

Executive Summary

We are aware that a number of care homes are being told they require a MPLC or PVSL license for TVs and films in their care homes.

Whilst licencing bodies have made clear that they expect care homes to purchase suitable licences (following a change to the law June 2016), there is a gap in the law and guidance when it comes to care homes. Recent correspondence from the Independent Cinema Office suggests there is room for interpretation and, in the absence of suitable guidance from the regulators, we have taken a look at the factors that determine whether a licence is required.

This note is intended to assist care home providers to:

- understand the history leading to changes in the law (click [here](#));
- familiarise themselves with the factors that may determine whether a licence is required (click [here](#));
- put forward a strong case for resisting licence fees (click [here](#)); and
- influence future guidance – to recognise the private and domestic nature of a care home settings and exempt care homes from needing a licence (click [here](#)).

Licensing Arrangements for Care homes

The Copyright, Designs and Patents Act 1988 (CDPA) provides copyright owners with a range of exclusive rights allowing them to control the uses of their works and to seek payment for these.

Among these are rights to control the showing, playing and other communication of works to the public, which includes the showing of a film or broadcast to a public audience. Those wishing to use protected works (such as showing films) must normally seek the permission of copyright owners, which is often granted as a licence for a fee.

Section 72 of the CDPA sets out a limited number of exceptions to some of these rights. These apply to organisations which do not charge for admission, allowing them to show television broadcasts without needing permission from some of the copyright owners.

Pre 2016 position

Amendments to the 2003 Licensing Act meant that no licence was required for:

- *Films: no licence is required for 'not-for-profit' film exhibition held in community premises between 08.00 and 23.00 on any day, provided that the audience does not*

exceed 500 and the organiser (a) gets consent to the screening from a person who is responsible for the premises; and (b) ensures that each such screening abides by age classification ratings.¹

In addition to this, before 15 June 2016, Section 72(1)(c) of the CDPA 1988 permitted the public showing or playing of a broadcast if the audience had not paid for admission and the showing did not infringe copyright. Section 67 outlined exceptions to showing copyright works in public without a licence fee.

At this stage, based on the legislation, it would have been permissible for a care home to screen the films without a licence.

Post 2016

Following the Copyright (Free Public Showing or Playing) (Amendment) Regulations 2016 (SI 2016/565) (15 June 2016), Sections 67 and 72(1)(c) were omitted from the CDPA 1988. This removed the exception which applied when an audience did not pay an admission fee. The amendment means that it is no longer relevant whether the showing is for profit or not for profit, a licence is required.

Why did the Government change the law in this area?

The scope of the Section 72 provision was questioned following legal action brought by the Football Association Premier League against pubs using unauthorised satellite decoder cards to show live Premier League football matches. The court found that there was inconsistency between the CDPA in relation to the inclusion of ‘in any film included in a broadcast’ and what is set out in EU legislation.

It became apparent the “film” exemption in section 72 current was not consistent with EU requirements and the government introduced the Copyright (free public showing or playing) (Amendment) Regulations 2016.

The government recognised that non-commercial public premises (such as public hospitals, prisons, village halls used by voluntary groups, charities, amateur sports clubs) would be negatively affected by these regulations but thought this would be the simplest way to address inconsistencies highlighted in the Football Association Premier League case.

Impact on care homes

The changes in 2016 have confused those operating care homes as to the additional licensing which may be required at considerable cost.

¹ Paragraph 15.6 (Page 99) of the Independent Cinema Office guidance March 2015 (http://www.independentcinemaoffice.org.uk/media/Advice/Resources/Revised_Guidance_issued_under_section_182_of_the_Licensing_Act_2003.pdf)

To screen a film to the public, you need permission from the film's copyright owner. Permission may be granted in the form of a licence or a film booking. The licensing of films for non-theatrical screenings can be complicated, but most films are available through three major distributors: the BFI, Filmbankmedia or MPLC.

Non-theatrical exhibition refers to film screenings which:

- are held in non-traditional cinema environments (e.g. village hall, school, business, care home, community centre, church, pop-up);
- may not be ticketed or advertised, or are ticketed only with a view to covering costs;
- may not be open to the general public;
- are likely to be shown from a non-professional cinema format such as Blu-ray/DVD.

A licence is therefore required, even if you stream main channels which show a range of content, such as BBC 1 or ITV: it is very likely that the broadcasts will contain content licensed by, for example, the MPLC. Therefore, where the film or tv channel is being shown in a public space it is likely that a licence is required.

A Public Video Screening Licence (PVSL) allows organisations to legally screen ad-hoc and unplanned films, to create background ambiance within their premises and is purchased through Filmbankmedia. The DVD Concierge Licence (DVDCL) is an annual licence enabling guest accommodation organisations to lawfully provide guests with films on DVD and Blu-Ray to watch in-room on a variety of devices including DVD players, laptops and games consoles. The Motion Picture Licensing Company (MPLC) grants licences in respect of the showing in public of its members audiovisual content, whether films or TV shows on DVD and Blu-ray, downloads, streaming, broadcast TV, pay TV and video-on-demand.

But we are not showing films or TV programmes to the “public”...

Section 19 of the Copyright, Designs and Patent Act 1988 left the term "in public" undefined. When assessing whether a screening takes place “in public”, the Courts have discussed some or all of the following factors: nature of the place; nature of the gathering; the "for profit" requirement; and the potential financial injury to the copyright owner. However, the courts have been reluctant to develop an exhaustive list of factors or criteria to assess whether a screening is "in public".

There is no definitive case law on this particular point to establish the meaning of “public” and instead, the limited case law on this issue suggests it is a matter of “common sense”:

Ernest Turner Electrical Instruments Limited v PRS 1943 – “... in considering whether a performance is in public, its effect on the value to the copyright owner [is] of great importance... the owner of the copyright contemplates that it will be played, and consents to its being played, by the purchaser and he expects, not that it will be enjoyed in solitude, but that it will be heard by members of the purchaser's household and his

guests... [a jury could by application of their] common sense decide whether the audience in any particular case exceeded what could fairly be described as a private or domestic audience. ”

For example, in *Performing Right Society Ltd v Qatar Airways Group QCSC* [2021] EWHC 869 (Ch), it was held that an in-flight entertainment system was made available to the “public” despite only being made available to passengers on 10 of its aircraft, whilst connected to the on board WiFi.

On the MPLC website, the [FAQs](#) section lists examples of when a licence is required and includes a non-profit or profit-making organisation and members-only establishments.

Other arguments that MPLC has put forward (informally via a [Healthcare provider blog](#)) as supporting their position that the legislation extends to care homes include:

- “Residents normally do not have a domestic or private relationship with each other. They do not live in the same residence because they are part of the same family or have private ties.
- Residents are in the scheme independently from each other. Each resident is there as an individual member of the public to benefit from services offered by the scheme.
- Residents pay for their accommodation and included within the price are various benefits offered by the scheme, which include communal activities that are available, such as the screening of the film. Showing a film in a communal lounge of a scheme is an additional activity offered at the scheme.
- Generally, the audience in the communal lounge comprises people who may not normally choose to watch a film together.
- Generally, the size of the audience would be much larger than a normal domestic situation.”

Government guidance (see the following link <https://www.gov.uk/showing-films-in-public>) suggests that care homes need a “non-theatrical” film licence to show films and TV programmes in public” in “common areas for guests, resident and passengers.” The guidance explains a non-theatrical licence is also required for one-off events and film clubs - whether or not you sell tickets. This section exempts education settings² and falls short of exempting care homes.

We have received commentary from the Independent Cinema Office that *“It is our understanding that the law does require licences for films watched in communal areas in care homes. However, we’d be pleased to see a different interpretation of this as we agree with you and believe that communal areas in care homes should be deemed part of the home. You will need to get legal advice on this though.”*

In respect of distinct ‘cinema rooms’, they have commented *“it may be that if this room is in the main building of the home, and screenings open to residents only, it could still be*

² Certain educational establishments are exempted and do not require a licence.

considered part of the home; but if it's in a separate building on a wider residential complex where organised screenings take place (as opposed to people deciding to watch a film ad hoc) and/or where there is a possibility of other people joining – e.g. relatives of residents” then it may be a public screening.

We must caution that the above opinions have been expressed by the Independent Cinema Office during the course of private correspondence and do not constitute official guidance. However, the comments helpfully demonstrate their thinking and highlight those issues which would impact their decision-making if presented with a live case. What this does demonstrate, is that there is a spectrum on which private and public sit at opposite ends. Care homes will need to carefully consider how their facilities and activities help support the argument that TV and films are not shown or broadcast ‘in public’.

Resisting MPLC licence fees

Although the MPLC guidance and the social media exchanges above suggest that there is an expectation in care homes to require an MPLC licence post-June 2016, there is no clear legal authority on the specific issue of care homes, or anything as clear-cut as MPLC put forward. We believe that a care home is in fact a “home” for these residents and there can be no comparison with hotels when, in fact, the care homes are showing films in a “domestic and private” context.

We believe there are strong arguments to deny accusations that care homes are showing films “in public”. These include:

- **nature of the place** – care homes are primarily domestic and private settings. Care homes are not ‘open to the public’ in the same manner as pubs, village halls or even hotels. Instead, care homes need to be considered in the same vein as private residences.

The CQC explains³ that when a person lives in a care home, it becomes the “sole place of residence” and so “it becomes their home”. The CQC even goes to far as to describe supported living and extra care housing as “household” accommodation⁴, where individual or multiple “households” can share communal facilities.

Residents are not members of the public, accessing a community scheme or renting transient / temporary accommodation. Care homes are not designed to be a ‘home away from home’ or institutional in nature, but to provide a homely, primary residence.

Communal facilities and shared parts of the home are still private spaces: members of the public do not have unrestricted access to common parts of the care home without authorisation.

³ <https://www.cqc.org.uk/guidance-providers/regulations-enforcement/service-types>

⁴ https://www.cqc.org.uk/sites/default/files/20151023_provider_guidance-housing_with_care.pdf

- **nature of the gathering** – we have outlined above that care homes are not open to the public ‘at large’. Such services on site are not generally made accessible by the general public, but only made available to residents. Whilst guests may visit, this is at the invitation or approval of residents. For example, a member of the public could not (in the majority of homes) attend a film screening at the home if they were not known to or invited by a resident.

Whilst residents and their guests may not all be related or even known to one another, the audience is made up entirely of members of a community organised for the purpose of enjoying their shared living space. They are not akin to the attendees of pubs, village halls, sports clubs or even hotels. All the residents have a domestic and private relationship with each other simply by virtue of living in the same household.

Care home residents who choose to gather together in a single room to watch a film is no more ‘public’ in nature, than a group of students moving to the living room in private rented accommodation to watch a film. The law should not unnecessarily interfere in the domestic life of individuals.

The above arguments are even stronger in relation to supported living arrangements where it is the individual resident and not the care provider that is in control of the premises and accommodation space. The screening is genuinely taking place in accommodation that is the resident’s own property: the legal agreements for the provision of care and accommodation are separate and the resident decides who can enter their accommodation and when they can enter.

Conversely, we believe that providers may have a harder time avoiding the need for a licence where they operate a dedicated ‘cinema room’:

- where films are selected and screened at a time chosen by the care provider rather than the residents;
- where additional fees are charged to access the cinema room or attending screenings;
- which is open to members of the public through the form of a ‘film club’ or where individuals can attend without the invitation of a resident;
- where access to the cinema room is restricted by the provider so that it can only be used by residents at certain times during the day or for dedicated ‘screenings’ (rather than 24/7 access like a living room).

We are aware that there is inconsistency in the rates applied by MPLC as well as its approach to enforcement. For those providers who wish to oppose the imposition of licence fees, we have prepared example wording below that can be adapted to suit your circumstances.

(for Supported Living providers)

*“We are a provider of supported living services, which means we provide personal care to people **in their own homes**. We support individuals to live independently in their own accommodation by visiting them at their property.*

Whilst some premises may be shared with other individuals at the same home, the residents share their communal spaces and together, form a single, domestic household. No admission fees/other charges are made by us to view films or TV together in a larger room.

Any films or TV broadcasts at the property occur in a private and domestic setting. Any distribution, streaming or broadcast is for personal use only and as such, is exempt from licence fees.”

(for Care Home providers)

“We are a care home provider which means we provide care services in purpose-built accommodation: where individuals have their own bedroom and share communal facilities with their fellow residents at the property.

*For the large majority of residents, this is their sole place of residence and their permanent home. As a resident of the home, individuals have access to communal areas such as lounges and facilities to view TV and films but **these amenities are not available to the general public**. This is a private residence, made up of people who have chosen to live with one another in a shared home.*

Residents are welcome to view films and TV in the complete privacy of their own room, or to enjoy these together with other members of their household (other residents at the home) and their guests. No admission fees/other charges are made to view films or TV together in a larger room.

Any films or TV broadcasts at the property occur in a private and domestic setting. Any distribution, streaming or broadcast is for personal use only and as such, is exempt from licence fees.”

Whilst there are gaps in both the legislation and existing case law, we believe there is merit in responding to any correspondence received from MPLC, demanding payment of licence fees on the above basis.

Might the law change again?

The 2016 Regulations were subject to a consultation that was organised by the Intellectual Property Office (“IPO”) and ran for 10 weeks from June to August 2021. The majority of

responses to the consultation exercise (which included roundtable discussions) were received from rights holders, licensing bodies and rights holder representative organisations, such as trade bodies.

The IPO also received two submissions from those representing users of audiovisual content, both commercial and non-commercial entities, and also gathered views through interactions with other government departments. Primarily the concerns related to the additional licensing fees organisations have been asked to pay following the 2016 change in law. Users said that this included requests for licences where it was not clear that the content was, or was likely to be, communicated, shown or played in public.

In February 2022, the IPO published a post-implementation review, concluding that:

- there was a broad consensus amongst respondents (albeit mostly rights-holders and licensing bodies), that the Regulations' original aims remained relevant and many stakeholders supported their retention.
- however, copyright users had highlighted an issue that the licensing system was not clear.

To address copyright users' concerns, the IPO will update and re-publish its guidance on section 72 of the CDPA and will also seek stakeholders' views on any changes to relevant licensing activity and the impact of its revised guidance one year from the publication of the guidance. We are hoping to engage more fully with the IPO on the distinction between public and domestic viewings.

In the meantime, there are a series of follow-up questions being asked by the IPO and care homes are particularly encouraged to consider and respond to the following questions:

1. Overall, do you consider that the Regulations have benefitted your business, organisation or your members? Please provide details.

[this is where you would explain that removing the "film" exemption to section 72" has been detrimental to your ability to screen films in your care setting]

2. What costs, if any, have you incurred as a result of the change to Section 72?

[this is where you would explain the cost of an MPLC licence that is purported to apply to your care setting and/or the cost of challenging the licence fee]

3. If you have experienced higher costs, have you been able to absorb these? If so, how have you done so, (e.g. any impacts on your supply chain/cost to customers)?

[this is where you would explain the increasing cost pressures that apply to care homes and whether you have had to cease offering facilities to view films / TV broadcasts]

4. Since the introduction of the Regulations has the nature or degree of competition between commercial premises (i.e. between care homes) that choose to show broadcasts changed? And if so, how?

[here you would explain whether the ability to offer communal films / TV has impacted the uptake of rooms at your home - the regulators are concerned with how changes such as this affect competition between different providers]

5. Have the Regulations led to any consequences that you did not anticipate? Please provide details.

[we recommend you highlight the change to section 72, without publishing additional guidance to interpret the meaning of "public" in section 19, has meant licensors and collecting societies such as MPLC are assuming free-to-view films / TV broadcasts require a licence, despite occurring in a private and domestic setting]

You can then email your responses and any applicable evidence to Section72.Callforviews@ipo.gov.uk Care homes are also strongly encouraged to submit any additional evidence they feel is relevant to the review of The Copyright (free public showing or playing) (Amendment) Regulations 2016.

We urge providers to take legal advice if they are unsure of their position or obligations with respect to licensing such as PPL, PRS, TV Licensing or MPLS etc.

If a formal threat of legal proceedings is made, or court proceedings served (which is unlikely to represent an attractive option to MPLC in view of the likely costs involved) then we would recommend that a collective legal response is coordinated across the care sector.

In the meantime, we recommend all providers engage with the call for views and highlight the impact that removing "film" from the section 72 has had upon domestic and quasi-domestic settings.

For further information about your screening films and TV within the home, or for specific advice on licensing, please contact:

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