

Aaron O'Neill
Assistant Secretary, Classification Branch
Department of Infrastructure, Transport, Regional Development and Communications

CC: Barbara Vosoba, Director, Policy & Research, Classification Branch

7 December 2020

Dear Aaron,

We are writing to you on behalf of the Motion Picture Distributors Association of Australia (MPDAA), the National Association of Cinema Operators-Australasia (NACO), the Australian Independent Distributors Association (AIDA), Independent Cinemas Australia (ICA), Roadshow Films, the Australia New Zealand Screen Association (ANZSA) and Screen Producers Australia (SPA).ⁱ The distribution and exhibition associations represent the vast majority of businesses operating in the cinema sector.

The trailer regulation flexibility requested by the signatories to this letter has the support of the peak bodies representing the Australian film and TV home entertainment industry (AHEDA) and the interactive games and entertainment industry (IGEA).

We request that the Classification Branch and the Department consider a flexible approach to the commensurate trailer regulation for a provisional period to provide essential assistance and support to cinemas and distributors currently struggling with the devastating financial impact COVID-19 has had on the sector.

The cinema sector has generated \$1.2 billion+ in average annual turnover for the past 5 years and employs around 13,000 Australians nationally. 2021 has seen a dramatic loss of revenue due to the combined impact of cinema closures followed by capacity restrictions, limited supply and public confidence. The November 2020 box office (BO) is 76% down on the 5-year average

The commensurate trailer restrictions are effectively exacerbating an already-challenged environment. Flexibility is urgently needed.

COMMENSURATE TRAILERS

Under the current scheme, the classification of a trailer for an unclassified film is determined on the “**likely classification**” of that film. These trailers can only be screened prior to films that have the same or a higher classification than the **likely classification** of the film being advertised.

The cinema industry has been advocating changes to the Commensurate Trailer regulation for many years - recommending that Australia align with the USA, UK, NZ and most international jurisdictions where

trailers for unclassified films are assessed on the actual **content of the trailer**, while taking into account the corresponding audience for both the film being screened and the film being advertised.

Such changes would not only eliminate the guesswork inherent in the current approach and thus increase the accuracy of trailer placement for commensurate audiences, but would also reduce the constraints placed on cinema advertising which are not applied to other platforms such as television and online, while acknowledging the unrestricted ability of Australians of all ages to view any trailer online.

INDUSTRY CONCERNS

The commercial limitations of the current trailer scheme have long been onerous for industry, but never more so than today where only a handful of films are being released. 417 films were released in July to November in 2019, compared to 213 in the same period this year.ⁱⁱ

Under normal circumstances, the approximately forty-five new films that are released on average each month, provide several options for trailers to be paired with films targeting a similar (commensurate) audience. The industry has long argued for these critical marketing opportunities to be increased by amendments to the commensurate trailer regulation.

Since cinemas re-opened in July, no “normal” or “usual” rules can be applied. It’s impossible to overstate the level of unpredictability associated with release patterns and film advertising. Box office from the weekend of 5th and 6th December 2020 was 75% less than that of the same weekend in 2019.

The throttling of cinema revenue is a result of interconnected restrictions that are limiting film supply, diminishing cinema capacity and reducing cinema opening days, times and session numbers and, in turn, making it increasingly unviable to outlay the kinds of costs associated with releasing a film. Easing Australian capacity constraints will help but the limited supply of mainstream films – a result of the international pandemic situation –will prolong the current circumstances.

While we would like to quantify the material impact of the loss of marketing opportunities, the traditional operating model for releasing films has been fundamentally transformed and comparisons are questionably worthwhile.

In simple terms, capacity restrictions of 50% in auditoriums results in a 50% loss in people viewing the trailer. However, absolute measures for audience reach of in-cinema trailers are inexact and extrapolating the financial impact of reduced trailer opportunities is imprecise. What is unambiguous is that in-cinema trailering remains the most effective targeted way to promote films to the audiences for which they are intended. The AUSTRALIAN CINEMA HEALTH TRACKER research demonstrated that trailers remain the primary way in which Australians aged 18+ typically find out about new movies.ⁱⁱⁱ

Furthermore, the negative impact of restricted trailer opportunities on Australian films is disproportionately high as there are limited budgets for other marketing opportunities outside of the cinema.

CASE STUDIES.

The examples below seek to demonstrate the seismic decline in the ability to advertise films to in-cinema audiences. The audience calculations in these case studies are based on the official box office revenue for the film, divided by the annual Average Ticket Price (2019: \$14.50). This method of calculating admissions has been used by industry for many decades.

The Dry

Roadshow Films

Release date 1 January 2021

Rated MA15+

The trailer content for the much-anticipated Australian film **The Dry** is M-rated, while the film has been classified MA15+. Under the current climate, with so few MA15+ films in cinemas in the leadup to the release, the ability to promote the film is severely limited.

There are only two wide-release MA15+ films releasing in the key trailer period prior to the release date: **Freaky** and **Fatman**. Neither of these films play to the target audience for **The Dry**. While MA15+ releases always have limited trailer options, if the film had been released in January 2020, it would have had twice as many wide-release MA15+ options for trailering.

The Dry is targeted to the same audiences as several other likely M-rated adult titles - **Words on Bathroom Walls, Let Him Go, Happiest Season, Honest Thief, All my life** - but cannot trailer with them under current regulation. **Rams** (rated PG) would have been an ideal film with which to screen a PG-rated trailer of **The Dry** because it targets a commensurate adult audience. With a current gross of \$4m, **Rams** could have delivered a trailer audience of over 275,000 people to date.

Happiest Season

Sony Pictures Releasing

Release date 26 November 2020

Rated M (all classifiable elements except language were mild or very mild and could be accommodated at the PG level).

With the current rapidly changing schedule, the release date was only confirmed in October, handicapping the film with a shortened trailer lead time. Usually, trailers screen 3-4 months prior to release. In the period from late October, only eight commercially relevant, wide-release films were screening in cinemas. Of those, only two shared the demographic target audience for **Happiest Season - Rams** (PG) and **All My Life** (M).

The **Happiest Season** trailer included only PG-rated content but the commensurate trailer regulation prevented the distributor from playing the trailer with those PG films and it thus lost key trailering opportunities prior to release. The films with which the trailer was able to screen delivered an audience of approximately 82,000 people. Screening the **Happiest Season** trailer prior to **Rams** would have delivered an additional audience of over 275,000 people.

The option to trailer a PG rated trailer of **Happiest Season** with suitable PG rated films could have increased title awareness and in turn the overall box office result without compromising the integrity of commensurate-audience trailering.

Had the film been released at the same time in 2019, even with current commensurate trailer limitations, there would have been at least eight relevant wide-release M and MA15+ titles with which to trailer, including **Hustlers, Judy** and **Charlie's Angels**. Based on their box office, those three films alone would have provided a trailer audience of over 1.2m people.

Tenet

Warner Bros

Release date 27 August 2020

Rated M

Tenet, the highly publicised and much-anticipated film from renowned director Christopher Nolan, is the highest grossing film release since cinemas reopened in July, earning \$14.8m. In comparison the tenth highest grossing film in 2019 earned \$24.7m (*Aquaman*).

The top ten grossing films in 2020 to date, with the exception of *Tenet*, were all released in January and February – prior to pandemic restrictions.^{iv}

In the two months prior to *Tenet*'s release, only eleven new wide-release films opened, earning a total of \$25m and equating to a local audience of approximately 1.7m people. Of these, there were only two films with a target audience commensurate with that of *Tenet*.

Based on current box office, had the *Tenet* trailer (with PG-rated content only) been able to screen prior to three corresponding PG-rated films aimed at adults - *The Secret: Dare to Dream*, *Ghostbusters* (re-release) and *The Personal History of David Copperfield* – it would have gained an additional audience of 200,000 people.

PROPOSED REFORM

The commensurate trailer restrictions essentially compound an already-challenged environment, with Covid precipitating further uncertainty into the business model of releasing films in Australian cinemas. The impact is being felt by production, distribution and exhibition businesses, as well as consumers who have fewer movie choices in cinema.

Due to the extraordinary financial pressures the cinema industry is experiencing, exhibitors and distributors ask Government to consider the need for critical short-term flexibility of the Commensurate Trailer regulation to enable the sector to survive the next twelve months.

We propose allowing trailers to screen to appropriate and commensurate audiences prior to films that may be **one rating category below** the likely classification of the film being advertised. This could be:

- A G-rated trailer for a film that might be PG (screened prior to a G-rated movie)
- A PG-rated trailer for a film that might be M (screened prior to a PG-rated movie)
- An M-rated trailer for a film that might be MA15+ (screened prior to a M-rated movie)

COMPLIANCE

Distributors and exhibitors remain committed to guaranteeing only appropriate trailers are shown in cinemas to commensurate audiences and that consumers are not exposed to inappropriate content. Complaints have no financial or reputational benefit to the sector which works hard to ensure advertising dollars are targeted and maximised.

We recommend a review of the impact of any changes after 12 months of operation to scrutinise compliance, complaints and the effect of the scheme. During this time, exhibitors and distributors will monitor, table and report trailer complaints received from cinema patrons, while the Classification Branch can collect data based on complaints it receives directly.

The Film Exhibition and Distribution Code (<http://www.filmcode.info>), developed many years ago at the instigation of the ACCC, can provide a forum for exhibitors and distributors to discuss and navigate compliance issues.

If there is no marked increase in consumer complaints and the sector demonstrates compliance with revised guidelines, we request that the Government considers extending the scheme.

IN CONCLUSION

A positive response from Government ahead of pre-Xmas trading would significantly support the ability to draw audiences into cinemas over the summer holidays. Increased marketing opportunities will support the release of more films, which in turn will provide consumers with more choices, drive cinema attendance and enable the industry to recover.

Australian exhibitors and distributors acknowledge the unique challenges Government currently faces, particularly in dealing with the competing priorities of so many sectors. We consider this desperately needed accommodation to a new environment urgent and essential to supporting the short-term viability and long-term survival of our industry.

Thank you for your consideration of this proposal. Please don't hesitate to contact us should you have any further queries.

Sincerely,

Lori Flekser, Executive Director
Motion Picture Distributors Association of Australia

Paul Wiegard, Chair
Australian Independent Distributors Association

Michael Hawkins, CEO
National Association of Cinema Operators

Adrienne Pecotic, CEO
Independent Cinemas Australia

Matthew Deaner, CEO
Screen Producers Australia

Paul Muller, CEO
Australia New Zealand Screen Association

Joel Pearlman, CEO
Roadshow Films

ⁱ This letter represents the views of the following organisations and associations.

Australian Independent Distributors Association <http://aida.film/>

AIDA is a not-for-profit association representing independent film distributors in Australia, being film distributors who are not owned or controlled by a major Australian film exhibitor or a major US film studio or a non-Australian person. Collectively, AIDA's members are responsible for releasing to the Australian public approximately 75% of Australian feature films which are produced with direct and/or indirect assistance from the Australian Government (excluding those films that receive the Refundable Film Tax Offset).

Australia New Zealand Screen Association <https://anzsa.film/>

ANZSA represents the film and television content and distribution industry in Australia. Our core mission is to advance the business and art of filmmaking, increasing its enjoyment around the world. Our members are Paramount Pictures; Sony Pictures; NBC Universal Studios; Village-Roadshow Entertainment; Walt Disney Studios; Warner Bros; Fetch TV; and, Netflix.

Independent Cinema Australia <http://www.independentcinemas.com.au/>

ICA is a not-for-profit industry association that develops, supports and represents the interests of independent cinemas and their affiliates across Australia and New Zealand. ICA's members range from single screens in rural areas through to metropolitan multiplex circuits and iconic arthouse cinemas including Palace Cinemas, Dendy Cinemas, Grand Cinemas, Ace Cinemas, Nova Cinemas, Cineplex, Wallis Cinemas, and Majestic Cinemas. ICA's members are located in every state and territory in Australia, representing over 601 screens across 154 cinema locations.

The Motion Picture Distributors Association of Australia <http://www.mpdaa.org.au/>

The MPDAA is a non-profit industry association representing the interests of theatrical film distributors to Government, media, industry and other stakeholders on issues such as classification, accessible cinema and copyright. The MPDAA members are Paramount Pictures Australia, Sony Pictures Releasing, Universal Pictures International, Walt Disney Studios Australia and Warner Bros. Entertainment Australia.

The National Association of Cinema Operators <https://naco.asn.au/>

NACO is a national organisation established to act in the interests of all cinema operators. It hosts the Australian International Movie Convention on the Gold Coast, 2019 being its 73rd year. NACO members include the major cinema exhibitors Amalgamated Holdings Ltd, Hoyts Cinemas Pty Ltd, Village Roadshow Ltd, as well as the prominent independent exhibitors Reading Cinemas, Palace Cinemas, Dendy Cinemas, Grand Cinemas, Ace Cinemas, Nova Cinemas, Cineplex, Wallis Cinemas and other independent cinema owners which together represent over 1400 cinema screens.

Roadshow Films <https://roadshow.com.au/>

Roadshow Films commenced distributing films under the Roadshow brand in 1970 and in August 2007 Roadshow became a wholly owned subsidiary of Village Roadshow. Roadshow Films distributes theatrical movies to cinema, pay television and free to air television in Australia and New Zealand. As well as holding the exclusive distribution rights for movies produced by Los Angeles based Village Roadshow Pictures, Roadshow Films has long-standing contracts to distribute movies for key film suppliers, STX and FilmNation. Roadshow Films is also a proud and passionate supporter of Australian film and television. Roadshow is expanding its presence in television production with the creation of Roadshow Rough Diamond. Additionally, Roadshow Films has also recently acquired a 50% interest in Blink TV, the unscripted television production company

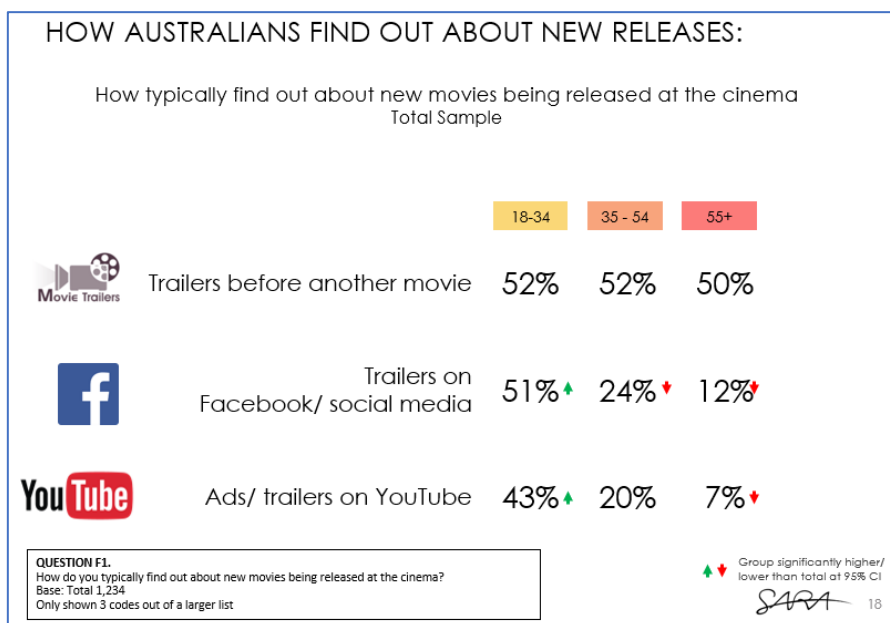
Screen Producers Australia screenproducers.org.au

SPA unites screen businesses to campaign for a healthy commercial environment. For over 60 years we have supported the interests of large and small enterprises from across the nation with a diverse production slate of feature film, television and immersive content. Our 500+ members employ hundreds of producers, thousands of related practitioners and drive more than \$1.2 billion worth of annual production activity for the independent production sector.

The trailer regulation flexibility requested by the signatories to this letter has the support of the peak bodies representing the Australian film and TV home entertainment industry (AHEDA) and the interactive games and entertainment industry (IGEA).

ii Data from the MPDAA and Numero Box Office Databases and Upcoming Release Schedules, 2019, 2020. Based on data supplied to the MPDAA and Numero by Australian distributors by 5 December 2020.

iii AUSTRALIAN CINEMA HEALTH TRACKER - SCREEN AUDIENCE RESEARCH AUSTRALIA (SARA)
Online survey with respondents sourced through an online consumer panel. Fieldwork conducted May 2017. Sample: n=1,234. Age: 18+ years. National representation on age, gender and location



^{iv} Top Ten Grossing Films in 2020.

With the exception of **Tenet**, all the films were released in January and February, prior to cinemas closing or imposed restrictions.

Rank	Title	Release Date	Box Office Gross
1	1917	09-Jan-20	23,249,709
2	Bad Boys for Life	16-Jan-20	19,565,338
3	Little Women	01-Jan-20	15,636,873
4	The Gentlemen	01-Jan-20	15,429,554
5	Tenet	27-Aug-20	14,847,643
6	Sonic the Hedgehog	13-Feb-20	13,999,784
7	Dolittle	16-Jan-20	11,617,287
8	Birds of Prey (And the Fantabulous Emancipation of One Harley Quinn)	06-Feb-20	11,031,432
9	Spies in Disguise	01-Jan-20	9,114,867
10	The Invisible Man	27-Feb-20	9,086,467