

COMMUNITY FILM EXHIBITION – DCMS CONSULTATION AUGUST 2013

1. Summary

The Cinema Exhibitors' Association (CEA) represents the interests of well over 90 per cent of UK cinema operators by number and market share. Our membership includes single screen/owner-managed sites as well as the largest circuit and multiplex operators.

The CEA welcomes the Government's commitment to deregulate in areas of legislation where evidence exists that current regulation is unnecessary or ineffective. However, in this submission, the CEA argues that:

- regulation of film exhibition works well and does not act as a barrier to community film exhibition;
- DCMS has offered no hard evidence of unmet demand caused by burdensome or costly licensing procedures; and,
- it has not been demonstrated that community-based venues require deregulation.

In addition, the deregulation proposal carries significant risks, including:

- creating new costs for local government and other enforcement authorities;
- fostering an environment where currently strong child protection measures may be weakened;
- creating new avenues for film piracy and intellectual property theft; and,
- damaging existing film exhibition businesses.

Although it can be argued that some CEA members (who operate not-for-profit business models and/or who are firmly rooted in local community venues) may benefit from slightly reduced licensing costs, even those members have made plain to CEA that they do not support this deregulation proposal. Licensing laws protect the quality of the exhibition of a film and service to customers and, having consulted with our members, there is a united view from both larger cinema circuits and smaller independent operators that the current process is logical and serves its purpose well. The CEA and its members believe that, amongst other disbenefits, deregulation of certain venues could potentially devalue the cinema business and be damaging to the industry as a whole.

The overall effect of this proposal would be to reduce, not enhance, the quality of film exhibition services to the public. **The CEA therefore urges the Government not to proceed with this proposal and to pursue Option 1.**

2. Comments on the Options

The Impact Assessment (IA) suggests that the policy objectives and intended effects of this proposal are as follows:

1. *Remove unnecessary costs and burdens from suitable community film exhibitions*
2. *Help grow activities that encourage positive social outcomes*
3. *Ensure suitable child protection arrangements*

It is suggested that these "*will reduce costs to civil society organisations and stimulate supply by removing a barrier to the exhibition of film*". However, neither the IA nor the consultation

document offer evidential support for these claims. Without such evidence, Option 1 is the only sensible course of action.

No demand for deregulation has been demonstrated

The IA goes through tortuous logic to estimate the possible number of community venues, using a variety of survey sources and unexplained assumptions. At no point, however, does the IA – or the consultation document – give hard evidence that there is an unmet demand. There is nothing other than assumption that the barrier to entry that the Government seeks to remove actually exists.

The Minister's foreword to the consultation document says, "*we've found many local screening and film clubs stop before they start*". No examples are given in the body of the document.

No relevant data have been offered on the effect of Temporary Event Notices (TENs) – which are a deregulatory target of this proposal. Rather, the IA states that such a "*lack of data makes it difficult to assess the impact of policy measures on TEN licensing*" (IA, para 6.9)

It cannot be correct – and is a negation of evidence-based policy making – to pursue any other course of action that Option 1.

No additional and distinct social benefit value has been quantified

No evidence has been offered that community film exhibition delivers the "*positive social outcomes*" claimed by the impact assessment. In any case, the IA itself chooses not to make any claims for the value of additional or distinct social benefits and concedes that there "*is little research on these wellbeing effects*" (IA, paras 6.19, 6.20).

Economic and social disbenefits have been ignored

Both the consultation document and the IA assert without evidence that the proposal will not affect the viability or distribution of commercial cinema operators, stating "*risks associated with an increased number of film exhibitions do not materialise.*" (IA, key assumptions, page 2) Rather, conveniently, the IA suggests that "*any costs arising from substitution between not-for-profit and commercial cinema would be indirect and out of scope*". (IA, para 9.2)

Additionally, since licensing authorities do not receive fees from community-based venues at present, any deregulation increases costs to local authorities, since they will be responsible for the administrative decision-making incumbent in determining whether an organisation fitted within the 'community premises' definition. Arguably this task is more subjective and so could be more labour-intensive and time-consuming than the current established process of granting a premises licence.

It is, in our view, inevitable that relaxations of the licensing regimes such as those proposed will increase the risks of film piracy. It is highly improbable that a community venue will have the expertise or resources to enforce the type of strong controls on illegal recording of films adopted by all commercial operators, which has seen the UK become a beacon of good practice in this regard. This is quite aside from the likelihood that such a relaxation would offer implicit encouragement to other venues such as pubs and clubs to show films, increasing the piracy risk.

Film piracy is a real and continuous challenge for the film industry and it is a stated aim of Government - and in particular DCMS and BIS - to tackle such offences. This deregulation proposal is inconsistent with that aim.

As stated elsewhere in this response, the benefit of a strict licensing regime for filmed entertainment is that each venue would be clearly registered and therefore on the radar of enforcement authorities such as FACT, whose role it is to support cinema venues in the fight against piracy, a problem which latest estimates indicate annually costs the industry at least £220 million per year in lost box office alone.

Child protection measures remain opaque

Since proposals in this area were first raised, the CEA has been concerned to ensure that the current, effective, controls on admission of children to film exhibitions remain in place. This proposal does not deliver assurance.

The IA asserts that beneficiaries of the proposal “*are likely to have a formal relationship with some form of local council and are likely to be governed by a formal organising committee*”. (IA, para 6.16) However, a deregulated environment would remove strong local authority oversight and visibility of ‘community groups’ and it cannot be realistic that all organisations wishing to take advantage of the deregulation will be traditionally-constituted bodies. Indeed, *ad hoc* groups appear more likely to be created, perhaps to show material without certification from dubious sources.

The consultation document notes that age classification must be obtained for “*every film that is intended for national distribution in the UK*” (Consultation, para 12). It is easy to envisage small populations with religious, ethnic or other special interests who might wish to exhibit films outwith this definition. In the most extreme cases, this may pose a risk to public safety and would not, we assume, be the kind of activity which Government would wish to see fly beneath relevant authorities’ radars. The consultation document recognises that the proposal would lead to “*less direct licensing authority control over the operation of film content in the venues in question*” (Consultation, para 34).

Whilst the consultation document suggests that “*films that do not have such [a formal age] classification would not be permitted for exhibition*” (Consultation, para 44), the ‘education, instruction, information’ exemptions of Part 2, Sch 1 of the 2003 Act would still offer comfort to unlicensed film exhibitors if this proposal were to be enacted.

3. Further concerns about Option 2

The CEA does not believe the current structure of Option 2 will meet the DCMS’ desired objectives. Rather, deregulation as reflected in the proposal would create new loopholes in strong oversight of film exhibition and may add perverse incentives to avoid such oversight.

The CEA recognises that the upper audience limit of 500 is intended to reflect parity with deregulation of theatrical and dance venues. However, this limit is far too high when considered in the context of film exhibition. On this basis, a significant majority of independent cinema theatres would fall within that capacity and (as will be demonstrated) would also qualify under other requirements for this dispensation.

Paragraph 34 of the consultation document would introduce a significant loophole when it comes to the sensible regulation of premises. The consultation document and the draft clauses are not clear on whether premises would need to self-declare as a community venue to the licensing authority. If they must do so, enforcement authorities will then have to assess each declaration to determine if they meet that definition. If they do not, but have declared a desire to exhibit film, would they then be subject to the normal licensing provisions? If they do not self-declare and begin to exhibit films, it is also unclear whether they are in contravention of any law. To call the consequent position one which involves “*less direct licensing authority control over the operation of film content*” is a considerable understatement.

Without such robust process in place, many venues could fall beneath the radar, self-defining themselves as operating within a community venue without any further scrutiny. We would be concerned that this poses a risk to public safety if authorities were unaware of activities within venues opening their doors to the public.

Pubs and clubs, for example, could claim community venue status to enhance their customer footfall through the exhibition of film. A village publican is unlikely to agree that his/her venue is not a community resource. The “not-for-profit” restrictions outlined in the consultation document would, we submit, be almost impossible to determine in this and similar cases – such as film exhibition within local bingo venues, for example.

Option 2 therefore deregulates too far. It creates a real and considerable risk of venues open to the public without readily enforceable legislative control not only over film content, but also on health and safety, environmental and hazard procedures, fire safety and the many other public protections which commercial film exhibitors provide and which film-going audiences rightly expect.

Moreover, even with strict sanctions in place for those not following age classification guidelines, authorities would not be aware of venues exhibiting films and so unable to track and tackle any malpractice. This is not, as the Minister’s foreword suggests, “*a sensible way forward*” consistent with strong child protection and community benefit.

4. Variations on Option 2

The CEA does not believe that Option 2 should be pursued. If the Government wishes to explore deregulation of community-based film exhibition further, we would be happy to contribute. However, it should not be the case that the sector must work to the arbitrary timetable of the current draft Deregulation Bill. It is more important to reach safe and robust decisions than to reach rapid ones.

In this context, the CEA wishes to outline areas where options for change may be considered.

- Paragraph 31. An audience limit of 500 is far too large for ‘community premises’. Many commercial cinemas, for example, have fewer seats than this. A far lower limit, perhaps 100, is more appropriate. This, together with a stronger and more defined understanding of what venues would be covered by deregulation, are essential prerequisites to achieve the Minister’s “*sensible way forward*”.
- Paragraph 37. The current definition for ‘community premises’ is ambiguous in its inclusion of ‘similar buildings’ under both a) and b). This could potentially allow a number of different venues who consider themselves to be places where the community gather to fit within this

definition, a warehouse holding community events for example, or a pub function room. As noted above, unless there were a requirement on venues to declare themselves as 'community premises' to licensing authorities, there is a significant risk that venues may see themselves as fitting within this definition when they might not in reality meet the intention of the deregulation. For the reasons, above, specific additional restrictions on pubs, clubs, bingo halls and similar commercial venues are needed.

- Paragraph 38. Were any deregulation granted for community venues we believe it is essential that the Licensing Authority undertakes an oversight role. Currently, the proposal would appear to change legislation so that many not-for-profit cinemas would qualify for deregulation.
- Paragraph 40. CEA rejects the suggestion that only profit-making events are at risk of overcrowding and compromising public safety. This is fundamentally wrong. Profit-making events are bound by their licence in any case which should provide the authorities reassurance that overcrowding would not happen. Not-for-profit events may be very popular with the community and arguably, since they would be deregulated, carry a greater level of risk of overcrowding as profit making ventures.
- Paragraph 41. We believe that the definition of 'not-for-profit' is opaque, particularly with the allowance of 'incidental' profit. There are a number of cinemas, some of which are CEA members, where any surplus generated is put back into the running and upkeep of the cinema. If an exemption applied to 'not for profit' organisations a number of established cinemas may then fall within this deregulation. Option 2 is at great risk of creating two tiers of such 'not for profit' venues – one licensed, one not – which would create considerable public confusion and allow unscrupulous operators to flout public safety laws.
- Paragraphs 42 - 43. There are a number of cinemas, some of which are CEA members, which operate as charities and are volunteer-led. If an exemption applied to organisations operating for charitable purposes a number of established cinemas again would fall within this. The same two-tier loopholes are evidently created and there is no assurance that sensible licensing objectives would be met by new entrants.

5. Conclusions

The CEA does not believe there is sufficient evidence to justify the need for deregulation of premises licenses for community premises.

Option 2 potentially creates a series of loopholes. It fosters a lack of proper oversight and assurance of safety and child protection which audiences of all types have come to expect and demand.

New costs and burdens on the licensing regime for venues exhibiting films could adversely affect the time spent by licensing authorities on managing queries and categorising venues. In the view of the CEA and its members, large and small, this risks public safety, especially if there is no means of tracking venues who consider themselves community premises.

Lack of clarity over the definition of community venue status in particular opens loopholes which give implicit encouragement to profit-making venues to flout copyright and content controls.

We do not oppose proportionate, thoughtful and well-defined deregulation to enable community film exhibition to flourish. However, for the reasons stated in this response, we strongly believe that the proposal put forward does not meet these criteria.

CEA
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