Dear SCL member

It has been brought to our attention that the Motion Picture Licensing Corporation (MPLC) has been approaching public libraries claiming that they must subscribe to its individual or umbrella licences for the purpose of ensuring the requirements of copyright legislation are met in relation to the “public performance” of films. We strongly advise Library Authorities to seek legal advice before taking out one of these licences for the following reasons:

- **The screening of films**

  Any Council organising screenings of films at its premises and facilities, which includes its libraries, Care and Residential Homes, Nursing and Day Centres, Community centres, Nurseries etc, **does** need to procure an appropriate licence for the screening if the film is being shown for entertainment purposes and not for educational purposes. Licences are available from MPLC ([http://www.themplc.co.uk/](http://www.themplc.co.uk/)). However, before purchasing one of these licences, we draw your attention to concerns around the lack of transparency over repertoire and a lack of indemnity, as set out on pages 6-7 of University UK’s *Update on Copyright Licensing Policy Briefing* (P-2013-03), issued in May 2013:

  **The producers’ repertoire covered by the MPLC licence**

  “The MPLC says that it represents in the UK over 400 independent studio and film or TV producers [correct as of May 2013] whose copyrighted work may be used for non-instructional use in educational establishments under one or other of its licences. It will provide a full list of these producers on request. It does not, however, publish a list of the films that are covered by its licence”.

  **The absence of an indemnity in the MPLC licence**

  “It is important to note that despite representations made to the MPLC, it will not provide the kind of indemnity that the CLA copyright licence provides. That is, to indemnify the licensee in respect of all reasonable and proper legal costs, expenses and damages awarded against or incurred by the licensee arising from a claim that the licensee, while acting in pursuance of the licence, has infringed copyright in licensed material (whether or not the claim is made by a copyright owner who has mandated the CLA to enter into the licence on its behalf)”.

  Licences can also be purchased from Filmbank [http://www.filmbankmedia.com/](http://www.filmbankmedia.com/). In addition, rights can be cleared directly with the rights owners.

- **The viewing of films on People’s Network computers**

  MPLC is also asserting that the viewing of films on People’s Network computers should be licensed as this constitutes a “public performance” under the Copyright, Designs and Patents Act 1988.
In 2010 The Museums, Libraries and Archives Council, the Scottish Library and Information Council, CyMAL: Museums Archives and Libraries Wales, and Libraries NI produced an information guide setting out the circumstances under which public libraries in the UK may need to purchase a licence or licences for music or film related public performances. This guidance states that:

“There is no statutory definition of ‘public performance’, the concept of which remains unclear and inconclusive even from relevant case law. Indeed, after considerable investigation by the library stakeholder bodies, and the expert group representatives, no case law relating to one person listening to music through headphones in a library has been identified. Further, the collecting societies have no common position with regard to the use of headphones. Therefore we are not in a position to recommend a public performance licence be purchased for this activity unless this is confirmed to be necessary in law. You may still receive invoices or requests for licences from the licensing agencies in respect of these activities and it is in your sole discretion to decide whether to purchase such licences or not.” (p2)

http://uk-irl.iaml.info/resources/pub_perf_licenses.pdf

To the best of our knowledge this guidance still stands. A public performance licence is not required if one person is watching a film and only that person can view the material. If more than one person can, even if no others do, it will be a “public performance” according to the Court of Justice of the European Union, where it is the potential, not the actual, audience that matters. Libraries therefore need to ensure that they never allow more than one person to sit at a single terminal and that headphones are always used.

Please also note that the ownership or use of equipment that allows access to copyrighted material does not itself require a licence as liability is dependent on usage.

If you have any questions please do not hesitate to contact either Ayub Khan Service Manager (Face to Face) [01926 412657 ayubkhan@warwickshire.gov.uk] or Yvonne Morris, Policy Officer at CILIP (020 7255 0629 or yvonne.morris@cilip.org.uk).

Yours sincerely

Nick Poole, Chief Executive, Chartered Institute of Library and Information Professionals

Neil MacInnes, President, Society of Chief Librarians
Disclaimer: The content of this letter does not constitute legal advice and neither SCL nor CILIP represents itself as a legal adviser. For additional guidance on this matter we advise you to speak to your Local Authority’s Legal Department.