows offered by distributors, will have a direct impact on the capacity of many independent exhibitors to keep their businesses viable. Shorter windows will reduce the number of people attending the cinema especially at sub-run cinemas. Material changes in contractual terms or access to film product (eg shorter windows) can quickly undermine commercial viability resulting in a cinema closing and a valued service being lost to the local community.

If authorisation is granted, ICA members will be better placed to respond to changes to the cinema exhibition sector and to remain economically viable and improve cinema services to the public.

3. CONSUMER BENEFITS

It is likely that authorisation may, in some circumstances, deliver better price outcomes for consumers by enabling ICA members or sub-sets of them to more effectively and efficiently negotiate with a distributor. This can best be illustrated by the impact of the major change in custom and practice in 2016 by a particular Studio referred to in our earlier submission. In the absence of authorisation those ICA members, whose business model of offering cheap tickets for families, could not lawfully collectively negotiate an

outcome that better reflected their approach to pricing tickets. The direct result of the introduction by the distributor of the change in custom and practice was unfortunately a subsequent increase in ticket prices at a sub-set of ICA member cinemas around Australia.

Authorisation is also likely to result in more marginal cinema businesses, especially in regional areas, becoming more sustainable due to an expected increase in effectiveness in negotiations with distributors, and the potential of more effective negotiations securing access to films on terms which better reflect their circumstances than is currently possible.

The pressure from on-line entertainment will mean that any cost savings resulting from the authorised conduct will likely be reinvested in the business and deliver consumers a better experience at their local cinema through improvements in infrastructure such as digital equipment and improved seating or increased screen capacity and through improved services such as liquor licensed premises, food offers and special event screenings.

Furthermore, greater transparency and more effective negotiations will assist ICA exhibitors to continue to offer and to increase the range of films offered to meet the diverse needs of the people in their local communities.

4. IMPACT ON INDEPENDENT DISTRIBUTORS

ICA and its members submit that independent distributors play a vital role in ensuring a diverse choice of films are available to be licensed by exhibitors in Australia. For this reason they are confident that the application for authorisation will not threaten the health and viability of that sector.

Independent cinemas themselves play an important role in providing the public with access to a diverse range of mainstream, art house and alternate content titles. Smaller screen sites, comprising the majority of independent cinemas have been found to offer the public a greater range of films than those offered by the major exhibition chains in Australia.¹

It would be contrary to the interests of ICA's members to harm the independent distributors. It is in fact in their interests to support and promote the viability of the independent distributors.

ICA and its members submit that voluntary collective negotiation is likely to assist a smaller, less well-resourced distributor to work more effectively, efficiently and co-operatively with ICA member exhibitors to reach a wider audience for their film and compete more effectively with films released by the major Studios. The cost of negotiation will be reduced and the capacity to quickly and effectively resolve disputes and misunderstandings will be enhanced.

¹ Professor Deb Verhoeven, Chair of Media and Communication and Professor Browyn Coate, Deakin University

ICA also submits that the capacity to enter into voluntary collective negotiations with ICA and its members is likely to result in mutually beneficial outcomes which may assist independent distributors to resist unreasonable demands that may be made by large exhibitors to the commercial disadvantage of the independent distributors and members of the independent exhibition sector.

Independent distributors are not without some bargaining power. As observed in our earlier submission, films are differentiated products. Control of a successful film, rather than necessarily the size of a distributor, confers significant, if transient, bargaining power. On this measure independent distributors can exert comparable bargaining power to a major Studio. Transmission Films for example recently distributed LION, the fifth most successful Australian film of all time at the local box office.

Independent distributors may, notwithstanding their bargaining power, be concerned that it will be the licensing of more risky films (eg those that may not be expected to be commercially successful) which will be more difficult if information sharing and collective negotiation with independent exhibitors are authorised. ICA submits that, in fact, the opposite is the more likely outcome. Collective negotiation with ICA and its members is likely to significantly reduce the cost and time for an independent distributor of licensing risky films to independent exhibitors. This is likely to assist the distributor's business be more sustainable over time.

Independent distributors will not, as a result of authorisation, have to deal with all ICA members as a bloc. ICA has made it clear that authorisation to negotiate on behalf of its members cannot confer market power because authorisation will not permit collective boycott and ICA will not engage in or promote illegal behaviour. In addition, collective negotiation is voluntary on the part of the distributor, regardless of their size.

ICA has also made clear its expectation that transparent sharing of information *will not* result in all exhibitors being granted or entitled to the same terms. Exhibitors are not a homogeneous group and some have the capacity to bring different offers to the table. However authorised sharing of information *will* mean that a distributor, including an independent distributor, will be more likely to justify the terms which it offers as being fair and equitable which are the requirements under the Code of Conduct but which cannot currently be monitored.

ICA submits that enabling the Code objectives to be better achieved through enhanced transparency cannot be regarded as a detriment in assessing the authorisation application and that this is as applicable to independent distributors as to the major distributors.

In summary, ICA submits that excluding smaller independent distributors from the terms of the authorisation would, in fact, place them at a further competitive disadvantage as against the major distributors. They would be unable lawfully to reach collective outcomes with independent exhibitors whose interests are more aligned with those of the smaller independent distributors than are those of the major exhibitors.