

COMPETITION AND MARKETS AUTHORITY (CMA) - REVIEW OF THE FILMS (EXHIBITION PERIODS) ORDER 1996 (the Films Order)

Executive Summary

The UK Cinema Association is wholly opposed to the CMA's proposal to revoke the Films Order, on the basis that its provisions are more relevant than ever and their retention is necessary for cinema audiences across the UK to continue to enjoy the widest possible choice of film content.

Introduction

The UK Cinema Association represents the interests of well over 90 per cent of the UK cinema industry. Our membership ranges from the largest international multiplex operators to a 'long tail' of over 200 smaller – often single screen – cinemas.

In preparing this response, the Association has consulted its Executive Board, which encompasses cinema operators across the broad spectrum of its membership, all of whom are supportive of the points made.

UK Cinema Association response

The UK Cinema Association is wholly opposed to the revocation of The Films Order, on the basis that – for the reasons set out below – its provisions are more relevant than ever and their retention is necessary to ensure that cinema audiences across the UK can continue to enjoy the widest possible choice of film content.

In setting out a potential rationale for revocation of the Films Order, the CMA notes three specific changes within the market, specifically that:

- 1) the Films Order pre-dates the introduction of digital film projection, when the incentives on film distributors and exhibitors in terms of desires for the length of exhibition periods differed from those now present in the era of digital projection;
- 2) there have been a range of other changes since 1996, including online viewing and distribution via new media channels; and
- 3) the market structure has also changed, with more distributors now present.

Each of these is addressed in turn below, with the headline conclusion that the changes seen in each of these areas since the introduction of the Films Order would support if anything a strengthening of the controls the Films Order brought to the market, rather than its revocation.

1) *Changes in technology*

As noted by the CMA, the Films Order predates the introduction of digital film projection technology, the key impact of which has been to allow cinemas to be much more flexible in their programming and potentially meet the needs of a much wider range of audience tastes.

This flexibility is more important than ever, given the number of films now being released into the UK theatrical market and therefore available for screening to relevant audiences.

In 2022, over 900 film titles were available for screening in UK cinemas. Supply of those films is generally concentrated at certain periods: early in each year (around key awards ceremonies), in the run-up to and during the summer months, and again as the year closes. During such periods, it is not uncommon for larger cinemas to find themselves playing as many as ten different films on a single screen – let alone a single site - during any particular week.

Currently, as permitted by the Films Order, a number of distributors – in particular the major US studios - require their films to be booked for a full two week term on release, and also impose additional requirements that any cinema showing their film must do so for ‘all shows’ regardless of how appropriate that film may be to the target audience and in particular irrespective of how appropriate such a requirement is for smaller cinemas, many with only one or two screens.

For those latter cinemas in particular – often the only cinema serving their communities – the distributors' requirements mean:

- (a) those cinemas are unable to play as diverse a range of films as their audiences might wish to see, and certainly nothing approaching the variety of titles potentially on offer; and
- (b) films are sometimes required to be shown at times when the target audience is self-evidently less likely to attend – such as a family animation late on a weekday – resulting in at best half-empty auditoriums, with reduced atmosphere for cinema-goers, less income for the cinema and upward pressure on cinema ticket prices for those who do attend.

Such is the imbalance of market power between the major studios (as to which, see below) and the smaller cinema operators that the latter are generally unable to negotiate any flexibility in this respect.

This is something felt particularly keenly at this time, when the recovery of the cinema sector from the impacts of the pandemic requires the sector to appeal to the widest possible audience and when the ‘cost of living’ issues being experienced by customers understandably lead them to demand choice in how they spend their money and make it harder for cinemas to attract audiences.

Revocation of the Films Order - and the resultant removal of the ‘two week’ booking restriction - would allow distributors to extend these practices, insisting on initial booking periods (and ‘all shows’ requirements) for three, four or more weeks, extending the period when cinemas are not then able fully to meet the needs of their customers, or to showcase the variety of films available, particularly from smaller, independent distributors. This would reduce consumer choice and make it harder for cinemas to attract audiences, particularly those who might otherwise be attracted to less mainstream films, and especially outside major cities.

2) *The emergence of online viewing and distribution channels*

It is not entirely clear how the emergence of online viewing and distribution via new media channels, as noted by the CMA in its preamble, might support revocation of the Films Order.

These services have undoubtedly broadened the choice available to consumers as to how they might watch films, and their arrival has led to a significant reduction in the commercially-agreed period of exclusivity enjoyed by cinemas before films are available to watch at home (from an average of 110 days pre-pandemic to a current figure of around 45 days).

If studios are not limited in the number of weeks they can demand a film is initially booked, then particularly for smaller sites, and taken with the ‘all shows’ requirement, it is highly likely that their screens will be ‘tied up’ with just a handful of titles before they are available in the home, reducing the profitability of the cinema and the range of films on offer to audiences on the big screen. This would jeopardise the survival of smaller cinemas, and with it local employment and communities.

3) *Changes in the distribution market*

The CMA notes changes in the market structure since the introduction of the Films Order, in

particular the emergence of more distributors.

While in numeric terms the latter might be the case, the vast majority of these are very small distributors who would be adversely impacted by the exclusionary conduct which would result from revocation of the Films Order, being 'locked out' of screens as the major studios extend their booking requirements. Most impacted by this would be those supporting the distribution of UK independent, foreign language and other more specialist film genres, disenfranchising niche audiences and acting as a barrier to market for new creative talent, both British and international.

What changes in the distribution market have occurred, we have in recent years seen a further increase of the market power of the comparatively small number of US major studios. That increase has accelerated even further post-pandemic.

When the Films Order was introduced in 1996, the six US major studios represented between them just over 81 per cent of total UK box office income; in 2022 that figure for the (now) five US major studios was 89 per cent¹. For many smaller operators in particular, the provisions of the Films Order represent one of the few safeguards they have against potential abuse of market power by increasingly powerful major distributors.

We are therefore strongly opposed to the proposed revocation of the Films Order.

UK Cinema Association
16 February 2023

¹ UK box office data from Comscore Movies, the widely-recognised industry data collection agency.